



Joint Factsheet

Cross-border child abduction ECtHR and CJEU Case-Law

(Last updated: 28/02/2026)

This factsheet has been prepared by the Registry of the European Court of Human Rights (“ECtHR”)¹ and the European Union Agency for Fundamental Rights as part of a collaborative effort to highlight jurisprudence in selected areas where European Union (“EU”) law and that of the European Convention on Human Rights (“ECHR” or “the Convention”) interact.

I. Introduction

Cross-border child abduction refers to the wrongful removal or retention of a child from his or her place of habitual residence in violation of actually exercised rights of custody². The return of children who have been abducted is regulated by the [Hague Convention on the Civil Aspects of International Child Abduction](#) of 25 October 1980 (“Hague Convention”) and, with regard to EU Member States, by the successive “Brussels II” Regulations³. In EU law, cross-border child abduction proceedings also engage the Charter of Fundamental Rights of the European Union (“the Charter”), in particular the child’s best interests (Article 24) and the right to respect for private and family life (Article 7), as reflected in the case-law of the Court of Justice of the EU (“CJEU”)⁴. The ECtHR’s case-law specifies the obligations that the Convention imposes on States when complying with their obligations stemming from these instruments, as well as from the [Convention on the Rights of the Child](#) of 20 November 1989 (“Convention on the Rights of the Child”).

Both EU law and the Convention give primacy to the best interests of the child throughout the entirety of the return proceedings⁵, bearing in mind that the objectives of prevention and immediate return correspond to a specific conception of those best interests. That shared conception, drawn from the Hague Convention, requires that the *status quo* prior to removal or retention be reestablished as soon as possible, so as to deprive the abducting parent of any advantages related to the issue of custody gained by the consolidation of a *de facto* situation he or she unilaterally created and as to ensure contact with both parents is maintained⁶. In practice, the effectiveness of return proceedings also

¹ The content of this factsheet is not binding on the Court.

² Article 3 of the Hague Convention; Article 2(11) of [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](#), OJ 2003 L 338, pp. 1–29 (the “Brussels II *bis* Regulation”); ECtHR, *Thompson v. Russia*, no. 36048/17, § 58-60, 30 March 2021. See also European Commission, [Practice guide for the application of the Brussels IIb Regulation](#), Luxembourg, 2023, pp. 96-99.

³ See below, section II.

⁴ See below, section IV.

⁵ See, for instance, Recitals 12 and 33 of the Brussels II *bis* Regulation, cited above; Article 24 § 2 of the Charter; ECtHR, *X v. Latvia* [GC], no. 27853/09, § 95-97, ECHR 2013.

⁶ See, for instance, ECtHR, *X v. Latvia*, cited above, § 97; *Michnea v. Romania*, no. 10395/19, § 37, 7 July 2020; *G.K. v. Cyprus*, no. 16205/21, § 53, 21 February 2023. See also CJEU judgments of 1 July 2010, *Povse*, C-211/10, EU:C:2010:400, § 64-65; 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, § 61-63; 16 February 2023, *Rzecznik Praw Dziecka e.a. (Suspension of the return decision)*, C-638/22 PPU, EU:C:2023:103, § 69, 74-75; and Article 24(3) of the Charter.

depends on how well national child protection and family justice actors work together across borders. In this regard, FRA has highlighted the importance of clear inter-agency coordination, accessible referral pathways and specialised training, including to ensure that children can be heard in a manner adapted to their age and maturity and that any protection concerns linked to return are identified and addressed⁷.

Nonetheless, non-return may sometimes prove justified in light of the child's best interests, thus explaining the existence of exceptions to return. The ECtHR's case-law has addressed these exceptions, most notably the Hague Convention's exceptions that return should not be ordered if there is a grave risk that it would expose the child to physical or psychological harm (Article 13(1)(b)) or if the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take into account his or her views (Article 13(2)), both in the context of proceedings which led to the adoption of a return order and in subsequent enforcement proceedings⁸. The CJEU's case-law has mainly dealt with these exceptions in the context of enforcement proceedings⁹.

II. Cross-border child abduction in EU law

Until 1 August 2022, the custody of children and their unlawful removal from one EU Member State to another was regulated by [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](#), OJ 2003 L 338, pp. 1–29 (known as the “Brussels II *bis*” or “Brussels IIa” Regulation), repealing [Regulation \(EC\) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses](#), OJ 2000 L 160, pp. 19–36.

The Brussels II *bis* Regulation took precedence over the Hague Convention in relations between EU Member States in matters governed by it (Article 60), but the Hague Convention's provisions could have an effect on the Regulation's meaning, scope and effectiveness¹⁰. The Regulation attributed jurisdiction in matters of parental responsibility in cases of child abduction, by derogation to the general rule in Article 8, to the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention (Article 10), until the child had acquired his or her habitual residence in another Member State and one of the other conditions listed in that Article was fulfilled. In any case, that ground of jurisdiction was to be applied in light of the best interests of the child and in particular the criterion of proximity¹¹. Article 11 of the Brussels II *bis* Regulation specified the rules applicable when examining an application for return made on the basis of the Hague Convention, including that the court examining such an application was to act expeditiously, issuing its judgment no later than six weeks after the application had been lodged except where exceptional circumstances made this impossible (Article 11(3)). It also provided that such a court could not refuse to return a child on the ground of risks of harm in case of return if it was established that adequate arrangements had been made to secure his or her protection after return (Article 11(4)). One of the central provisions of the Regulation was that the courts of the Member State, in which the child was habitually resident prior to wrongful removal or retention, could override a decision of non-return, issued on the basis of any of the exceptions listed in Article 13 of the Hague Convention by the courts of the Member State in which the child had been displaced, by handing down a subsequent judgment requiring the return of the child (Article 11(8)), which would be directly

⁷ FRA, [Towards Integrated Child Protection Systems – Challenges, promising practices and ways forward](#), Vienna, 2025.

⁸ See below, section IV B. 2. and IV C. 1.

⁹ See below, section IV C.1.

¹⁰ CJEU, judgment of 13 July 2023, [TT \(Wrongful removal of a child\)](#), C-87/22, EU:C:2023:571, § 58.

¹¹ Recital 12 of the Brussels II *bis* Regulation, cited above. See below, section IV B.1.

enforceable in all Member States if a certificate was issued by that court (Article 42). The CJEU confirmed that the courts of the Member State to which the child had been displaced could not oppose that certified judgment's recognition and enforceability¹².

[Council Regulation \(EU\) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction](#), OJ 2019 L 178, pp. 1–115 (known as the “Brussels II *ter*” or “Brussels IIb” Regulation) includes a chapter dedicated to cross-border child abduction (Article 22-29). It provides for, *inter alia*, the obligation for the court seized of an application for return on the basis of the Hague Convention to invite the parties to engage in mediation or other means of alternative dispute resolution – unless this is contrary to the best interests of the child, is not appropriate in the particular case or would unduly delay the proceedings (Article 25). It also specifies that the time frame of six weeks for issuing a decision on an application for return applies to each individual instance, running respectively from the moment the court of first instance is seized and from the moment when all the required procedural steps have been taken and the court of higher instance is in a position to examine the appeal (Article 24). Article 28 § 2 also adds that if a decision ordering return has not been enforced within six weeks after the beginning of the enforcement proceedings, the party requesting that the decision be enforced can ask the competent authority in the Member State of enforcement the reasons for this delay. The Regulation also provides that decisions ordering return may be declared provisionally enforceable upon the condition that it is in the best interests of the child (Article 27(6)) and guarantees the right of the child to express his or her views in return proceedings (Article 26). It sets out the possibility for a court seized of an application for return to adopt provisional measures under Article 15, either at any stage of the proceedings to ensure contact between the child and the person seeking return (Article 27(2)), or once return has been ordered to protect the child from a grave risk within the meaning of Article 13(1)(b) of the Hague Convention provided that this would not unduly delay the return proceedings (Article 27(5)). The overriding mechanism found in the Brussels II *bis* Regulation was also modified. While the court of the Member State in which the child was habitually resident prior to wrongful removal or retention can still override a non-return decision issued by the courts of the Member State in which the child has been displaced, it can only do so where a decision refusing return is based on Article 13(1)(b) or Article 13(2) of the Hague Convention and only in the context of ongoing proceedings on the substance of custody rights (Article 29(6)). The subsequent decision ordering return, once certified under Article 47, will be recognised in other Member States without any special procedure being required and without any possibility of opposing its recognition, unless and to the extent that that decision is found to be irreconcilable with a later decision (Article 42-43, Article 50). The European Commission has published a comprehensive practice guide on the application of the Brussels II *ter* Regulation, detailing its rules on cross-border child abduction and the enforcement of decisions ordering return¹³.

III. Cross-border child abduction in the case-law of the ECtHR

In the area of cross-border child abduction, the obligations imposed by the ECHR on Contracting States must be interpreted in light of the Hague Convention, of the Convention on the Rights of the Child, and of the relevant rules and principles applicable in relations between the Contracting parties¹⁴. The

¹² See below, section IV C.1.

¹³ European Commission, [Practice guide for the application of the Brussels IIb Regulation](#), Luxembourg, 2023. See, in particular, pp. 92-122 as regards cross-border child abduction and pp. 124-154 with regard to enforcement of decisions ordering return. Additional information can also be found on the European e-Justice Portal, at the page [Brussels IIb Regulation - Matrimonial matters and matters of parental responsibility \(recast\) - National information and online forms concerning Regulation No. 2019/1111](#).

¹⁴ ECtHR, *Michnea v. Romania*, cited above, § 36.

ECtHR ascertains whether the fair balance has been struck between the competing interests of the child, the parents and the public order, within the margin of appreciation granted to States, all the while keeping in mind that the child's best interests are paramount in all decisions concerning them¹⁵. In that regard, the ECtHR has found that the presumption that the best interests of the child can best be served by ensuring immediate return is rebuttable. Part of the ECtHR's case-law is thus concerned with assessing whether domestic courts genuinely took into account all possible exceptions to return, including those provided for by the Hague Convention, when making their decisions. Domestic courts are under a procedural obligation to hand down a substantiated decision on that point, looking at whether non-return can be justified in view of the circumstances of the case and the child's best interests, in light of Article 8 of the Convention. The ECtHR therefore requires that return not be ordered automatically or mechanically¹⁶.

In cases concerning the enforcement of judgments ordering return, given that Article 8 includes a parent's right to the taking of measures with a view to being reunited with his or her child, the ECtHR has found that it is incumbent on the authorities to take all steps that could reasonably be demanded of them to facilitate the execution of the return order¹⁷. Voluntary compliance and mediation should be prioritised by States¹⁸, but recourse to sanctions should not be ruled out in the event of manifestly unlawful behaviour on the part of the person with whom the child is living. The national authorities' obligation to take such steps is not absolute, since the best interests of the child and his or her rights must be taken into account, including the child's expressed wishes¹⁹. The ECtHR has notably acknowledged that the passage of time may call for a re-assessment of the child's ties to his or her parents and their environments, and exceptionally justify the non-enforcement of a final return order in light of his or her best interests²⁰. However, the change of relevant facts must not be brought about by the State's failure to take all measures which could reasonably be expected to facilitate the execution of the return order²¹. The ECtHR has more generally required that domestic authorities act expeditiously in carrying out return proceedings, including the enforcement of final return decisions, with the adequacy of a measure being judged by the swiftness of its implementation²².

In cases concerning the return of children pursuant to the "Brussels II" Regulations, the ECtHR verifies that the principle of mutual recognition at the heart of those Regulations is not applied "automatically and mechanically" to the detriment of fundamental rights. Domestic courts called upon to apply these Regulations are to give full effect to their mechanisms where the protection of Convention rights cannot be considered manifestly deficient, but cannot refrain from examining a serious and substantiated complaint raised before them to the effect that the protection of a Convention right has

¹⁵ ECtHR, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 134, ECHR 2010; *X v. Latvia*, cited above, § 95-96.

¹⁶ ECtHR, *X v. Latvia*, cited above, § 98, 106-107. For examples of how these principles were applied, see below section B.2.; ECtHR, *Byčenko v. Lithuania*, no. 10477/21, 14 February 2023; ECtHR, *G.K. v. Cyprus*, cited above; *Verhoeven v. France*, no. 19664/20, 28 March 2024.

¹⁷ ECtHR, *M.K. v. Greece*, no. 51312/16, § 76-77, 1 February 2018.

¹⁸ [CM/Rec\(2025\)4 - Recommendation of the Committee of Ministers to member States on the protection of the rights and best interests of the child in parental separation proceedings](#), § 47-55, 59-63, 28 May 2025.

¹⁹ See below, section IV C.1. and section IV C. 2.; [CM/Rec\(2025\)4](#), cited above, § 19-31 ; [CM/Rec\(2025\)5 – Recommendation of the Committee of Ministers to member States on the protection of the rights and best interests of the child in care proceedings](#), § 20-31, 66, 28 May 2025.

²⁰ ECtHR, *Sévère v. Austria*, no. 53661/15, 21 September 2017.

²¹ ECtHR, *Makhmudova v. Russia*, no. 61984/17, § 68, 2020.

²² ECtHR, *Ferrari v. Romania*, no. 1714/10, § 49, 28 April 2015; *M.K. v. Greece*, cited above, § 79; *Veres v. Spain*, no. 57906/18, § 79, 8 November 2022.

been manifestly deficient and that this situation cannot be remedied by EU law, on the sole ground that they are applying EU law²³.

IV. Case-law of the Court of Justice of the European Union (CJEU) and of the ECtHR

A. The notion of wrongful removal or retention

1. In violation of actually exercised rights of custody

ECtHR, *Guichard v. France* (dec.), no. 56838/00, ECHR 2003-X

Facts – The applicant and M., an unmarried couple, had a son over whom the mother had been automatically granted parental responsibility by virtue of Article 374 of the French Civil Code. She unilaterally decided to take her son to Canada. The French Minister of Justice refused to intervene to obtain the return of the child pursuant to the Hague Convention as the mother alone had parental responsibility at the time of removal and the removal could not therefore be described as wrongful. The applicant's appeals to the administrative courts, up to the *Conseil d'Etat*, were also dismissed. The *Conseil d'Etat* notably considered that Article 374 of the Civil Code was not incompatible with the Convention or the Convention on the Rights of the Child. The applicant complained that the way the national law was applied to him amounted to a violation of the relevant authorities' positive obligations under Article 8 of the Convention. He also complained that Article 374 of the Civil Code created discrimination contrary to Article 14.

Law – The ECtHR observed that the removal could not be regarded as wrongful within the meaning of the Hague Convention since the applicant did not have rights of custody, as the relevant provisions of the Civil Code vested the exercise of parental responsibility in the mother. It therefore found that Article 8 of the Convention did not impose positive obligations on the French authorities to secure the return of the child in this case. The ECtHR also relied on *Dazin v. France*, no. 28655/95, Commission decision of 12 April 1996, unreported, to state that the measures taken on the basis of Article 374 of the Civil Code were compatible with Article 8 and Article 14 ECHR, to the extent that Article 374 of the Civil Code gave the parent who did not have parental responsibility the possibility of requesting the domestic courts to vary the award of parental responsibility, that application then being examined by the appropriate court and each case being determined on the basis of the child's interests. The ECtHR did not see any reason to move away from the conclusion of the Commission.

Conclusion – The ECtHR found the application inadmissible as manifestly ill-founded.

CJEU, Judgment of 5 October 2010, *McB*, C-400/10 PPU, EU:C:2010:582

Facts – Mr McB and Ms E lived together as an unmarried couple in Ireland, and had three children. The mother left for England with the children, and the father subsequently brought an action for the return of his children before the English courts. In that context, he was required to obtain a decision from the Irish authorities declaring the removal of the children wrongful within the meaning of the Hague Convention. That request was dismissed as, under Irish law, the natural father who is not married to the child's mother does not automatically have rights of custody in respect of his child, unlike the mother, but can obtain such rights by a court judgment. Since he had

²³ ECtHR, *Povse v. Austria* (dec.), no. 3890/11, 18 June 2013 (see below, section IV. C.1.).

no rights of custody, the removal could not be wrongful. The father appealed to the referring court, which asked the CJEU whether the Brussels II *bis* Regulation precluded such a Member State law.

Law – The CJEU held that the Member State law determining the existence of rights of custody, on the basis of which removal can be considered wrongful within the meaning of Article 2(11) of the Brussels II *bis* Regulation, may impose conditions under which the natural father acquires rights of custody, including that his acquisition of such rights is dependent on obtaining a judgment from the national court with jurisdiction. That interpretation of the Regulation was not precluded by the fundamental rights of the natural father and his children protected by Articles 7 and 24 of the Charter. Referring to the ECtHR’s reasoning in *Balbontin v. United Kingdom* (dec.), no. 39067/97, 14 September 1999 and in *Guichard*, cited above, the CJEU found that the very essence of the right of a natural father to a private and family life was his right to apply to the national court with jurisdiction to request that rights of custody be awarded to him. Therefore, the fact that the natural father did not automatically possess rights of custody, and that he thus could not obtain a declaration that a removal was wrongful, did not affect the essence of his right to private and family life, provided that the right to apply to the national court with jurisdiction before the removal to request that rights of custody be awarded to him was safeguarded. The CJEU also held that the rights of the child did not preclude, for the purposes of applying the Regulation, a situation where mothers were exclusively granted rights of custody as a general rule and natural fathers possessed rights of custody only as the result of a court judgment. This was so because, in such a case, a national court with jurisdiction was enabled to take a decision on custody of the child while taking into account all the relevant facts, and was therefore apt to protect the child’s best interests in accordance with Article 24(2) of the Charter.

2. Displacement from the child’s place of habitual residence

CJEU, Judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829

Facts – Mr Chaffe and Ms Mercredi had a daughter while living in England. After separation, Ms Mercredi left England for the island of Réunion with her daughter. The removal was lawful as Ms Mercredi was the only person with rights of custody. Four days after the removal, Mr Chaffe filed an application for parental responsibility in England. The Duty High Court Judge then ordered Ms Mercredi to return the daughter to England. The Saint-Denis Regional Court, upon an application by Ms Mercredi, eventually awarded sole parental responsibility to her and established the child’s habitual residence at the mother’s address. After the High Court found that it had jurisdiction to make orders in relation to the daughter, the Court of Appeal referred several questions to the CJEU with a view to clarifying the appropriate test for determining the habitual residence of a child for the purpose of Articles 8 and 10 of the Brussels II *bis* Regulation.

Law – The CJEU held that, to ensure that the best interests of the child are given the utmost consideration, the concept of habitual residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. National courts, in determining the place of habitual residence of a child who has been staying with her mother in a Member State for only a few days, should pay particular attention to the duration, regularity, conditions and reasons for the stay in the territory of that Member State, the intention of the parent to settle permanently, and to the family and social connections which the mother and child have with that Member State, with particular reference to the child’s age.

CJEU, Judgment of 9 October 2014, C, C-376/14 PPU, EU:C:2014:2268

Facts – In the context of divorce proceedings, the French court of first instance awarded joint parental responsibility to both parents over their child, determined the child’s habitual residence to be with the mother, and permitted her to set up residence in Ireland. That judgment was provisionally enforceable. The mother left for Ireland, and eight months later the French court of first instance’s judgment was overturned by the Court of Appeal, which ordered that the child should reside with the father. The father brought an action before the Irish High Court for the return of the child. That request was dismissed on the ground that the removal to Ireland was lawful as it took place on the basis of a judgment of the French court authorising that removal. The father appealed to the referring court, which asked the CJEU, *inter alia*, whether, in case of a removal of a child taking place in accordance with a court judgment that was provisionally enforceable and that was thereafter overturned by a court judgment fixing the residence of the child with the parent living in the Member State of origin, the failure to return the child to that Member State is wrongful within the meaning of Article 2(11) of the Brussels II *bis* Regulation, with the result that Article 11 of the Regulation is applicable.

Law – The CJEU held that the failure to return the child to the Member State of origin following a court judgment in that Member State fixing the residence of the child with the parent living in that Member State constitutes wrongful retention, rendering Article 11 of the Regulation applicable, provided that the child was, immediately before that retention, habitually resident in the Member State of origin. The Irish court must therefore determine whether the child was still habitually resident in France immediately before the Court of Appeal’s judgment. In doing so, that court must take into account all the circumstances of fact specific to the individual case and use the factors listed in the CJEU’s judgment in *Mercredi*, cited above. In circumstances such as those in the main proceedings, the fact that the court judgment authorising the removal could be provisionally enforced and that an appeal had been brought against it must be taken into account, but those factors are not sufficient to find that the habitual residence had been transferred. They must be weighed against other matters of fact which might demonstrate a degree of integration of the child in a social and family environment since the removal, in particular, the time which elapsed between that removal and the judgment which set aside the judgment of first instance and fixed the residence of the child with the parent living in the Member State of origin.

CJEU, Judgment of 8 June 2017, OL, C-111/17 PPU, EU:C:2017:436

Facts – OL and PQ lived together in Italy. They agreed that PQ would give birth in Greece and then return to Italy. PQ however decided to stay in Greece with her daughter. OL brought proceedings before the Greek court of first instance for the return of his daughter, which referred a question to the CJEU seeking to ascertain how the concept of habitual residence, within the meaning of Article 11 of the Brussels II *bis* Regulation, was to be interpreted when determining whether there was a wrongful retention in such a situation, notably whether the initial intention of the parents that the mother would return with the child was a factor of crucial importance for that determination.

Law – The CJEU held that, in such a situation, the child could not be considered as habitually resident in the Member State where her parents were habitually resident before her birth, and therefore that the refusal of the mother to return together with the child to that Member State could not constitute a wrongful retention. As the CJEU’s findings in the *Mercredi* judgment, cited above, notably the list of factors to be considered when determining a child’s habitual residence, could be applied to Article 11(1), the intention of the parents to settle permanently with the child in a

Member State where they were habitually resident before birth could constitute one such factor capable of complementing a body of other evidence. However, it could not be crucial by itself to the determination of the habitual residence of a child. To consider otherwise would force national courts to gather a substantial quantity of evidence and testimony to determine with certainty that intention, which is difficult to reconcile with the requirement of expediency, or to issue their judgments while not in possession of all the relevant information, which would result in legal uncertainty. That interpretation of the concept of habitual residence would also be contrary to the objective of the return procedure to restore the *status quo ante* and thus to put the child back in the environment with which he or she is most familiar, by resulting in the return of the child to a Member State with which he or she is not familiar. The best interests of the child, and in particular the right of the child to maintain a personal relationship and direct contact with both parents enshrined in Article 24(3) of the Charter, also do not require this interpretation. That fundamental right could be safeguarded through the course of proceedings on the substance of custody rights.

ECtHR, *Michnea v. Romania*, no. 10395/19, 7 July 2020

Facts – The applicant and X, a Romanian national, had a daughter while living in Italy, over whom they jointly exercised parental authority. After X took their daughter to Romania without the applicant’s consent, the applicant lodged an action with the Romanian court for the return of his daughter pursuant to the Hague Convention. The Court of Appeal ultimately dismissed the applicant’s request for the return of his child. It considered, based on the CJEU’s findings in the judgment of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829²⁴, that the removal was not wrongful because the child’s habitual residence had been in Romania since the couple were still registered as resident there. The applicant complained that the refusal of the Romanian courts to order the return of his child to Italy had breached his right to respect for his family life protected by Article 8 ECHR.

Law – The ECtHR found that the Court of Appeal’s interpretation and application of the provisions of the Hague Convention and of the Brussels II *bis* Regulation did not secure the applicant’s rights under Article 8 ECHR. Having recalled that the concept of habitual residence is a question of pure fact differing from domicile, the ECtHR observed that it was unclear from the Court of Appeal’s decision whether such a distinction was made, as it did not explain why it gave precedence to the parents’ Romanian domicile over the clear factual elements indicating that the child had been integrated in a social and family environment in Italy prior to her removal. The ECtHR also noted that the Court of Appeal relied on the CJEU’s findings in the *Mercredi* judgment, cited above, without making any assessment of the contextual differences between that case and the case brought before it. Finding that the child’s habitual residence had been in Italy and that there existed shared parental responsibility would normally have been sufficient to conclude that the Hague Convention was applicable and that the child’s removal had been wrongful, thus triggering the duty to return the child to Italy.

Conclusion – Violation of Article 8 of the Convention.

CJEU, Judgment of 2 August 2021, *A*, C-262/21 PPU, EU:C:2021:640

Facts – A and B are third-country nationals who had resided in Finland since 2016, but moved to Sweden in May 2019. They had a child in September 2019, over whom they had joint custody. In August 2020, the mother submitted an application for asylum in Sweden for herself and the child.

²⁴ See above in this section.

The Finnish authorities informed the Swedish authorities that they were responsible for examining these applications for asylum pursuant to Article 12(3) of the Dublin III Regulation, and the Swedish authorities then ordered the transfer of the mother and the child to Finland. After the mother voluntarily complied with the decision to transfer herself and the child to Finland in application of Article 29(1) of the Dublin III Regulation, that decision was annulled by the Swedish Migration Court and referred back to the immigration authority. The father then brought an action before the Finnish Court seeking an order for the prompt return of the child to Sweden. According to the Swedish authorities in the context of those proceedings, neither the child nor the mother held valid residence documents in Sweden or the right to enter Sweden and remain there. The father's application was dismissed as it could not be considered that the mother had wrongfully removed the child. The father appealed to the Supreme Court, which asked the CJEU whether a situation in which one of the parents removes the child from his or her Member State of habitual residence pursuant to a decision to transfer taken by that Member State in application of the Dublin III Regulation, then remains in the second Member State after the decision to transfer has been annulled without the authorities of the first Member State deciding to take back the persons transferred or authorise their residence, can be considered wrongful removal or retention within the meaning of Article 2(11) of the Brussels II *bis* Regulation.

Law – The CJEU held that such a situation could not be considered wrongful removal or retention within the meaning of Article 2(11) of the Brussels II *bis* Regulation as compliance with an enforceable transfer decision taken by the Member State in which the child was habitually resident was merely a legal consequence of that decision which could not be blamed on the parent. Furthermore, retention in the Member State responsible for examining the application for international protection did not constitute wrongful conduct, even after the annulment of the decision to transfer, where no decision to take back the parent and child had been made by the authorities of the Member State which carried out the transfer and where the parent and child were not authorised to reside in that Member State. An interpretation according to which an applicant for international protection should refrain from complying with a transfer decision on the ground that her conduct could be considered wrongful under the Brussels II *bis* Regulation would undermine the principle of legal certainty and the attainment of the objectives pursued by the Dublin III Regulation.

ECtHR, *Giannakopoulos v. Greece*, no. 20503/20, 3 December 2024

Facts – The applicant and E.B., a German national, had two children while living in Greece. After deciding to separate, E.B. was granted custody of the children by an interim measure issued by the Greek One-Member Court of First Instance, confirming that she would stay in Greece with the children. E.B. however settled permanently in Germany. The applicant later sought sole custody of his children by an application lodged with the Greek One-Member Court of First Instance. Three levels of jurisdiction found that they were not competent to deal with his application, by reference to the CJEU's case-law²⁵, either under Article 8 of the Brussels II *bis* Regulation (setting the rule that the competent courts in cases concerning custody matters are those where the children have their habitual residence) since the children were habitually resident in Germany, or under Article 10 of the Brussels II *bis* Regulation as there had been no wrongful removal since the mother had sole custody of the children when she moved them to Germany. The applicant complained that the Greek courts' rejection of his application for custody on the ground that they had no jurisdiction violated his right to respect for his family life guaranteed by Article 8 ECHR.

²⁵ CJEU, judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225; 22 December 2010, *Mercredi*, cited above; 9 October 2014, *C*, cited above; 8 June 2017, *OL*, cited above; 28 June 2018, *HR*, C-512/17, EU:C:2018:513.

Law – The ECtHR found that the domestic courts did not adopt an arbitrary or manifestly unreasonable interpretation of the provisions of the Brussels II *bis* Regulation, but instead took into account the interpretation given to the relevant provisions by the CJEU, the preamble to the Brussels II *bis* Regulation and the purposes of the relevant provisions. With specific regard to their interpretation of the notion of habitual residence, the ECtHR noted that the domestic courts' assessment was based on a thorough examination of a variety of factors including those mentioned in an indicative way by the CJEU. The domestic courts also applied these relevant principles with due regard to the contextual difference between the cases brought before the CJEU and the case before them. The fact that the period of one year during which the children had lived in Germany was less than the period they had spent in Greece could not outweigh the domestic courts' assessment of all the factors indicating that the children's new environment had become the centre of their lives, in line with the CJEU's case-law and the best interests of the children.

Conclusion – No violation of Article 8 of the Convention.

B. Assessing an application for return

1. Jurisdiction to take measures in matters of parental responsibility in cases of child abduction

CJEU, Judgment of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810

Facts – The parents had a daughter while living in Italy, over whom the competent Italian court provisionally granted sole custody to the father and ordered that she be placed temporarily in a children's home. On the same day as that order, the mother left with her daughter for Slovenia. The Slovenian Supreme Court confirmed that the order of the Italian court was enforceable in Slovenia. Enforcement proceedings were then brought in front of the Slovenian District Court for the daughter to be returned and placed in the children's home, which were suspended until the final disposal of the main proceedings: Ms Detiček had indeed made an application before the Slovenian Regional Court for a provisional and protective measure for custody of the child, which was granted on the basis of Article 20 of the Brussels II *bis* Regulation in conjunction with Article 13 of the Hague Convention, the daughter having expressed the wish to remain with her mother, having settled in Slovenia and return with enforced placement possibly causing physical and psychological trauma. The father challenged that order, ultimately before the Court of Appeal, which asked the CJEU whether a court of a Member State could take such a provisional measure where a court of another Member State, which has jurisdiction under that Regulation as to the substance of the dispute relating to custody, has already delivered a judgment provisionally giving custody of the child to the other parent and that judgment has been declared enforceable in its territory.

Law – The CJEU held that Article 20 of the Regulation precluded such a possibility. The courts of a Member State in which the child is present, referred to in that provision, may take provisional or protective measures only if those measures are urgent. However, a change in circumstances due to the fact that the child has settled into a new environment and that return would place her in a situation liable to harm her welfare are not grounds for finding that the case is urgent. Recognising a situation of urgency in such a case would undermine the principle of mutual recognition of judgments established by the Regulation and run counter to the Regulation's aim of deterring the wrongful removal of children between Member States, as accepting that a measure involving a change of parental responsibility could be taken under Article 20 of the Regulation in such a

situation would amount to legitimating the consequences of that wrongful conduct and to strengthening the position of the parent responsible for the wrongful removal.

CJEU, Judgment of 24 March 2021, *MCP*, C-603/20 PPU, EU:C:2021:231

Facts – SS and MCP had a child while living in the United Kingdom. After leaving for India with the child, MCP returned without her. The father applied to the referring court seeking an order for the return of the child and rights of access. The referring court asked the CJEU whether the courts of the Member State where the child was habitually resident immediately before his or her abduction retain their jurisdiction under Article 10 of the Brussels II *bis* Regulation indefinitely, in a case where a child has acquired his or her habitual residence in a third State following abduction to that State when the application relating to parental responsibility is brought before them.

Law – The CJEU held that there was no justification for an indefinite retention of jurisdiction in the Member State of origin in a case of child abduction to a third State. Having noted that Article 10 of the Regulation deals solely with jurisdiction in cases of child abductions from one Member State to another, the CJEU also found, *inter alia*, that such an interpretation would not be compatible with one of the fundamental objectives pursued by the Brussels II *bis* Regulation, read in the light of Article 24 of the Charter, namely that of respecting the best interests of the child by giving priority to the criterion of proximity. If the jurisdiction of the courts of the Member State of origin were to be retained unconditionally and indefinitely, even though the abduction to the third State has in the meantime met acquiescence on the part of any holder of custody and without account being taken of the specific circumstances of the situation, that retention of jurisdiction would prevent the court regarded as best placed to assess the measures to be adopted in the best interests of the child from being able to hear applications in relation to such measures.

CJEU, judgment of 13 July 2023, *TT (Wrongful removal of a child)*, C-87/22, EU:C:2023:571

Facts – TT and AK lived in Austria with their two children over whom they had joint custody. However, their children still went to school in Slovakia, and mainly spoke in Slovak. AK brought the children to live with her in Slovakia without TT's consent. TT lodged a request for the return of the children pursuant to the Hague Convention before a Slovak court, and lodged in parallel an application before an Austrian court seeking to be granted sole custody of his two children. The Austrian court dismissed TT's application on the ground that it did not have jurisdiction as the children's habitual residence was in Slovakia since they were not socially integrated in Austria. TT unsuccessfully appealed to the Regional Court and the Supreme Court. AK then asked a District Court in Austria to request a court in Slovakia to assume jurisdiction on the matter of custody in accordance with Article 15 of the Brussels II *bis* Regulation, which provides that, by way of exception, the courts of a Member State with jurisdiction as to the substance of a case in matters of parental responsibility may request the transfer of that case to a court of another Member State with which the child has a particular connection, if that court is better placed to hear the case, and where the transfer is in the best interests of the child. That District Court granted her application. TT appealed to the Regional Court, which is the referring court. That court sought to clarify whether it could request the transfer of the case to a court of the Member State in which the child had settled his or her habitual residence following a wrongful removal by one of his or her parents.

Law – As a preliminary observation, the CJEU noted that the question rested on the twofold premiss that the removal of the children from Austria was wrongful, and that the referring court, as the court of the Member State in which the children had their habitual residence immediately before their wrongful removal, had jurisdiction as to the substance of parental responsibility pursuant to

Article 10 of the Brussels II *bis* Regulation. The CJEU held that the power to request this transfer could be exercised where the transfer was requested to the court in the Member State to which the child had been wrongfully removed. A court which would be “better placed” to hear the case would indeed often be a court of the Member State in which the child had settled his or her habitual residence following wrongful removal. The right of the child to maintain contact with both his or her parents also did not mean that the court with jurisdiction could not rebut, in view of the best interests of the child, the strong presumption in favour of maintaining its own jurisdiction derived from the Regulation. However, it meant that the court with jurisdiction should be satisfied that the transfer was not likely to have a negative impact on the emotional, family and social relationships of the child concerned or on the child’s material circumstances. If it reached the conclusion that the transfer was contrary to the best interests of the child, that transfer should be denied. The existence of a return application pursuant to the Hague Convention and in respect of which a final decision had not yet been made should also be taken into account.

2. Exceptions to return

ECtHR, *X v. Latvia* [GC], no. 27853/09, ECHR 2013

Facts – The applicant and T. had a child while living in Australia. The applicant left for Latvia with her daughter, after which T. applied to the Australian court to establish his parental rights. That court recognised T’s paternity and held that the applicant and T. had had joint parental responsibility since the child’s birth. The Latvian court then granted T.’s request for return of the child pursuant to the Hague Convention, referring to the Australian court’s holding that the applicant and T. exercised joint parental responsibility, thus finding that the child’s removal had been wrongful. That judgment was upheld on appeal, with that court refusing to examine a psychologist’s certificate concluding to a risk of trauma in case of return. The applicant claimed that the Latvian courts’ decisions to order the return of the child infringed her right to respect for family life within the meaning of Article 8 ECHR.

Law – Clarifying its case-law on the matter, the ECtHR specified that domestic courts must genuinely take into account the factors capable of constituting an exception to the child’s immediate return in application of the Hague Convention in light of Article 8 ECHR and issue a reasoned decision on those points in light of the circumstances of the case, allowing the ECtHR to verify that those questions have been effectively examined. In this case, the ECtHR found that the Latvian courts’ refusal to take into account the psychologist’s certificate, the conclusions of which could disclose a possible grave risk within the meaning of Article 13(1)(b) of the Hague Convention, was contrary to the requirements of Article 8 ECHR. As the national courts had failed to carry out an effective examination of the applicant’s allegations under the Hague Convention, the decision-making process under domestic law did not satisfy the procedural requirements inherent in Article 8 ECHR, and the applicant had therefore suffered a disproportionate interference with her right to respect for her family life.

Conclusion – Violation of Article 8 of the Convention.

C. Enforcement of judgments ordering return

1. Obligation to enforce, including in the case of a risk to the child's best interests

CJEU, Judgment of 11 July 2008, *Rinau*, C-195/08 PPU, EU:C:2008:406

Facts – Mr and Mrs Rinau had a daughter, over whom they exercised joint parental responsibility, while residing in Germany. In July 2006, with Mr Rinau's consent, Mrs Rinau travelled to Lithuania with her daughter and with her son from an earlier relationship, initially for a temporary stay. She however remained in Lithuania with her children. In October 2006, Mr Rinau applied to the Lithuanian court to obtain the return of his daughter to Germany. The Court of Appeal eventually ordered the return of the child in March 2007 after dismissing the mother's allegations relating to risks of harm in case of return. The bailiff's attempts to enforce that return decision were ineffective as Mrs Rinau was uncooperative. Mrs Rinau and the Head of the Lithuanian Public Prosecution Service then applied to have the proceedings reopened, relying on new circumstances and the interest of the child. The Lithuanian Supreme Court ultimately accepted to hear the appeal, and in October 2007 the President of that court unilaterally adopted a ruling suspending the execution of the Court of Appeal's judgment pending its decision on the substance of the case. The Supreme Court then found that the lower courts had erred in refusing to reopen the proceedings, and remitted the case back to the first instance court – which then rejected as unfounded the request for reopening, as did the Court of Appeal. The enforcement proceedings were thus resumed, but again suspended by the Supreme Court pending another appeal by Mrs Rinau requesting reopening of the proceedings. In the meantime, the German court had ordered Mrs Rinau to return the child to Germany. It annexed a certificate issued pursuant to Article 42 of the Brussels II *bis* Regulation to its decision. Mrs Rinau asked the Lithuanian Court of Appeal not to recognise the German court's decision, a request which was rejected. She appealed to the Supreme Court, which suspended these recognition proceedings and referred several questions to the CJEU to clarify, *inter alia*, in which cases the court of the Member State in which the child is wrongfully retained is obliged to recognise the decision requiring the child's return handed down by the court of the Member State of origin under Article 11(8) of the Brussels II *bis* Regulation and for which a certificate has been issued under Article 42 of that Regulation.

Law – The CJEU reaffirmed the obligation of the court of the Member State in which the child is wrongfully retained to recognise and enforce such a certified decision. The fact that a non-return decision, issued by the court of the Member State in which the child is wrongfully retained and brought to the attention of the court of the Member State of origin in the framework of the mechanism provided for by Article 11(8), has not become *res judicata* is irrelevant for the purposes of issuing the certificate provided for in Article 42 of the Regulation, in so far as the return of the child has not actually taken place. A contrary position would deprive the Regulation of its useful effect (*effet utile*), as the objective of immediate return would remain subject to the exhaustion of the redress procedures in the Member State in which the child is wrongfully retained. In this case, since no doubts were expressed as to the authenticity of the certificate, the requested court in the Member State in which the child was wrongfully retained could only declare the enforceability of the certified decision and allow the immediate return of the child.

ECtHR, *Rinau v. Lithuania*, no. 10926/09, 14 January 2020

Facts – See the CJEU's judgment in *Rinau*, cited above. After the CJEU's preliminary ruling, in August 2008 the Supreme Court held that the case could not be reopened and therefore that the child should be returned. Throughout the proceedings, the dispute received nationwide political and

media attention in Lithuania. This notably included public petitions, questions by members of parliament on the validity of judicial decisions and encouragements given to the mother by the Minister of Justice. Moreover, amendments to the national law were adopted to enable the child to acquire Lithuanian citizenship and the government provided legal and financial support to the mother for the proceedings before the CJEU. The father and his daughter complained that the way the proceedings for the child's return had been handled breached their right to respect for their family life under Article 8 ECHR.

Law – The ECtHR began by noting that until March 2007 the decision-making in the Lithuanian courts, although lengthy under the standard of Article 11 of the Hague Convention, met the requirements of Article 8 ECHR to the extent that those courts' assessment revolved around the question of whether returning the child into her father's care would cause her serious psychological harm, complying with the duty to undertake an effective examination of allegations made on the basis of one of the exceptions to return provided for by the Hague Convention. However, the ECtHR found that the Lithuanian authorities failed to ensure fair decision-making in the applicants' case in the phase of enforcement of the judgment of March 2007, which was indispensable for the discharge of Lithuania's duties under Article 8, with the upsurge in public, institutional and political pressure as well as concerted efforts by politicians to help Mrs Rinau keep the child with her in Lithuania constituting *prima facie* evidence of politics being involved in the applicants' case.

The child's return was also obstructed by Mrs Rinau with the support of the Prosecutor General and the Supreme Court through the reopening and suspensions of proceedings, including to ask the CJEU for a preliminary ruling. In line with the CJEU's jurisprudence, the ECtHR found that, since no doubt had been expressed as to the authenticity of the certificate issued by the German court, once seised the Lithuanian courts had to order the child's return, any further delay only risking harm to the child, calling into question the authority of *res judicata* and allowing the abducting parent to benefit from the passage of time. Whilst it took the CJEU less than nine weeks to deliver its preliminary ruling, the Supreme Court took a further six weeks to confirm that the return of the child should be enforced. The ECtHR thus found that the time it took for the Lithuanian courts to reach the final decision on enforcement in the applicants' case failed to respond to the urgency of their situation, and that the "procedural vagaries" in this case were incompatible with the aims of the Hague Convention, of the Brussels II *bis* Regulation, and of Article 8 ECHR.

Conclusion – Violation of Article 8 of the Convention.

CJEU, Judgment of 1 July 2010, *Povse*, C-211/10, EU:C:2010:400

Facts – Ms Povse and M.A. lived together in Italy with their daughter, over whom they had joint custody. After the couple had separated, Ms Povse left for Austria with her daughter in February 2008. M.A. brought an action before the Austrian courts to obtain the return of his child. His action was ultimately dismissed on the ground that there was a grave risk of psychological harm to the child within the meaning of Article 13(1)(b) of the Hague Convention. Ms Povse brought an action before an Austrian court for custody of her daughter, and that court declared that it had jurisdiction and later awarded custody to the mother. However, M.A. had already applied to the Venice Youth Court, as part of another set of previous pending custody proceedings, for an order requiring the return of his daughter to Italy under Article 11(8) of the Brussels II *bis* Regulation. The Italian court declared, in its judgment of 10 July 2009, that it had retained jurisdiction, and ordered the immediate return of the child to Italy where she would live with her mother in accommodation provided by the social services department, or with her father if her mother did not wish to return. It also issued a certificate under Article 42 of that Regulation. M.A. applied to the Austrian court for enforcement of the judgment of the Italian court ordering the return of the child. His application

was initially dismissed on the ground that enforcement presented a grave risk of psychological danger to the child, but that decision was quashed on appeal on the basis of the CJEU's judgment in *Rinau*, cited above. Ms Povse lodged a further appeal to the Supreme Court, and that court referred several questions to the CJEU with a view to clarifying, *inter alia*, in which cases enforcement of a judgment ordering return under Article 11(8) of the Brussels II *bis* Regulation, certified under Article 42 of that Regulation, could be refused, including in case of a risk to the best interests of the child.

Law – The CJEU reaffirmed that a certified judgment is automatically enforceable, without the possibility of opposing its recognition. It notably held that the interpretation which makes enforcement of a judgment issued pursuant to Article 11(8) of the Brussels II *bis* Regulation and accompanied by the certificate referred to in Article 42 of that Regulation dependent on whether a final judgment on rights of custody preceded that judgment has no basis in the wording of Articles 11(8) and 42 of the Regulation or in the CJEU's case-law. An interpretation to the contrary would be inconsistent with the objective and purpose of the system set up by Articles 11(8) and 42 of the Regulation, and constitute a constraint which might compel the court of the Member State of origin to take a decision on rights of custody when it had neither all the information and material needed for that purpose, nor the time required to make an objective and dispassionate assessment.

It also held that a judgment delivered subsequently by a court in the Member State in which the child has been wrongfully displaced, awarding provisional custody rights and deemed to be enforceable under the law of that State, cannot preclude the enforcement of a certified judgment delivered previously by the court with jurisdiction in the Member State of origin. While a certified judgment cannot be enforced if it is irreconcilable with a subsequent enforceable judgment pursuant to Article 47(2) of the Regulation, the question whether a certified judgment is irreconcilable with a subsequent enforceable judgment must be addressed only in relation to judgments subsequently handed down by the courts with jurisdiction in the Member State of origin. To hold otherwise would amount to circumventing the system set up by the Regulation, and would deprive Article 11(8) of the Regulation of practical effect.

The CJEU also held that enforcement of a certified judgment cannot be refused in the Member State in which the child has been wrongfully displaced because, as a result of a subsequent change of circumstances, it might be seriously detrimental to the best interests of the child. A significant change of circumstances in relation to the best interests of the child constitutes an issue of substance, which must be resolved by the court with jurisdiction in the Member State of origin.

ECtHR, *Povse v. Austria* (dec.), no. 3890/11, 18 June 2013

Facts – See the CJEU's judgment in *Povse*, cited above. Following the CJEU's preliminary ruling, Ms Povse's appeal to the Supreme Court was dismissed in July 2010, noting that it was now for the first-instance Austrian court to enforce the Venice Youth Court's judgment of 10 July 2009. The mother's request to the Venice Youth Court for a stay of the enforcement of the return order was also dismissed in August 2010. The Austrian first-instance court later asked the father, in February 2011, to submit evidence that accommodation would be made available by the social services. The Italian Central Authority was also sent a request for information on five occasions prior to November 2011.

By a subsequent judgment of 23 November 2011, the Venice Youth Court withdrew the mother's custody rights, awarded sole custody to the father, and ordered the child's return to Italy for a second time, where she would reside with her father. A certificate of enforceability under Article 42 of the Brussels II *bis* Regulation was also issued. The father requested, in March 2012, that the Austrian courts enforce that judgment. His request was granted on appeal, on the ground that the

condition related to accommodation by the social services department was no longer valid in view of the Venice Youth Court's second judgment. The mother's appeal to the Supreme Court was then rejected, seven months after the initial application for enforcement of the judgment of 23 November 2011 had been lodged. The Austrian court competent to conduct the enforcement proceedings was then changed in October 2012. Ms Povse's request to the ECtHR for interim measures was then granted in December and applied for three months until February 2013. After that measure was lifted, attempts to bring about the parents' cooperation continued unsuccessfully in April. Ms Povse was then ordered by the competent Austrian court, in May 2013, to hand over the child within two months. The applicants, the mother and her daughter, complained under Article 8 of the Convention that the Austrian courts' decisions ordering the enforcement of the Venice Youth Court's return orders had violated their right to respect for their family life to the extent that they had limited themselves to ordering the enforcement of that return order and had not examined their argument that the child's return to Italy would constitute a serious danger to her well-being and lead to the permanent separation of mother and child.

Law – Applying the presumption of equivalent protection established by the ECtHR in the *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI, judgment, the ECtHR first observed that the decisions ordering return were certified under Article 42 of the Brussels II *bis* Regulation, which leaves no discretion to the courts of the Member State of enforcement. The Supreme Court also made use of the control mechanism provided for by EU law by referring a question to the CJEU for a preliminary ruling, in which the CJEU made it clear that the courts of the requested State could not review the merits of the return order issued under Article 11(8) and accompanied by a certificate of enforceability under Article 42 of the Brussels II *bis* Regulation, nor could they refuse enforcement on the ground that return would entail a grave risk for the child owing to a change in circumstances since the delivery of the certified judgment. The ECtHR thus held that the Austrian courts did not exercise any discretion in ordering the enforcement of the return orders, and that Austria had done no more than fulfil the legal obligations flowing from its membership of the EU. The ECtHR then found that the protection of Convention rights had not been manifestly deficient in the specific circumstances of this case, as the applicants could have relied on their Convention rights before the Italian courts, which were designated to protect the fundamental rights of the parties involved by the CJEU, but did not do so. Accepting that the Austrian courts must enforce the return order without any scrutiny as to its merits would therefore not result in the deprivation of any Convention rights. The presumption that Austria has complied with the Convention was not rebutted.

Conclusion – The ECtHR found the application inadmissible as manifestly ill-founded.

CJEU, Judgment of 22 December 2010, *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828

Facts – The parents had a daughter in Spain, over whom the Spanish court provisionally awarded rights of custody to the father and rights of access to the mother. The mother then moved to Germany, and after spending the summer holidays with her, the daughter remained with her mother in Germany. The father brought an application for the return of his daughter before the German courts, which was dismissed on appeal on the ground that, pursuant to Article 13 (2) of the Hague Convention, the daughter refused to return to Spain. In the meantime, the Spanish court, despite not having heard the daughter, awarded sole rights of custody to the father and issued a certificate pursuant to Article 42 of the Brussels II *bis* Regulation. The mother objected to the enforcement of the certified judgment in Germany. The competent German court held that the Spanish court's judgment was not to be recognised or enforced as it had not heard the daughter before handing down its judgment. The father appealed to the referring court, which asked the

CJEU whether a court of the Member State to which the child has been wrongfully displaced can exceptionally oppose the enforcement of a certified judgment on the ground that it contains a declaration which is manifestly inaccurate or a serious infringement of fundamental rights.

Law – Recalling the findings it had made in *Povse* and *Rinau*, both cited above, the CJEU reaffirmed the obligation for the court of the Member State to which the child was wrongfully displaced to recognise and enforce the judgment for which a certificate has been issued under Article 42 of the Brussels II *bis* Regulation. That court cannot review the conditions for the issue of the certificate stated in Article 42(2), including the condition that the child was given an opportunity to be heard unless a hearing was considered inappropriate having regard to his or her age or degree of maturity (Article 42(2)(a)) – only the court in the Member State of origin can do so. Hearing the child is not an absolute obligation, but if a court does decide to hear the child, Article 24 of the Charter and Article 42(2)(a) of the Regulation require it to take all measures appropriate to arrange such a hearing, having regard to the child’s best interests and the circumstances of each individual case. Before a court of the Member State of origin can issue a certificate which accords with the requirements of Article 42 of the Regulation, it must therefore ensure that the judgment to be certified was produced with due regard to the child’s right to freely express his or her views and that a genuine and effective opportunity to express those views was offered to the child. It is however solely for the courts of the Member State of origin to examine the lawfulness of the judgment with reference to those requirements. Therefore, the court with jurisdiction in the Member State to which the child was wrongfully displaced cannot oppose the enforcement of a certified judgment on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of the Regulation interpreted in accordance with Article 24 of the Charter.

ECtHR, *M.K. v. Greece*, no. 51312/16, 1 February 2018

Facts – The applicant and A.V. had two children, A. and I., over whom the Greek first-instance court had granted custody to the applicant and rights of access to the father. The applicant, who moved to France in October 2011, left her children in the care of her mother in Greece. During that period, the father exercised his access rights but did not hand the children back to the applicant’s mother. The Greek court dismissed A.V.’s request for the residence of his children to be transferred to his home and confirmed that the children should follow their mother to France. The applicant then managed to bring A. with her to France. In May 2015, after spending the holidays in Greece, A.V. refused to hand A. over to his mother. The applicant then initiated proceedings for the return of I. pursuant to the Hague Convention in front of the Greek court. The Greek court ordered that A. be returned to his mother. That judgment became final, and in October 2015, a bailiff asked A.V. to return A. to the applicant. At the same time, the French judge also indicated that A.’s residence was in France and that A.V. had wrongfully retained him in Greece. Upon the applicant’s request, the prosecutor transferred her request for assistance in obtaining return to the competent services, and initiated proceedings against A.V. for child abduction. In August 2016, a social worker met with A., and recommended against social services temporarily taking up custody of A. to enforce his return, in light of A.’s relationship with his father and brother and his expressed refusal to return to France. A. and I., aged 13 and 16, were also heard and A. declared that he wanted to remain with his father and brother. The applicant complained that the Greek authorities’ failure to comply with the French and Greek courts’ judgments awarding her custody and refusal to facilitate A.’s return to France amounted to a violation of Article 8 ECHR.

Law – The ECtHR first noted, in light of the final nature of the 2015 Greek court’s judgment ordering A.’s return, that the Greek authorities should have taken measures to enforce that judgment.

However, the Greek court's judgment ordering A's return was based on elements dating back to 2013, and did not take into account A.'s family situation as a whole and notably his close relationship with his brother. The situation had radically changed over the years, to the point where A. no longer wanted to follow his mother to France and had expressed the wish to remain with his father and brother. The ECtHR concluded that these elements could not be ignored when assessing the Greek authorities' actions, which thus took into account the whole of the family situation and its evolution throughout time as well as the best interests of the two children and the clearly expressed wish of A., who had attained an age of understanding at which his views were bound to carry significant weight. The ECtHR found that the Greek authorities, acting in keeping with the spirit of the Hague Convention and of the Brussels II *bis* Regulation, took the measures which could reasonably be expected of them to comply with their positive obligations under Article 8 ECHR.

Conclusion – No violation of Article 8 of the Convention.

2. Expediency with which judgments ordering return are enforced

ECtHR, *M.A. v. Austria*, no. 4097/13, 15 January 2015

Facts – This application, lodged by the father of the child whose abduction was assessed by the CJEU in the judgment *Povse*, and by the ECtHR in the decision *Povse v. Austria* (dec.), both cited above²⁶, concerns the measures taken by the Austrian courts to enforce the Venice Youth Court's judgments of 10 July 2009 and 23 November 2011. After the ECtHR's decision in *Povse v. Austria* (dec.) was handed down, an unsuccessful attempt to enforce by coercive measures the Italian court's judgment of 23 November 2011 was made in July 2013. Ms Povse's application for a stay of enforcement was dismissed by the Austrian court, which nevertheless provisionally refrained from returning the child until the Venice Youth Court gave a decision on a subsequent action brought by the mother for a new ruling on return and custody. Those proceedings were still pending at the time of the ECtHR's judgment in this case. The applicant complained that the Austrian courts had violated his right to respect for his family life by failing to enforce the Venice Youth Court's judgments ordering his daughter's return.

Law – Regarding the enforcement of the judgment of 10 July 2009, the ECtHR first noted that the Austrian courts did not fail to handle the case expeditiously up until August 2010, as it raised a new issue regarding the application of the Brussels II *bis* Regulation, and bringing it before the CJEU was a necessary step for the control mechanism provided for in EU law to come into play. However, no explanation was provided for the delay in enforcement from August 2010 until February 2011 attributable to the Austrian first-instance court. Regarding the enforcement of the judgment of 23 November 2011, the initial refusal to enforce, overturned on appeal, ultimately opened up the possibility to lodge a further appeal to the Supreme Court although the relevant legal issues had already been resolved in the first set of proceedings. While the lack of cooperation between the parents added difficulty, the Austrian authorities had not yet been able to bring about an enforcement of any of the two return orders. The Austrian authorities thus failed to act swiftly, in particular in the first set of proceedings. The ECtHR also found that the procedural framework available to the applicant did not facilitate the expeditious and efficient conduct of the return proceedings, as it did not contain any specific rules or mechanisms to ensure particular speediness despite the fact that specific streamlined proceedings may be required for the enforcement of return orders under the Hague Convention or under the Brussels II *bis* Regulation, and as no means

²⁶ See above, section C.1.

were available to ensure that contact between the applicant and his daughter was maintained while the proceedings were pending.

Conclusion – Violation of Article 8 of the Convention.

ECtHR, *Sévère v. Austria*, no. 53661/15, 21 September 2017

Facts – C.B. took her two children, over whom she had joint custody with the applicant, from France to Vienna. The applicant then lodged a request with the Austrian District Court for his children's return pursuant to the Hague Convention. That court ordered the children's return, finding that C.B. had failed to prove her allegations of sexual abuse and thus to establish that their return would expose them to a grave risk of physical or psychological harm under the exception provided for by Article 13(1)(b) of the Hague Convention. The applicant filed a request with the District Court for enforcement of the return order, but the authorities were unsuccessful in tracing the mother and children. After a series of applications and appeals stretching over several years, the Austrian courts finally dismissed the applicant's request for enforcement of the return order, on the ground that there was a grave risk that the children's separation from their mother upon their return would psychologically harm them. The applicant complained that the Austrian courts had violated his right to respect for his family life guaranteed in Article 8 ECHR by not taking all necessary and reasonable measures to ensure the swift return of his children.

Law – The ECtHR observed that the Austrian courts had issued the return order swiftly and given detailed and comprehensive reasons why they considered that the mother's allegations of grave risk were not credible. However, after the first unsuccessful attempt at locating the mother and the children to enforce the return order, no further steps towards enforcement were taken. With the passage of time, the courts' focus shifted from the allegations of sexual abuse to the possibility of the children being further traumatised in the event of separation from their mother. The Court accepted that a change in circumstances, such as their integration in Austria and closeness with their mother, may exceptionally justify the non-enforcement of a final return order. However, in the case at stake that change was mainly attributable to the conduct of the Austrian authorities, as nearly five and a half years had passed between the initial attempt of enforcement and the decision not to enforce the return order.

Conclusion – Violation of Article 8 of the Convention.

ECtHR, *Makhmudova v. Russia*, no. 61984/17, 1 December 2020

Facts – The applicant and A. had two sons, who lived in Estonia with the applicant until A. took his children to Russia. Both the Estonian court and the Russian Town Court ordered the children's immediate return to Estonia. Enforcement proceedings were initiated by the applicant after A. failed to voluntarily comply with the judgment. Four attempts at enforcement were made over the course of almost two years, the last three of which failed because the children refused to go with the applicant. The applicant complained that the Russian authorities' failure to secure the enforcement of the judgment ordering the return of her children had violated her right to respect for family life provided for by Article 8 ECHR.

Law – Noting that a delay of six months took place between the first and second attempt to enforce the return order, and a further delay of a year and a half occurred between the second and third attempts, the ECtHR observed that none of the attempts to enforce the judgment were preceded by any preliminary measures with a view to making the transfer smooth and psychologically comfortable for the children. Their reluctance to go with their mother had therefore been mainly

due to the fact that the domestic authorities in charge of the enforcement proceedings failed to take any of the measures that could reasonably have been expected of them in order to enforce the order for the children's return in a timely manner, or to ensure regular contact between the children and the applicant during the pending proceedings so as to preserve the prospects of a successful enforcement of the judgment. The children's unwillingness to go with the applicant could therefore not serve as a legal ground for justifying the non-enforcement of the return order.

Conclusion – Violation of Article 8 of the Convention.

ECtHR, *Veres v. Spain*, no. 57906/18, 8 November 2022

Facts – The applicant and K.P. had a daughter in Hungary. In January 2015, K.P. applied to the Hungarian court for custody over her daughter. She then moved to Spain without informing the applicant in July. Upon the applicant's request, the Hungarian court adopted in April 2016 interim measures pending final judgment in the custody proceedings, ordering K.P. to bring the child back to Hungary. In July 2016, the applicant applied to the Spanish Court for recognition and enforcement in Spain of the Hungarian court's decision. After several procedural steps, including inviting K.P. and the public prosecutor to submit observations, his application was dismissed in February 2017. The second-instance court then overturned the first-instance court's judgment and declared the decision enforceable. The applicant applied to the first-instance court for the enforcement of the Hungarian court's decision in September, and K.P. was ordered to take the child back to Hungary. K.P. travelled to Hungary with her daughter on 1 November. The applicant complained that the recognition and enforcement proceedings in Spain had been unreasonably long, thus interfering with his right to respect for his family life protected by Article 8 ECHR.

Law – The ECtHR first noted that, while neither the Brussels II *bis* Regulation nor domestic law set out a specific time-limit for domestic courts to rule on the recognition of a judgment, Article 31 of the Brussels II *bis* Regulation clearly stated that the court was to give its decision without delay. Accordingly, the domestic courts were expected to adopt swift and adequate measures to secure recognition and enforcement of a decision. In this case, the total duration of the proceedings for the recognition and enforcement of the Hungarian courts' decision was over two years. That delay was essentially attributable to the national courts, which took procedural steps other than only assessing the grounds for non-recognition set forth in Article 23 of the Brussels II *bis* Regulation as they were supposed to, including inviting K.P. and the public prosecutor to submit observations. They therefore did not take swift and adequate measures in order to enforce the Hungarian courts' decision ordering the return of the child. That delay also could not be explained by the complexity of the case. The ECtHR therefore found that Spain had failed to deal with the recognition and enforcement of the decision in an expeditious manner as required by the Convention.

Conclusion – Violation of Article 8 of the Convention.

CJEU, Judgment of 16 February 2023, *Rzecznik Praw Dziecka e.a. (Suspension of the return decision)*, C-638/22 PPU, EU:C:2023:103

Facts – T.C. and M.C. resided in Ireland with their two children. M.C. went on holiday to Poland with her children, with T.C.'s consent, but later informed him that she would remain in Poland with the children. The Polish Regional Court ordered the return of the children. After M.C.'s appeal was dismissed, the Commissioner for Children's Rights and the Public Prosecutor General submitted requests for suspension of the enforcement of the return order. Article 388 of the Polish Code of Civil Procedure, as amended by a law of 2022, provides that the Public Prosecutor General, the Commissioner for Children's Rights and the Ombudsman have the power to automatically obtain

suspension for at least two months of the enforcement of a decision ordering the return of a child pursuant to the Hague Convention if they submit a request to that effect to the Court of Appeal within two weeks from the date on which that decision became final. If no appeal on a point of law before the Supreme Court is brought within those two months, the suspension ceases. However, if such an appeal is brought, that suspension is automatically extended until the conclusion of the proceedings before the Supreme Court. The referring court, the Court of Appeal, asked the CJEU whether Article 11(3) of the Brussels II *bis* Regulation, read in conjunction with Article 47 of the Charter, precluded the application of such a provision.

Law – The CJEU found that Article 11(3) of the Brussels II *bis* Regulation, read in the light of Article 47 of the Charter, precluded such piece of national legislation. Noting that the need for efficiency and speed which governs the adoption of a return decision also applied to national authorities in connection with the enforcement of such a decision, the CJEU observed that since submitting a request automatically results in the suspension of the enforcement of a final return decision for a period of two months, exceeding in itself the time limit within which that decision must be adopted according to Article 11(3) of the Regulation, submitting such a request may deprive that provision of its useful effect. Enforcement of the return decision is also suspended at the mere request of the empowered authorities, who are not courts and who are not required to give reasons for their request. Article 47 of the Charter precludes a public authority from being able to frustrate the enforcement of a judicial decision, as the right to an effective remedy would be illusory if a Member State's legal system were to allow a final, binding judicial decision to remain ineffective to the detriment of one party. This finding is not challenged by the argument that such a piece of legislation is essential to avoid the child concerned suffering irreparable harm resulting from the enforcement of the return decision in the event that that decision is later annulled by the Supreme Court. The judicial protection of the child against such a risk is already in principle guaranteed by the existence of two levels of judicial review, during which account may be taken of the existence of risks in the event of return of the child concerned. The referring court is therefore required to give full effect to Article 11(3) of the Regulation by disapplying the piece of national legislation which may undermine the effectiveness of that provision, in accordance with the principle of primacy of EU law.