ECLI:EU:C:2023:103

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

16 February 2023 (*)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Area of freedom, security and justice – Judicial cooperation in civil matters – Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility – International child abduction – 1980 Hague Convention – Regulation (EC) No 2201/2003 – Article 11 – Application for return of a child – Final decision ordering the return of a child – Legislation of a Member State providing for automatic suspension of the enforcement of that decision in the event that a request is made by certain national authorities)

In Case C-638/22 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), made by decision of 12 October 2022, received at the Court on 13 October 2022, in the proceedings

T.C.,

Rzecznik Praw Dziecka,

Prokurator Generalny

interested parties:

M.C.,

Prokurator Prokuratury Okręgowej we Wrocławiu,

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, M. Safjan, N. Piçarra, N. Jääskinen and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 8 December 2022,

after considering the observations submitted on behalf of:

– T.C., by I. Antkowiak, adwokat, M. Bieszczad, radca prawny, and D. Kosobucki, adwokat,

– M.C., by A. Śliwicka, adwokat,

– the Prokurator Generalny, by S. Bańko, R. Hernand and E. Tkacz,

– the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,

– the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents,

– the French Government, by A. Daniel and E. Timmermans, acting as Agents,

– the Netherlands Government, by C.S. Schillemans, acting as Agent,

– the European Commission, by J. Hottiaux and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 January 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11(3) 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, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1), as well as Articles 22 and 24, Article 27(6) and Article 28(1) and (2) of 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, p. 1, and corrigendum OJ 2020 L 347, p. 52), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings brought by T.C., who is the father of two minor children, seeking enforcement of a decision ordering the return of those children, who have been relocated to Poland by their mother M.C., to Ireland.

Legal context

International law

3 As is apparent from the preamble thereto, one of the objectives of the Convention on the Civil Aspects of International Child Abduction, concluded at the Hague on 25 October 1980 ('the 1980 Hague Convention'), is to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their

habitual residence. That convention, which entered into force on 1 December 1983, was ratified by all the Member States of the European Union.

4 According to Article 1(a) thereof, the purpose of that convention is, inter alia, to secure the prompt return of children wrongfully removed to or retained in any Contracting State.

5 Article 2 of that convention states:

‘Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.’

6 Article 3 of that convention provides:

‘The removal or the retention of a child is to be considered wrongful where –

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

…’

7 The first paragraph of Article 11 of the 1980 Hague Convention provides:

‘The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.’

8 The first and second paragraphs of Article 12 of that convention are worded as follows:

‘Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.’

9 Under point (b) of the first paragraph of Article 13 of that convention:

‘Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

…

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.’

European Union law

Regulation No 2201/2003

10 Recitals 17 and 33 of Regulation No 2201/2003 stated:

'(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end [the 1980 Hague Convention] would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

…

(33) This Regulation recognises the fundamental rights and observes the principles of [the Charter]. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of [the Charter]'.

11 Article 11(1) and (3) of that regulation provided:

'1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of [the 1980 Hague Convention], in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

…

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.'

Regulation 2019/1111

12 Article 22 of Regulation 2019/1111 provides:

'Where a person, institution or other body alleging a breach of rights of custody applies, either directly or with the assistance of a Central Authority, to the court in a Member State for a decision on the basis of the 1980 Hague Convention ordering the return of a child under 16 years that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, Articles 23 to 29, and Chapter VI, of this Regulation shall apply and complement the 1980 Hague Convention.'

13 Article 24 of that regulation provides:

‘1. A court to which an application for the return of a child referred to in Article 22 is made shall act expeditiously in proceedings on the application, using the most expeditious procedures available under national law.

2. Without prejudice to paragraph 1, a court of first instance shall, except where exceptional circumstances make this impossible, give its decision no later than six weeks after it is seised.

3. Except where exceptional circumstances make this impossible, a court of higher instance shall give its decision no later than six weeks after all the required procedural steps have been taken and the court is in a position to examine the appeal, whether by hearing or otherwise.’

14 Article 27(6) of that regulation states:

‘A decision ordering the return of the child may be declared provisionally enforceable, notwithstanding any appeal, where the return of the child before the decision on the appeal is required by the best interests of the child.’

15 Article 28 of that regulation is worded as follows:

‘1. An authority competent for enforcement to which an application for the enforcement of a decision ordering the return of a child to another Member State is made shall act expeditiously in processing the application.

2. Where a decision as referred to in paragraph 1 has not been enforced within six weeks of the date when the enforcement proceedings were initiated, the party seeking enforcement or the Central Authority of the Member State of enforcement shall have the right to request a statement of the reasons for the delay from the authority competent for enforcement.’

16 Under Article 100 of Regulation 2019/1111:

‘1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022.

2. [Regulation No 2201/2003] shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of that Regulation.’

Polish law

17 Article 388(1) of the Kodeks postępowania cywilnego (Code of Civil Procedure) provides:

‘If, as a result of the enforcement of a decision, irreparable harm may be caused to a party, the court of second instance may, at the request of one of the parties, stay enforcement of its decision until the conclusion of the appeal on a point of law. If the appeal is dismissed, the court of second instance may also suspend the enforcement of the decision of the court of first instance.’

18 Article 518^2(1) of that code provides:

‘The court of second instance for cases involving the removal of a person subject to parental responsibility or custody conducted under the 1980 Hague Convention is the Sąd Apelacyjny w Warszawie [(Court of Appeal, Warsaw, Poland)].’

19 Under Article $519^1(2^1)$ and (2^2) of that code:

‘2^1. An appeal on a point of law is also available for cases involving the removal of a person subject to parental responsibility or custody conducted under the 1980 Hague Convention.

2^2. The Prokurator Generalny [(Public Prosecutor General)], the Rzecznik Praw Dziecka [(Commissioner for Children’s Rights)] or the Rzecznik Praw Obywatelskich [(Ombudsman)] may lodge an appeal on a point of law with respect to the cases referred to in paragraph 2^1 within four months of the date on which the decision became final.’

20 The ustawa o zmianie ustawy Kodeks postępowania cywilnego (Law amending the Code of Civil Procedure) of 7 April 2022 (Dz. U. of 2022, item 1098), which entered into force on 24 June 2022 (‘the Law of 2022’), amended the Code of Civil Procedure by inserting into that code several provisions relating to the suspension of decisions handed down on the basis of the 1980 Hague Convention.

21 Thus, Article 388^1 of that code, inserted into that code by the Law of 2022, is worded as follows:

‘1. In cases involving the removal of a person subject to parental responsibility or custody brought under [the 1980 Hague Convention], at the request of one of the entities referred to in Article $519^1(2^2)$ notified to the court referred to in Article $518^2(1)$ within a period not exceeding two weeks from the date on which the order for the removal of the person subject to parental responsibility or custody became final, the enforcement of that order shall be suspended by operation of law.

2. Suspension of the enforcement of the order referred to in paragraph 1 shall cease if one of the entities referred to in Article $519^1(2^2)$ does not lodge an appeal on a point of law within two months of the date on which that order became final.

3. Where an appeal on a point of law is lodged by one of the entities referred to in Article $519^1(2^2)$ within two months of the date on which the order referred to in paragraph 1 [of the present Article] became final, suspension of the enforcement of that order shall be extended by operation of law until the conclusion of the appeal on a point of law.

4. An entity who has notified a request for suspension of the enforcement of the order referred to in paragraph 1 may withdraw that request within two months of the date on which the order became final, unless one of the entities referred to in Article $519^1(2^2)$ has lodged an appeal on a point of law.

5. As a result of the withdrawal of a request for suspension of the enforcement of the order referred to in paragraph 1, that order becomes enforceable.’

22 Article 388^3 of that code, inserted into that code by the Law of 2022, states:

‘The lodging of an extraordinary appeal as referred to in Article 89 of the [ustawa o Sądzie Najwyższym (Law on the Supreme Court) of 8 December 2017 (Dz. U. of 2021, item 1904, and of 2022, item 480)], in a case involving the removal of a person subject to parental responsibility or

custody brought under the 1980 Hague Convention, shall suspend by operation of law the enforcement of an order concerning the removal of the person subject to parental responsibility or custody until the conclusion of such extraordinary appeal proceedings.'

The dispute in the main proceedings and the question referred for a preliminary ruling

23 T.C. and M.C., who are both of Polish nationality, are the parents of the minor children N.C. and M.C.(1) (collectively, 'the minor children'), who were born in Ireland in 2011 and 2017 respectively. That family has been resident in Ireland, where T.C. and M.C. have stable employment, for several years. M.C. is currently on long-term sick leave.

24 During the summer of 2021, M.C. went on holiday to Poland with the minor children with T.C.'s consent. In September 2021, M.C. informed T.C. that she would remain permanently in that Member State with the minor children. At no point had T.C. consented to the minor children being permanently relocated in this way.

25 On 18 November 2021, T.C. lodged an application with the Sąd Okręgowy we Wrocławiu (Regional Court, Wrocław, Poland), requesting that M.C. be ordered to ensure the return of the minor children to Ireland on the basis of the 1980 Hague Convention. By an order of 15 June 2022, that court ordered M.C. to ensure that return within seven days of the date on which that order became final.

26 M.C. brought an appeal against that order before the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) – the referring court – which, by an order of 21 September 2022, dismissed that appeal as unfounded, holding that M.C. could not rely on any ground for refusing to return the minor children to Ireland. That order of the referring court became enforceable on 28 September 2022, without M.C. having complied with the order to ensure the return of the minor children to Ireland.

27 On 29 September 2022, T.C. requested that the referring court send him a copy of the order of 21 September 2022, together with a notice regarding the enforceability of that order.

28 On 30 September 2022 and 5 October 2022, respectively, the Commissioner for Children's Rights and the Public Prosecutor General, pursuant to Article 388[1](1) of the Code of Civil Procedure, as amended by the Law of 2022, submitted requests for suspension of the enforcement of the final orders of 15 June 2022 and 21 September 2022.

29 On 21 November 2022, the Commissioner for Children's Rights and the Public Prosecutor General brought appeals on a point of law before the Sąd Najwyższy (Supreme Court, Poland) against the order of 21 September 2022.

30 The referring court notes that, as a general rule, substantive decisions handed down by a court of second instance are final and enforceable, even if they are the subject of an appeal on a point of law before the Sąd Najwyższy (Supreme Court). Before the entry into force of the Law of 2022, the only derogation from that rule was the derogation laid down in Article 388 of the Code of Civil Procedure. That article enables the court of second instance to suspend the enforceability of a final decision until the conclusion of the proceedings before the Sąd Najwyższy (Supreme Court) if, as a result of the enforcement of that decision, irreparable harm may be caused to a party.

31 Pursuant to Article 388[1] of the Code of Civil Procedure, inserted into that code by the Law of 2022, the Public Prosecutor General, the Commissioner for Children's Rights and the Ombudsman

(collectively, ‘the empowered authorities’) now have the power to obtain suspension of the enforcement of a decision ordering the return of children on the basis of the 1980 Hague Convention where they submit a request to that effect to the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) within a period not exceeding two weeks from the date on which that decision became final. It is apparent from the information provided by the referring court that the empowered authorities are not required to provide reasons for their request. Such a request automatically entails suspension for a period of at least two months.

32 Suspension of the enforcement of the return decision ceases if those authorities do not bring an appeal on a point of law before the Sąd Najwyższy (Supreme Court) against that decision within that period. By contrast, if such an appeal is brought within that period, that suspension is, pursuant to Article 388^{1}(3) of the Code of Civil Procedure, as amended by the Law of 2022, automatically extended until the conclusion of the proceedings before the Sąd Najwyższy (Supreme Court).

33 Furthermore, according to the referring court, even if the Sąd Najwyższy (Supreme Court) were to dismiss that appeal on a point of law, those authorities could once again obtain suspension of the return decision on the basis of Article 388^{3} of the Code of Civil Procedure, as amended by the Law of 2022, by bringing an extraordinary appeal under that article.

34 In view of those considerations, the referring court questions whether Article 388^{1} of the Code of Civil Procedure, as amended by the Law of 2022, is compatible with the requirement of expedition underlying Regulation No 2201/2003, and in particular with Article 11(3) of that regulation.

35 In addition, that court notes that the Polish legislation in force provides, in essence, that entities which cannot be classified as courts have the power to trigger suspension of the enforcement of a final judicial decision, without the exercise of that power being subject to any judicial review whatsoever. Such a circumstance raises, in the referring court’s view, questions as to whether that legislation is in line with Article 47 of the Charter, in so far as it deprives the parties to a return procedure of effective judicial protection.

36 In addition, in view of the fact that the date of the entry into force of the Law of 2022 is only a few days before the date of implementation of Regulation 2019/1111, which reinforces the requirement of expedition underlying Regulation No 2201/2003, the referring court is uncertain as to whether the provisions inserted into the Code of Civil Procedure by that law are compatible with the principle of sincere cooperation.

37 Lastly, in the event that the Court of Justice confirms that Regulation No 2201/2003 precludes the Law of 2022, the referring court questions whether it is obliged to disapply that law in accordance with the principle of the primacy of EU law.

38 In those circumstances, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 11(3) of [Regulation No 2201/2003], [as well as Articles 22 and 24], Article 27(6) and Article 28(1) and (2) of [Regulation 2019/1111], read in conjunction with Article 47 of [the Charter], preclude the application of a provision of national law under which, in cases involving the removal of a person subject to parental responsibility or custody conducted under [the 1980 Hague Convention], the enforcement of an order for the removal of a person subject to parental responsibility or custody is suspended by operation of law where [the empowered authorities

submit] a request to that effect to the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) within a period not exceeding two weeks from the day on which the order becomes final?'

The request for the application of the urgent preliminary ruling procedure

39 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107(1) of the Rules of Procedure of the Court of Justice.

40 In support of its request, that court has put forward reasons relating to the best interests of the minor children. In particular, the parent-child relationship, as well as the welfare of those children, may be irreparably harmed as a result of their being separated from their father; a situation which has been prolonged due to the exercise by the Commissioner for Children's Rights and the Public Prosecutor General of their power to obtain suspension of the enforcement of the decision ordering that the minor children be returned to Ireland.

41 In the first place, it must be pointed out that the present reference for a preliminary ruling concerns the interpretation of, inter alia, provisions of Regulation No 2201/2003, which was adopted on the basis of, inter alia, Article 61(c) EC (now Article 67 TFEU), as well as provisions of Regulation 2019/1111, which was adopted on the basis of Article 81(3) TFEU. Those acts are therefore covered by Title V of Part Three of the FEU Treaty, relating to the area of freedom, security and justice. Consequently, this reference may be dealt with under the urgent preliminary ruling procedure.

42 Regarding, in the second place, the condition relating to urgency, it is apparent from the order for reference that the minor children have been separated from their father for more than a year and that the continuation of that situation could seriously harm those children's future relationship with their father.

43 In those circumstances, on 26 October 2022 the Third Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Admissibility of the request for a preliminary ruling

44 The Public Prosecutor General disputes the admissibility of the request for a preliminary ruling, as does, in essence, M.C.

45 First, according to the Public Prosecutor General, the question put by the referring court is hypothetical and is not necessary to resolve the dispute in the main proceedings. That dispute has already been definitively decided and that court has no jurisdiction as regards suspension of the enforcement of final decisions ordering the return of children handed down at first and second instance, given that that suspension is automatic.

46 Secondly, the Public Prosecutor General contends that the question is inadmissible inasmuch as the referring court is requesting interpretation of Regulation 2019/1111, whereas, in this instance, that regulation is not applicable *ratione temporis*.

47 In the first place, it should be borne in mind that it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision

to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 24 November 2022, *Varhoven administrativen sad (Repeal of the disputed provision)*, C-289/21, EU:C:2022:920, paragraph 24 and the case-law cited).

48 Thus, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2022, *Varhoven administrativen sad (Repeal of the disputed provision)*, C-289/21, EU:C:2022:920, paragraph 25 and the case-law cited).

49 In addition, it should be noted that the term 'give judgment', within the meaning of the second paragraph of Article 267 TFEU, encompasses the entire procedure leading to the referring court's decision. That term must be interpreted broadly in order to prevent many procedural questions from being regarded as inadmissible and from being unable to be the subject of interpretation by the Court and the latter from being unable to interpret all procedural provisions of EU law that the referring court is required to apply (judgment of 21 November 2019, *Procureur-Generaal bij de Hoge Raad der Nederlanden*, C-678/18, EU:C:2019:998, paragraph 25 and the case-law cited).

50 In that regard, first, it is apparent from the order for reference and from the observations submitted by the parties at the hearing that T.C. applied to the referring court in order to obtain enforcement of the order of 21 September 2022 by which that court had ordered that the minor children be returned to Ireland. In addition, pursuant to Article 388[1] of the Code of Civil Procedure, as amended by the Law of 2022, that court would be required to grant the requests for suspension of the enforcement of that order submitted by the Public Prosecutor General and the Commissioner for Children's Rights.

51 In those circumstances, as the Advocate General noted in point 46 of his Opinion, it appears that the referring court is hearing conflicting requests submitted by T.C., on the one hand, and by the Public Prosecutor General and the Commissioner for Children's Rights, on the other. Those requests reflect the fact that there is a 'dispute' between those parties, which concerns the enforcement of the return order of 21 September 2022 and concerning which the referring court is called upon, in connection with those requests, to give judgment within the meaning of the second paragraph of Article 267 TFEU.

52 Secondly, as regards the relationship between the question put by the referring court and the actual facts of the main action or its purpose, it is clear from the order for reference that that question is intended to enable that court to determine whether the provisions of Regulations No 2201/2003 and 2019/1111 are to be interpreted as precluding Article 388[1] of the Code of Civil Procedure, as amended by the Law of 2022, and whether it is required, as the case may be, to disapply that article. In so doing, the referring court sufficiently demonstrates that an answer from the Court to that question is 'necessary', within the meaning of the second paragraph of Article 267 TFEU, in order for it to be able to give a ruling on the possible suspension of the enforcement of the return decision at issue.

53 In the second place, the admissibility of the present request for a preliminary ruling cannot be called into question by the Public Prosecutor General's argument that, in this instance, Regulation

2019/1111 is not applicable *ratione temporis*. Where it is not obvious that the interpretation of an act of EU law bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that act to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions submitted (see, to that effect, judgments of 13 July 2006, *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 30, and of 19 December 2019, *Dobersberger*, C-16/18, EU:C:2019:1110, paragraph 21).

54 In those circumstances, the request for a preliminary ruling is admissible.

Consideration of the question referred

55 As a preliminary point, it should be noted that, while the question referred concerns the interpretation both of provisions of Regulation No 2201/2003 and of provisions of Regulation 2019/1111, only the first of those regulations is applicable, *ratione temporis*, to the dispute in the main proceedings. It is apparent from Article 100(2) of Regulation 2019/1111 that Regulation No 2201/2003 continues to apply, after the entry into force of Regulation 2019/1111, to proceedings brought before 1 August 2022. In this instance, as has been indicated in paragraph 25 of the present judgment, T.C. brought his action before the Sąd Okręgowy we Wrocławiu (Regional Court, Wrocław) on 18 November 2021.

56 In that regard, although T.C.'s application to obtain enforcement of the return order of 21 September 2022 was lodged after 1 August 2022, the fact remains that it is apparent from the information before the Court that that application does not constitute independent proceedings, but a stage of the return procedure based on T.C.'s action, brought on 18 November 2021, requesting an order for the minor children to be returned to Ireland.

57 In those circumstances, it must be held that, by its question, the referring court asks, in essence, whether Article 11(3) of Regulation No 2201/2003, read in the light of Article 47 of the Charter, is to be interpreted as precluding a piece of national legislation which confers on authorities that are not courts the power to obtain automatic suspension, for a period of at least two months, of the enforcement of a return decision handed down on the basis of the 1980 Hague Convention, without having to provide reasons for their request for suspension.

58 In that regard, it should be borne in mind that Article 11(3) of Regulation No 2201/2003 provides that a court to which an application for return of a child is made is to act expeditiously in proceedings on the application, using the most expeditious procedures available in national law. Except where exceptional circumstances make this impossible, that court must issue its judgment no later than six weeks after the application is lodged.

59 In the first place, according to settled case-law, when interpreting a provision of EU law it is necessary to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 28 October 2022, *Generalstaatsanwaltschaft München (Extradition and ne bis in idem)*, C-435/22 PPU, EU:C:2022:852, paragraph 67).

60 First of all, it is apparent from the wording of Article 11(3) of Regulation No 2201/2003, and in particular from the use of the terms 'expeditiously' and 'the most expeditious', that, when a child has been wrongfully removed or retained in a Member State other than the Member State where that child was habitually resident immediately before the wrongful removal or retention, the courts of the Member States having jurisdiction are required to adopt a decision requiring the return of the child concerned within a particularly short and strict time limit. Such a decision must, in principle, be made no later than six weeks from the date on which proceedings are brought before those

courts, using the most expeditious procedures available in national law. A derogation from that rule is not possible except in ‘exceptional circumstances’.

61 Next, such an interpretation is supported by the context of Article 11(3) of Regulation No 2201/2003, and in particular by the relevant provisions of the 1980 Hague Convention.

62 Regulation No 2201/2003 complements and clarifies, in particular in Article 11 thereof, the rules of the 1980 Hague Convention governing the procedure for returning wrongfully removed children. Thus, Articles 8 to 11 of that convention and Article 11 of that regulation form a unitary body of rules which applies to the procedures for returning children who have been wrongfully removed within the European Union (see, to that effect, Opinion 1/13 (*Accession of third States to the Hague Convention*) of 14 October 2014, EU:C:2014:2303, paragraphs 77 and 78).

63 Because of the overlap and the close connection between the provisions of Regulation No 2201/2003 and those of the 1980 Hague Convention, the provisions of that convention may therefore have an effect on the meaning, scope and effectiveness of the rules laid down in that regulation (see, to that effect, Opinion 1/13 (*Accession of third States to the Hague Convention*) of 14 October 2014, EU:C:2014:2303, paragraph 85).

64 Thus, first, in accordance with the preamble to the 1980 Hague Convention, as well as Article 1(a) thereof, that convention pursues the objective of promptly returning the child concerned to his or her place of habitual residence. Secondly, the second sentence of Article 2 of that convention obliges the authorities of the Contracting States to use the most expeditious procedures available when processing an application for return. Thirdly, according to the first paragraph of Article 11 of that convention, the judicial or administrative authorities of Contracting States must act expeditiously in proceedings for the return of children. Fourthly, Article 13 of that convention gives a restrictive list of the situations in which the judicial authority of the requested State is not bound to order the return of the child. In particular, according to point (b) of the first paragraph of Article 13 of the 1980 Hague Convention, that authority is not bound to order the return of the child if the person, institution or other body which opposes the child’s return establishes that there is a grave risk that the child’s return would expose him or her to physical or psychological harm or otherwise place him or her in an intolerable situation.

65 It is apparent from all those provisions that, according to the 1980 Hague Convention, where a child has been wrongfully removed from his or her place of habitual residence, that child must be returned promptly, using the most expeditious procedures provided for by national law. In addition, it is only in exceptional circumstances, in particular in the event of a grave risk to that child, that that return may not be ordered.

66 Lastly, the intended purposes of Regulation No 2201/2003, and in particular Article 11(3) thereof, also support the findings set out in paragraphs 60 and 65 of the present judgment.

67 Thus, first, it should be borne in mind that Regulation No 2201/2003 is based on the idea that the best interests of the child must prevail. That regulation seeks, in particular, to deter child abductions between Member States and, in cases of abduction, to obtain the child’s return without delay (see, to that effect, judgment of 11 July 2008, *Rinau*, C-195/08 PPU, EU:C:2008:406, paragraphs 51 and 52).

68 Secondly, as is stated in recital 17 of Regulation No 2201/2003, in cases of wrongful removal or retention of a child, the return of that child should be obtained without delay. In addition, the

courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return only in specific, duly justified cases.

69 Thirdly, it is apparent from the case-law of the Court that one of the objectives of Article 11 of that regulation is the restoration of the *status quo ante*, that is, the situation that existed prior to the wrongful removal or retention of the child (see, to that effect, judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 61).

70 Fourthly, the Court has previously held that a return procedure is, inherently, an expedited procedure, since its aim is to ensure, as stated in the preamble to the 1980 Hague Convention and in recital 17 of Regulation No 2201/2003, the prompt return of the child (judgment of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 57).

71 It is thus apparent from a literal, contextual and teleological interpretation of Article 11(3) of Regulation No 2201/2003 that that provision requires a judge of a Member State to which an application is made for the return of a child who has been wrongfully removed from his or her place of habitual residence to give a ruling on that application, in principle, within a period of six weeks after the application is lodged at the latest, using the most expeditious procedures available in national law. In addition, it is only in specific and exceptional, duly justified cases that the return of a child who has been wrongfully removed may not be ordered.

72 It is true that the obligations derived from Article 11(3) of that regulation concern the procedure for adopting a return decision. However, it must be held, as the Advocate General did in point 59 of his Opinion, that the need for efficiency and speed which governs the adoption of a return decision also applies to national authorities in connection with the enforcement of such a decision. That provision would be deprived of any useful effect if national law were to permit suspension of the enforcement of a final decision ordering the return of a child.

73 According to the case-law of the Court, the application of national rules of substantive law and of procedure cannot undermine the effectiveness of Regulation No 2201/2003 (see, to that effect, judgment of 11 July 2008, *Rinau*, C-195/08 PPU, EU:C:2008:406, paragraph 82).

74 It should also be noted that, by laying down obligations concerning the adoption and, accordingly, the enforcement as soon as possible of a decision enabling the prompt return of the child to his or her place of habitual residence following a wrongful removal, Regulation No 2201/2003 seeks, as is apparent from recital 33 thereof, to ensure respect for the fundamental rights guaranteed by the Charter, and in particular respect for the fundamental rights of the child as set out in Article 24 thereof.

75 In that regard, Article 7 of the Charter enshrines the right to respect for private or family life and must be read in conjunction with the obligation to take account of the child's best interests, recognised in Article 24(2) thereof. Account must therefore be taken of the need for a child, as expressed in Article 24(3) of the Charter, to maintain on a regular basis a personal relationship and direct contact with both his or her parents (see, to that effect, judgment of 17 November 2022, *Belgische Staat (Married refugee minor)*, C-230/21, EU:C:2022:887, paragraph 48).

76 According to Article 52(3) of the Charter, in so far as the Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), the meaning and scope of those rights are to be the same as those laid down by that convention. Article 53 of the Charter further states that nothing in the Charter is to be interpreted as restricting or adversely affecting, in

the field of application of EU law, rights recognised by, inter alia, the ECHR (see, to that effect, judgment of 8 December 2022, *CJ (Decision to postpone surrender due to criminal prosecution)*, C-492/22 PPU, EU:C:2022:964, paragraph 79 and the case-law cited).

77 Thus, as regards Article 8 ECHR, which corresponds to Article 7 of the Charter (see, to that effect, judgment of 8 December 2022, *Orde van Vlaamse Balies and Others*, C-694/20, EU:C:2022:963, paragraph 25), the European Court of Human Rights has held that, in cases concerning decisions handed down on the basis of the 1980 Hague Convention, the adequacy of a measure must be judged by, inter alia, the swiftness of its implementation. Such cases require urgent handling, as the passage of time may have irremediable consequences for relations between the children and the parent who does not live with them. Delays in the procedure alone may permit a finding that the authorities have not complied with their positive obligations under the ECHR (see, to that effect, ECtHR, 28 April 2015, *Ferrari v. Romania*, CE:ECHR:2015:0428JUD000171410, § 49).

78 In the second place, it is in the light of the interpretation of Article 11(3) of Regulation No 2201/2003 set out in the preceding paragraphs of the present judgment that it is necessary to determine whether that provision precludes a piece of national legislation such as that described in paragraph 57 of the present judgment.

79 According to the information provided to the Court, under that legislation, the enforcement of a return decision is automatically suspended for a period of at least two months where one of the empowered authorities submits a request to the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) to that effect within a period of two weeks from the date on which that decision became final.

80 In addition, if, after that request has been submitted, that authority brings an appeal on a point of law before the Sąd Najwyższy (Supreme Court) against that decision, suspension of the enforcement of that decision is automatically extended until the conclusion of the appeal proceedings before that court.

81 Thus, first, the effect of submitting that request is the suspension, for a period of at least two months, of the enforcement of a decision ordering the return of a child to his or her place of habitual residence, even if that decision has become final. That return may be suspended for a much longer period if the empowered authorities decide to bring an appeal on a point of law against that decision. Submitting such a request, in view of the requirements of expedition underlying Article 11(3) of Regulation No 2201/2003, inasmuch as it has the effect of automatically suspending the enforcement of such a return decision, may thus deprive that provision of its useful effect. Furthermore, those authorities could once again obtain suspension of the enforcement of a return decision on the basis of Article 388^3 of the Code of Civil Procedure, inserted into that code by the Law of 2022, by bringing an extraordinary appeal under that article.

82 In that regard, it must be pointed out that suspension, for a period of two months, of the enforcement of a final return decision in itself exceeds the time limit within which that decision must be adopted according to Article 11(3) of Regulation No 2201/2003.

83 Secondly, it is apparent from the information before the Court that the enforcement of a return decision is automatically suspended at the mere request of the empowered authorities. Those authorities, which moreover are not courts, are not required to give reasons for their request and the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) is required to grant that request without being able to exercise its power of judicial review in that regard. Accordingly, the piece of

legislation at issue in the main proceedings does not appear to be such as to guarantee that, as has been recalled in paragraph 71 of the present judgment, the return of the child to his or her place of habitual residence may not be suspended except in specific and exceptional cases and, in any event, does not ensure that such suspension will be duly justified.

84 Furthermore, according to the settled case-law of the Court, Article 47 of the Charter precludes a public authority being able to frustrate the enforcement of a judicial decision, as the right to an effective remedy enshrined in that provision 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 (see, to that effect, judgments of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horaţiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 43 and the case-law cited; of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraphs 72 and 73; and of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 36).

85 In view of the foregoing considerations, it must be found that a piece of national legislation such as that described in paragraph 57 of the present judgment may undermine the effectiveness of Article 11(3) of Regulation No 2201/2003.

86 That finding cannot be called into question by the Polish Government's argument that, in essence, such a piece of legislation is essential in order to enable the empowered authorities to bring an appeal on a point of law before the Sąd Najwyższy (Supreme Court) and thus avoid the children concerned suffering irreparable harm resulting from the enforceability of a final return decision, in the event of that decision being annulled by that court.

87 As the referring court explains, first, before the insertion, by the Law of 2022, of Article 388^1 into the Code of Civil Procedure, Article 388 of that code already provided for a mechanism enabling the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) to suspend the enforcement of a final return decision, where appropriate at the request of one of the empowered authorities, where that court considered that the child concerned could be exposed to a grave risk of physical or psychological harm in the event of his or her return.

88 Second, it is apparent from the case-law of the Court that the judicial protection of that child against such a risk is, in principle, already guaranteed by the existence of a remedy before a judicial body (see, to that effect, judgment of 26 September 2018, *Belastingdienst/Toeslagen (Suspensory effect of the appeal)*, C-175/17, EU:C:2018:776, paragraph 34), even where it is alleged that there is a grave risk within the meaning of point (b) of the first paragraph of Article 13 of the 1980 Hague Convention.

89 Consequently, as is apparent from points 82 to 84 of the Advocate General's Opinion, it does not follow from Article 11(3) of Regulation No 2201/2003, read in the light of Articles 24 and 47 of the Charter, that EU law requires Member States to provide an additional level of judicial review in respect of a return decision where that decision has been adopted in a procedure which already provides two levels of judicial review and that procedure enables account to be taken of the existence of risks in the event of the return of the child concerned. A fortiori, EU law does not permit Member States to couple proceedings brought against such a decision with an automatic suspensory effect, contrary to what appears to be provided for by Article 388^1(3) of the Code of Civil Procedure, as amended by the Law of 2022.

90 Regarding, in the third and last place, the consequences of the finding set out in paragraph 85 of the present judgment, it should be borne in mind that, in accordance with the principle of the primacy of EU law, the national court called upon within the exercise of its jurisdiction to apply

provisions of EU law is under a duty to give full effect to the requirements of EU law in the dispute brought before it, by disapplying, as required, of its own motion, any national rule or practice, even if adopted subsequently, that is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (see, to that effect, judgment of 22 February 2022, *RS (Effects of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 53).

91 In that regard, it should be borne in mind that, under the second paragraph of Article 288 TFEU, regulations have general application and are directly applicable in all Member States. Accordingly, owing to their very nature and their place in the system of sources of EU law, regulations operate to confer rights on individuals which the national courts have a duty to protect (see, to that effect, judgment of 17 September 2002, *Muñoz and Superior Fruiticola*, C-253/00, EU:C:2002:497, paragraph 27).

92 In this instance, it should be noted that Article 11(3) of Regulation No 2201/2003 imposes a clear and precise obligation on the Member States as to the result to be achieved, which is not coupled with any condition as regards the requirement of expedition to which proceedings concerning the adoption of a return decision, within the meaning of the 1980 Hague Convention, are subject. Thus, the referring court will be required, within the exercise of its jurisdiction, to give full effect to that provision of EU law by disapplying, as required, the piece of national legislation which may undermine the effectiveness of that provision.

93 Having regard to all the foregoing considerations, the answer to the question referred is that Article 11(3) of Regulation No 2201/2003, read in the light of Article 47 of the Charter, must be interpreted as precluding a piece of national legislation which confers on authorities that are not courts the power to obtain automatic suspension, for a period of at least two months, of the enforcement of a return decision handed down on the basis of the 1980 Hague Convention, without having to provide reasons for their request for suspension.

Costs

94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 11(3) 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, repealing Regulation (EC) No 1347/2000, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding a piece of national legislation which confers on authorities that are not courts the power to obtain automatic suspension, for a period of at least two months, of the enforcement of a return decision handed down on the basis of the Convention on the Civil Aspects of International Child Abduction, concluded at the Hague on 25 October 1980, without having to provide reasons for their request for suspension.

[Signatures]

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*	Language of the case: Polish.