

AD v (1) CD (2) AD (2007)

[2007] EWCA Civ 1277; (2008) 1 FLR 1003 : Times, January 9, 2008

12/12/2007

Barristers

Teertha Gupta KC

Court

Civil Division

Summary

An order of a Romanian court, delivered before Romania's accession to the European Union but not certified within the meaning of Regulation 2201/2003 Art.41 until after the accession, was not an enforceable judgment within the meaning of Art.41.

Facts

The appellant father (F) appealed against a decision that a contact order made in the Romanian court was unenforceable under the provisions of Regulation 2201/2003 Art.41. F and M were Romanian. Their son was born in Romania and had lived there until M unilaterally removed him to the United Kingdom. In October 2006 a Romanian court ordered that F should have regular staying contact with the child. F appealed against that order, but later withdrew his appeal. In March 2007 the appellate court sealed the October order. Thereafter, the Romanian court issued a certificate under Art.41 of the Regulation, the judgment certified being that of October 2006, rendered final and enforceable by the order of March 2007. In the UK, F sought enforcement of the certified Romanian order. However, the judge held that the order was unenforceable under the provisions of the Regulation, the order certified being that of October 2006, which pre-dated Romania's accession to the European Union in January 2007. In appealing that judgment, F relied on fresh evidence in the form of a letter from the Romanian Secretary of State which indicated that once an order had been appealed in Romania that order had no legal effect, and that it was only when the appeal was abandoned that the order became final and enforceable. D submitted that a court at first instance could not issue a certificate pursuant to Art.41 until either the expiration of the time for filing a notice of appeal or until the determination of any appeal; that it was the determination of the appellate court that created an enforceable order; and that the clear objective of the Regulation was to ensure that a contact order made in one Member State was immediately enforceable in another Member State provided that the order had been duly certified under Art.41.

Held

HELD: (1) The points of law in issue were not to be decided solely in accordance with Romanian law, but in accordance with the Regulation. The practice guide for the application of the Regulation indicated that, if national law did not enable a judgment to be enforceable pending appeal, the Regulation conferred a

right on the judge of origin to render the judgment enforceable. The judgment in question was given before Romania acceded to the EU and was not declared enforceable until after the accession. The Regulation distinguished in several places between a judgment and an enforceable judgment, and that supported the conclusion that it was the original judgment and not the order declaring it enforceable that was the relevant judgment. In those circumstances, what was given was not an enforceable judgment within the meaning of Art.41 because in October 2006 Romania was not a member of the EU. Nothing in the ruling of the European Court in case C-435/06 altered that conclusion. (2) (Obiter) In relation to judgments given after January 1, 2007 in proceedings begun before that date, the court's tentative view was that a purposive interpretation of the Regulation in relation to new Member States would involve an interpretation, or application by analogy, of Art.64(1) and Art.64(2), which would mean that the Regulation would not apply to proceedings commenced before January, 1 2007, except that it could apply to judgments given after that date provided that jurisdiction was founded on the rules which accorded with those in Chapter II of the Regulation.

Permission

Lawtel 