



PRESS RELEASE No 127/23

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Judgment of the Court of 13 July 2023 in Case C-87/22 | TT (Wrongful removal of a child)

Wrongful removal of a child: although the court of the Member State in which the child was habitually resident has jurisdiction to rule on rights of custody, it may exceptionally request the transfer of the case to a court of the Member State to which the child has been removed

It is however necessary that the child have a particular connection with that other Member State, that the other court be better placed to hear the case and that the transfer be in the best interests of the child

In connection with a separation, a Slovak couple who had moved to Austria with their two children are engaged in a legal battle concerning rights of custody and the children's place of residence.

As the mother has brought the children to live with her in Slovakia, the father has requested a Slovak court, on the basis of the Hague Convention on International Child Abduction, to order that they be returned to him in Austria.

In addition, as custody of the children has been joint until now, he has requested an Austrian court to grant him sole custody of those children.

The children's mother has requested that that Austrian court ask a Slovak court to assume jurisdiction on the matter of custody of the children. As the Austrian court has granted that request, the father has lodged an appeal.

In that context, the Austrian appeal court asks the Court of Justice to interpret the Brussels IIa Regulation¹ which lays down, at EU level, the rules on jurisdiction concerning, in particular, rights of custody.

According to that regulation, the courts having jurisdiction to hear a case concerning rights of custody are, in principle, the courts of the Member State in which the child is habitually resident at the time the court is seised. Because of their geographical proximity, those courts are generally the best placed to assess the measures to be taken in the interests of the child. However, in a case of the wrongful removal of the child, the courts of the Member State where the child was habitually resident immediately before that removal are to retain, in principle, their jurisdiction in order to deter such removals.

By way of exception, the regulation further provides that the court of a Member State with jurisdiction as to the substance of rights of custody may request the transfer of the case to a court of another Member State with which the child has a particular connection, if the latter court is better placed to hear that case, and where the transfer is in the best interests of the child.

The question arises in the present case whether that power may also be exercised in a case of the wrongful removal of the child.

By judgment delivered on 13 July 2023, the Court replied in the affirmative: **the court of a Member State which has jurisdiction to rule on the substance of rights of custody, on the ground that the child was habitually resident in that Member State immediately before he or she was removed to another Member State by one of his or her parents, may exceptionally request the transfer of the case to a court of that other Member**

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

State.

This presupposes that the child has a particular connection with that other Member State, that that other court – in the view of the court having jurisdiction – is better placed to hear the case, and that the transfer is in the best interests of the child.

Those cumulative conditions are exhaustive. That being so, when examining the last two conditions, the court having jurisdiction must take into consideration the existence of proceedings for the return of that child, instituted pursuant to the Hague Convention on International Child Abduction and in which a final decision has not yet been delivered in the Member State to which that child was wrongfully removed.

In that regard, the court having jurisdiction must particularly take into account, in the light of the provisions of that convention, the temporary impossibility for the courts of the other Member State to adopt a decision on the substance of rights of custody, consistent with the child's interests, before the court of that other Member State hearing the application for the return of that child has, at the very least, ruled on that application.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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