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Viktorija Baranauskaite v (1) Doncaster Metropolitan Borough Council (2) AB (A Child By Her Children's Guardian) (2012)

[2012] EWCA Civ 978

17/07/2012

Barristers
Private: Marcus Scott-Manderson QC

Court
Court of Appeal (Civil Division)

Practice Areas
International Children Law
Public Children Law

Summary
The sole purpose and effect of Regulation 2201/2003 art.56(1) and art.56(2) were to require a court which was considering placing a child in institutional or foster care in another Member State to consult any authority responsible for child placements in that Member State and not to decide on any such placement without that authority's consent. They did not give a Member State an entitlement to call for the placement of a child within its jurisdiction.

Facts
The appellant (B) appealed against an order remitting the case from the High Court to the county court for a decision as to the future care of her four-year-old daughter (D).

B was a Lithuanian national who lawfully resided in England by virtue of Lithuania's membership of the European Union. In response to a communication from the Lithuanian authority responsible for child welfare, the local authority obtained an emergency protection order and D had since been in foster care. Because it was believed that the Lithuanian authorities were going to seek D's return to Lithuania for placement there, the county court judge transferred the case to the High Court. The High Court judge found that the Lithuanian authorities were content for the English court to decide whether D could be returned to B or not, but if she was not they had made clear that they wanted to undertake her replacement in Lithuania. He therefore remitted the case to the county court to consider whether B was able to care for D, and in the event that she was not, the arrangements necessary to comply with the request of the Lithuanian authorities pursuant to Regulation 2201/2003 art.56 to undertake her placement in Lithuania.

Held
Regulation 2201/2003 art.56(1) and art.56(2) did not give a Member State an entitlement to call for the

placement of a child within its jurisdiction. Nor therefore did they eliminate or constrict the domestic court's ordinary obligation to make its own judgment of where the child's best interests lay. The sole purpose and effect of art.56(1) and (2) were to require a court which was considering placing a child in institutional or foster care in another Member State to consult any authority responsible for child placements in that Member State and not to decide on any such placement without that authority's consent, Health Service Executive v SC (C-92/12) followed. In short, it was to ensure that children at risk were not sent into a transnational void. Article 56(2) tended to mislead by the use of the terms "requesting" and "requested" state, when no request was involved. What was meant were, respectively, the consulting state and the state consulted. If D could not safely be returned to B, then return to Lithuania would be under consideration. In that connection art.56 would have a role, but it was a consultative role, not one which tied the hands of the English court or excluded or reduced its obligation to arrive at its own judgment as to the child's best interests. The judge had fallen into error and that part of his order for remission was deleted (see paras 5-10 of judgment).