

Jurisdiction in matters of parental responsibility:  
court seized by the filing of the document  
instituting the proceedings, provided that the  
plaintiff has taken the steps required to ensure  
that the initial document is (Ruling n° 614 – 21-  
25.874)

22/11/2023



Ruling No. 614

**Quashing**

FRENCH REPUBLIC

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ON BEHALF OF THE FRENCH PEOPLE

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## **RULING OF THE *COUR DE CASSATION* (COURT OF CASSATION), FIRST CIVIL CHAMBER, 22 NOVEMBER 2023**

Mr [N] [S], domiciled at [Address 2], brought appeal No. G 21-25.874 against the ruling delivered on 25 October 2021 by the *cour d'appel* (Court of Appeal) of Rennes (6th Chamber A) in the dispute between him and Ms [J] [W], domiciled at [Address 1] (Germany), respondent in the quashing.

The appellant bases his appeal on one single ground of quashing.

The case file has been sent to the Prosecutor-General.

On the report of Mr Fulchiron, judge, the observations of SARL Delvolvé and Trichet, lawyers of Mr [S], of SARL Meier-Bourdeau, Lécuyer and Associés, lawyers of Ms [W], and the advisory opinion of Mr Sassoust, Advocate General, after discussions in the public hearing of 3 October 2023 attended by Ms Champalaune, President, Mr Fulchiron, judge-rapporteur, Ms Auroy, Elder Judge, Ms Antoine, Ms Poinseaux, Ms Dard, Ms Beauvoie, Ms Agostini, judges, Ms Lion, Mr Duval, Ms Azar, Mr Buat-Ménard, Ms Daniel, judge referee-rapporteurs, Mr Sassoust, Advocate General, and Ms Layemar, Chamber Registrar,

the First Civil Chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the abovementioned President and judges, after deliberation in accordance with the law, has delivered the present ruling.

## **Facts and Procedure**

1. According to the ruling under appeal (Rennes, 25 October 2021), from the relations between Mr [S] and Ms [W], [N] was born in Nantes on 23 October 2012.
2. By petition of 28 May 2019, Mr [S] referred the case to the Family Judge of the *tribunal judiciaire* (Tribunal of First Instance) of Nantes to obtain a ruling on the arrangements for exercising parental authority.
3. On 17 March 2020, Ms [W] brought an action before a German court for the same purpose.

## **Reviewing plea**

On the sixth, seventh, eighth and ninth parts of the plea

4. Pursuant to Article 1014(2) of the civil procedure code there is so need to rule by a specially reasoned decision which is clearly not of a nature to quashing But on the first part of the plea

## **Statement of plea**

5. Mr [S] objects to the ruling whereby the Family Judge of the *tribunal judiciaire* (Tribunal of First Instance) of Nantes was declared incompetent and the parties were referred to the German court to which the case had been referred, even

though "the courts of a Member State of the European Union have jurisdiction in matters of parental responsibility in respect of a child who habitually resides in that Member State when the case is referred to the court; where a case is deemed to have been referred to a court on the date on which the document instituting the proceedings or an equivalent document is filed with the court, provided that the plaintiff has proceeded as required to have the document served on the respondent; this latter condition is met when the formalities following the petition are fulfilled, regardless of the conditions under which they were fulfilled; where, by examining, in order to assess the habitual residence of the child [T] [S] at the date of 18 September 2020, the date on which Mr [S] served the petition at the Registry of the *tribunal de grande instance* (Tribunal of First Instance) of Nantes on 28 May 2019, and not the actual date of the petition, on the ineffective ground whereby Mr [S] would have been lacking in diligence and demonstrated negligence in the proceedings, the *cour d'appel* (Court of Appeal) infringed Articles 8 and 16 of Regulation (EC) No. 2201/2003 of 27 November 2003 (Brussels II bis) concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility."

## Court's response

Having regard to Articles 8(1) and 16(1)(a) of Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility:

6. According to the first of these texts, the courts of a Member State have jurisdiction in matters of parental responsibility for a child who is habitually resident in that Member State when the case is referred to the court.

7. The second text provides the following:

"A case shall be deemed to have been referred to a court:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; "

8. It follows from the latter text that a case shall be deemed to have been referred to a court by the performance of one single act, namely the filing of the document instituting the proceedings, provided that the plaintiff has proceeded as required vis-à-vis the original document being duly served on the respondent.

9. In order to declare the French court incompetent in favour of the German court receiving the referral, the ruling maintains that Mr [S] was guilty of serious negligence in failing to inform the registry in good time of Ms [W]'s new address in Germany and to inform the latter of the proceedings in progress before the summons he had sent her on 18 September 2020, date on which the child no longer had its habitual residence in France but rather in Germany, such that, in view of Article 16 of Regulation 2201/2003, it cannot be considered that the case had been validly referred to the French court by the petition filed on 28 May 2019.

10. In so ruling, while it had found that Mr [S] had filed his petition with the French court and then duly summoned Ms [W], the *cour d'appel* (Court of Appeal) violated the above-mentioned texts.

11. And in the absence of reasonable doubt as to the interpretation of European Union law, it is not fitting to refer the matter to the Court of Justice of the European Union for a request for preliminary ruling.

**ON THESE GROUNDS, and without having to rule on the other objections of the appeal, the Court:**

QUASHES AND SETS ASIDE all provisions of the 25 October 2021 ruling delivered to the parties by the *cour d'appel* (Court of Appeal) of Rennes;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the *cour d'appel* (Court of Appeal) of Caen;

Orders Ms [W] to pay the costs;

Pursuant to Article 700 of the Code of Civil Procedure, dismisses the claims;

At the request of the Prosecutor-General of the *Cour de cassation* (Court of Cassation), orders that this ruling be transcribed in the margin or at the bottom of the quashed ruling.

Thus decided by the first civil chamber of the *Cour de cassation* (Court of Cassation) and pronounced by the President in public hearing on the twenty-second day of the month of November of the year two thousand and twenty-three.

President : Ms Champalaune  
Advocate-general : M. Sassoust  
Judge-Rapporteur : M. Fulchiron  
Lawyer(s) : Delvolvé and Trichet – SARL Meier-Bourdeau, Lécuyer and Associés

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Translated rulings