



# Reports of Cases

OPINION OF ADVOCATE GENERAL  
KOKOTT  
delivered on 7 August 2018<sup>1</sup>

**Joined Cases C-325/18 PPU and C-375/18 PPU**

**Hampshire County Council**  
v  
**C.E.,**  
**N.E.**

(Request for a preliminary ruling from the Court of Appeal, Ireland)

(Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction, recognition and enforcement of judgments in matters of parental responsibility — Relationship to the Hague Convention on the Civil Aspects of International Child Abduction — Application for a declaration of enforceability — Appeal — Time limit for bringing the appeal — Whether the time limit may be extended — Right to effective judicial protection — Scope — Enforcement of a judgment before service of the declaration of the enforceability of that judgment on the parents concerned — Preservation of the practical effect of the appeal against the declaration of enforceability — Injunction (protective measure))

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<sup>1</sup> Original language: French.

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## I. Introduction

1. Regulation (EC) No 2201/2003, known as ‘the Brussels II bis Regulation’,<sup>2</sup> is the EU instrument that is relevant, in particular, when a judgment relating to parental responsibility is to be recognised and enforced in another Member State. For cases in which children are wrongfully removed in breach of rights of custody, that regulation integrates and supplements the provisions of the Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on 25 October 1980 (‘the Hague Convention’).

2. The present case raises the question of the relationship between those two instruments in a case in which a British family, threatened with the removal of its children by a local authority responsible for child protection, fled to Ireland with a two- or three-day-old baby and two children aged three and five.

3. The local authority subsequently obtained, in the absence of the parents, first, from an English court, an order making the children wards of court and directing that they be returned to England, then, from an Irish court, an order authorising enforcement (*exequatur*) on the basis of Regulation No 2201/2003. Finally, even before that order authorising enforcement was served on the parents, the English authority, with the assistance of its Irish counterparts, proceeded with enforcement by taking the children back to England without the parents’ knowledge. The parents then lodged an appeal in Ireland against the order authorising enforcement, but, on the basis of the time limit laid down by Regulation No 2201/2003, they did so two days late. In the meantime, the English authority was arranging for the baby to be adopted in England.

4. In those circumstances, the referring court asks the Court of Justice, first, whether the English authority’s use of the general provisions of Regulation No 2201/2003 on enforcement of judgments delivered in another Member State in order to obtain authorisation to enforce the English order in Ireland constituted a circumvention of the specific procedures laid down, in respect of international child abduction cases, by the Hague Convention, read in conjunction with Regulation No 2201/2003.

5. Next, the referring court queries whether the time limit which Article 33(5) of Regulation No 2201/2003 prescribes for the bringing of an appeal against the order authorising enforcement may be extended, notably in a case in which an order was enforced before service of the declaration of enforceability on the person against whom enforcement was sought.

6. Last, the referring court, which is also seised of an application for provisional measures, specifically an injunction (protective measure) against the English authority, prohibiting that authority from proceeding with the adoption of the baby and from initiating any adoption of the two older children, seeks an answer from the Court of Justice as to whether it is precluded under EU law from granting such an injunction against a public body of another Member State.

<sup>2</sup> 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 amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1).

## II. Legal context

### A. International law and EU law

#### 1. *The Hague Convention*

7. According to Article 1 of the Hague Convention, the objects of that Convention are, in particular, ‘to secure the prompt return of children wrongfully removed to or retained in any Contracting State’.

8. Under Article 3 of the Hague Convention, 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

...

The rights of custody mentioned in subparagraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.’

9. According to the first paragraph of Article 12 of the Hague Convention:

‘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.’

10. Article 13 of the Hague Convention is worded as follows:

‘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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. ...’

#### 2. *Regulation No 2201/2003*

11. Article 1 of Regulation No 2201/2003 provides:

‘1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

- (a) rights of custody and rights of access;
- (b) guardianship, curatorship and similar institutions;
- (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- (d) the placement of the child in a foster family or in institutional care;

...

3. This Regulation shall not apply to:

...

(b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

...'

12. Article 2 of Regulation No 2201/2003 provides that:

'(4) the term "judgment" shall mean ... a judgment relating to parental responsibility, pronounced by a court of a Member State ...;

...

(7) the term "parental responsibility" shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

...

(9) the term "rights of custody" shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

...

(11) the term "wrongful removal or retention" shall mean a child's removal or retention where:

- (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention ...'

13. Chapter II of Regulation No 2201/2003 is entitled 'Jurisdiction' and contains, inter alia, Article 11, entitled 'Return of the child', which provides:

'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 Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "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.

...

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

...

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.'

14. Article 20, which also forms part of Chapter II, provides:

'1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

...'

15. Chapter III of Regulation No 2201/2003 contains provisions on ‘Recognition and enforcement’. Section 1 (‘Recognition’) includes Article 21, entitled ‘Recognition of a judgment’, paragraph 1 of which provides as follows:

‘A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.’

16. Article 23 of Regulation No 2201/2003 sets out the ‘Grounds of non-recognition for judgments relating to parental responsibility’, as follows:

‘A judgment relating to parental responsibility shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
- (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;
- (c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;
- (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

...’

17. Section 2 of Chapter III of Regulation No 2201/2003 is entitled ‘Application for a declaration of enforceability’ and contains, in particular, Article 28 (‘Enforceable judgments’), paragraph 1 of which provides as follows:

‘A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

18. Article 31 of Regulation No 2201/2003 provides in that regard:

1. The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.
2. The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.
3. Under no circumstances may a judgment be reviewed as to its substance.’

19. Article 33 of Regulation No 2201/2003, entitled ‘Appeal against the decision’, provides:

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

...

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. ...

5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.'

20. Article 35(1) of Regulation No 2201/2003 is worded as follows:

'The court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.'

21. Article 40 of Regulation No 2201/2003 defines the scope of Section 4 of Chapter III of the regulation and provides that

'1. This Section shall apply to:

(a) rights of access;

and

(b) the return of a child entailed by a judgment given pursuant to Article 11(8).

2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.'

22. Article 42, which forms part of Section 4, provides as follows:

'1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(8), the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) 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;

(b) the parties were given an opportunity to be heard; and



- (c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

...'

## B. Irish Law

23. Order 122 of the Rules of the Superior Courts is entitled 'Time' and states, in rule 7:

'The Court shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the Court may direct, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.'

## III. Background to the dispute

24. The present case concerns a family composed of a mother<sup>3</sup> who is currently 24 years old, her three children currently aged six years,<sup>4</sup> four years<sup>5</sup> and approximately eleven months,<sup>6</sup> and her spouse,<sup>7</sup> currently 26 years old, who is the father of the baby and the stepfather of the two older children.

25. It is apparent from the file of the case in the main proceedings that, when they were living in England, the mother and the two older children were monitored by a local authority responsible for child protection, Hampshire County Council,<sup>8</sup> over a number of years. HCC's concerns in that context related, in particular, to unhygienic and unsanitary home conditions, weight gain in the case of the second child, domestic violence against the mother by the father of the second child while he was living with her, possession of cannabis plants by the father of the second child and, overall, a risk of neglect in the care of the children.

26. In 2015 and 2016, the mother took part in a programme for victims of domestic violence,<sup>9</sup> separated from the father of the second child and took steps to protect herself and to protect her children. There was also an improvement in hygiene conditions in the home.

27. However, in the first half of 2017, HCC made a further care plan in respect of the two older children, mainly because of neglect in respect of the children's living conditions and hygiene conditions in the home. In addition, HCC was concerned about the fact that the mother had embarked on a relationship with the father at the end of 2016, although the father and his former partner had lost custody of their children because one of those children had sustained a non-accidental injury and the possibility that the father was the perpetrator could not be excluded, even though the police had been unable to prove it. HCC also expressed concern because the first child had reported having been hit on the bottom by the father, and it was not clear whether that had been in the context of a play fight or inappropriate chastisement.

3 'the mother'.

4 'the first child'.

5 'the second child'; also, together with the first child, 'the two older children'.

6 'the baby'.

7 'the father'; also, together with the mother, 'the parents'.

8 'HCC'.

9 The 'Freedom Programme', see <http://www.freedomprogramme.co.uk/>.

28. Without ever raising the possibility of adoption of the two older children, HCC considered the various options for their care, including placing them in foster care, with their maternal grandmother or with their respective fathers. In that context, HCC considered the children to be too young for their views to be taken into consideration. HCC also noted that the mother had indicated that if it were decided that the children could not stay with her, she would like them to be placed in the care of her mother, their maternal grandmother.

29. It is apparent, moreover, from HCC reports and from reports provided by the first child's school and the second child's nursery that the two older children had a good relationship with their grandmother and that their conditions had improved since their grandmother had started supporting their mother and was taking them to school and to nursery in the mornings. Furthermore, it is apparent from the reports provided by the first child's school and the second child's nursery in the summer of 2017, in particular, that these children were sociable and had an affectionate relationship with their mother. Last, those reports attest to the fact that the parents had been responsive and had sought advice to improve the living and hygiene conditions criticised by the social services, which had in fact led to an improvement in those conditions.

30. On 30 June 2017, the Family Court at Portsmouth (United Kingdom) granted HCC an interim care order in relation to the two older children. That order gave HCC parental authority and notably prohibited the removal of the children from the United Kingdom. Notwithstanding HCC's care plans, the children were initially left with the parents. At the hearing in those proceedings, the person responsible for representing the children's interests<sup>10</sup> disagreed with HCC's plan for placing the children.

31. According to the statements made by HCC, in August 2017, HCC informed the parents of its intention to institute care proceedings in respect of the baby once it was born. HCC also advised the parents that it would oppose any unsupervised contact by the father with the baby.

32. The baby was born in hospital at the beginning of September 2017 and the mother and the baby returned home on the day of the birth or the following day.<sup>11</sup>

33. Either the day after or two days after the baby's birth,<sup>12</sup> social workers from HCC went to the parents' home and informed them of HCC's change of care plan for the children, which involved them being taken away from the parents. In addition, one of the social workers and the parents signed an agreement under which the father was required to leave the family home that same evening and to have no further contact with the children without first informing HCC, pending the outcome of the court proceedings.

34. The mother, then aged 23, was therefore to be alone at home with the one- or two-day-old baby and the two older children, aged three and five, with the prospect of imminent court proceedings during which it might be decided that her children were going to be taken away from her. The mother also stated subsequently in a sworn affidavit that at that point she had recalled a conversation she had had previously with an HCC social worker, during which that social worker had indicated that the two older children would in any event be too old to be adopted but that a baby is easy to adopt.

35. Those are the circumstances in which, on 5 or 6 September 2017,<sup>13</sup> that is to say, two or three days after the baby was born, the parents travelled by ferry to Ireland with the children.

10 A 'Cafcass guardian', responsible for reviewing the local authority's plan and ensuring that decisions are made in the best interests of the children concerned; see <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/care-proceedings/cafcass-role-care-proceedings/>.

11 It is not entirely clear whether they returned home the same day or the day after the baby was born.

12 It is not entirely clear whether that visit took place one day or two days after the baby was born.

13 It is not entirely clear whether the parents arrived in Ireland on 5 or 6 September 2017.

36. Having arrived in Ireland, the parents rented a house, had the baby checked by a nurse, registered the children with a doctor and enrolled the two older children in school. The family was, moreover, monitored by the Irish police and the Irish child protection services (Child and Family Agency, 'the CFA'), which found nothing of concern during several visits to the family home.

37. On 6 September 2017, the Family Court at Portsmouth granted HCC an interim care order in relation to the baby.

38. On 8 September 2017, HCC lodged a wardship application in respect of the three children at the High Court of Justice (England and Wales), Family Division, Family Court at Portsmouth (United Kingdom) ('the English High Court'). The application was served on the representatives of the parents that same day. The father's representative indicated that no instructions had been received in relation to the wardship application and no application for legal aid to act in those proceedings would be made. The mother's representative confirmed that instructions would be sought from the mother, but was unable to contact the mother by telephone.

39. Later that same day, the English High Court, in the absence of representatives of the parents, ordered that the children be made wards of court and that they be returned to England ('the English High Court order of 8 September 2017').

40. According to statements made by HCC, the English High Court order of 8 September 2017 was notified to the parents on 11 September 2017.

41. On 13 September 2017, the District Court of Gorey (Ireland) granted interim care orders in relation to all three children to the CFA, which were to remain in effect until 26 September 2017. The children were provisionally placed in foster care accommodation in Ireland.

42. On 21 September 2017, the High Court (Ireland) ('the Irish High Court') made an order concerning the recognition and enforcement of the English High Court order of 8 September 2017 ('the enforcement order of the Irish High Court of 21 September 2017').

43. On the same day on which the enforcement order of the Irish High Court of 21 September 2017 was made, the CFA services collected the children from the foster family with which they had provisionally been placed and handed them over to HCC social workers at Rosslare Ferry Port (Ireland). The children were then taken back to the United Kingdom, where the two older children were placed in the care of the father of the second child, and the baby was placed in foster care.

44. After the children's departure, the parents were advised of their departure in a telephone call from an English social worker. The enforcement order of the Irish High Court of 21 September 2017 was subsequently served on the parents on 22 September 2017.

45. On 26 September 2017, the parents sought to appeal against the English High Court order of 8 September 2017 in the Court of Appeal of England and Wales. On 9 October 2017, that court refused the parents permission to appeal.

46. On 24 November 2017, the parents' representatives lodged an appeal in the Irish High Court against the enforcement order of the Irish High Court of 21 September 2017, which had been served on the parents on 22 September 2017. At the hearing in those proceedings, the parents' representatives indicated that the 48-hour delay in lodging the appeal was not attributable to the parents.

47. On 21 December 2017, the English High Court made a placement order granting permission to HCC to identify adoptive parents for the baby and to place the baby with them.

48. On 18 January 2018, the Irish High Court dismissed the parents' appeal against the enforcement order of the Irish High Court of 21 September 2017, finding that it had no jurisdiction to extend time for the purposes of the appeal.

49. The parents appealed against that dismissal to the referring court, the Court of Appeal (Ireland).

50. In the context of those proceedings, HCC informed the referring court that it did not intend to participate in the proceedings because of budgetary constraints. It also indicated to the referring court that, in any event, it did not intend to return the children, irrespective of the outcome of the proceedings pending before that court.

51. On 17 May 2018, the referring court lodged the reference for a preliminary ruling in Case C-325/18 PPU.

52. On 23 May 2018, the parents applied to the referring court for interlocutory relief, seeking an injunction against HCC to prevent HCC from proceeding with the adoption of the baby and from initiating an adoption procedure in respect of the two older children.

53. Although it did not take part in the proceedings for interlocutory relief either, HCC filed a statement of position on the morning of the hearing in those proceedings, on 29 May 2018. In that statement, it stressed that it was proposed to proceed only with the adoption of the baby. It stated that, given the ages of the other two children, their placement with a parent — the father of the second child — and their strong sibling relationship, there would be no reason to initiate an adoption procedure. Should the placement with the father of the second child break down, the care plan would entail long-term foster care.

54. On 7 June 2018, the referring court lodged the reference for a preliminary ruling in Case C-375/18 PPU.

#### **IV. Procedure before the Court and the questions referred for a preliminary ruling**

55. By document lodged at the Court Registry on 17 May 2018, the Court of Appeal decided, in the appeal proceedings pending before it, to request that the urgent preliminary ruling procedure be applied, and to refer the following questions to the Court of Justice for a preliminary ruling (Case C-325/18 PPU):

1. Where it is alleged that children have been wrongfully taken from the country of their habitual residence by their parents and/or other family members in breach of a court order obtained by a public authority of that State, may that public authority apply to have any court order directing the return of the children to that jurisdiction enforced in the courts of another Member State pursuant to the provisions of Chapter III of Council Regulation No 2201/2003 or would this amount to a wrongful circumvention of Article 11 of that Regulation and the 1980 Hague Convention or otherwise amount to an abuse of rights or law on the part of the authority concerned?
2. In a case concerning the enforcement provisions of Council Regulation No 2201/2003 is there a jurisdiction to extend time for the purposes of Article 33(5) where the delays are essentially *de minimis* and an extension of time would otherwise have been granted by reference to national procedural law?
3. Without prejudice to question 2, where a foreign public authority removes the children, the subject matter of the dispute, from the jurisdiction of a Member State pursuant to an enforcement order made *ex parte* in accordance with Article 31 of Council Regulation No 2201/2003 but before the

service of such order on the parents thereby depriving them of their rights to apply for a stay of such an order pending an appeal, does such conduct compromise the essence of parents' entitlement under Article 6 [of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)] or Article 47 of the Charter [of Fundamental Rights of the European Union ('the Charter')] such that an extension of time (for the purposes of Article 33(5) of that Regulation) should otherwise be granted?

56. In addition, by document lodged at the Court Registry on 7 June 2018, the Court of Appeal decided, in the proceedings for interlocutory relief which had in the meantime been brought before it, to refer the following question to the Court of Justice for a preliminary ruling, again requesting that the urgent preliminary ruling procedure be applied (Case C-375/18 PPU):

'[Is it] compatible with EU law and, specifically, the provisions of Council Regulation No 2201/2003, for the courts of one Member State to grant an interlocutory injunction (protective measures) directed *in personam* at the public body of another Member State preventing that body arranging for the adoption of children in the courts of that other Member State where the *in personam* injunction arises from the necessity to protect the rights of the parties in enforcement proceedings arising under Chapter III of the 2003 Regulation?'

57. Following the administrative meeting held on 11 June 2018, the First Chamber of the Court of Justice decided that the present cases should be joined and be dealt with under the urgent preliminary ruling procedure referred to in Article 107 of the Rules of Procedure of the Court of Justice.

58. In the proceedings before the Court of Justice, the parents, HCC, the European Commission, Ireland and the United Kingdom Government submitted observations, and the latter Government replied to questions put by the Court. The same parties and the Czech and Polish Governments took part in the hearing on 13 July 2018.

## V. Assessment

### A. Admissibility of the references for a preliminary ruling

59. It is apparent from the chronology of the case before the national court that the children were returned to England before the order of the Irish High Court authorising enforcement had been served on the parents, who were therefore able to lodge their appeal against that order only after it had been enforced.

60. In those circumstances, the question might arise whether the dispute in the main proceedings continues to exist and, accordingly, whether the present questions referred for a preliminary ruling are admissible.

61. Admittedly, it follows from the structure of Regulation No 2201/2003 that a decision authorising enforcement must normally be served on the party against whom enforcement is sought before enforcement is effected to enable that party to lodge an appeal in good time to prevent enforcement.<sup>14</sup>

62. However, that does not mean, on the other hand, that where enforcement took place before the decision authorising enforcement was served, an appeal against that decision is devoid of purpose.<sup>15</sup>

<sup>14</sup> See point 118 et seq. below.

<sup>15</sup> See, to that effect, my View in *Health Service Executive* (C-92/12 PPU, EU:C:2012:177, points 56 and 57).

63. In that regard, the Commission did indeed emphasise at the hearing that Regulation No 2201/2003 does not lay down a specific procedure that would require the English courts to take into account a possible annulment by the referring court of the decision authorising enforcement.

64. Nonetheless, as the United Kingdom Government asserted, in such a situation the parents would be able to bring an action in England and, on the basis of international comity, the English courts would not disregard the decision of the Irish court but, on the contrary, would ascribe great importance to that court's reasoning. In addition, as the United Kingdom Government and HCC's representative also noted, the children's return to England is by no means irreversible and, subject to their best interests being taken into account, they might well, if appropriate, be taken to Ireland again. The United Kingdom Government and HCC's representative also stated that such 'return trips' frequently take place, for example when the Hague Convention is applied, between the United Kingdom and the United States of America.

65. It follows that there can be no doubt as to the continuation of the dispute in the main proceedings and, accordingly, as to the admissibility of the requests for a preliminary ruling.

## **B. The first question referred in Case C-325/18 PPU**

66. By its first question in Case C-325/18 PPU, the referring court seeks to ascertain whether, where it is alleged that children have been wrongfully removed, a decision of a court of the Member State of habitual residence ordering their return may be declared enforceable in the Member State of refuge in accordance with the general provisions of Chapter III of Regulation No 2201/2003 or whether that constitutes a circumvention of the specific procedure laid down for child-removal cases by the Hague Convention in conjunction with Article 11 of Regulation No 2201/2003 (hereinafter also 'the Hague route').

67. The parents and the referring court seem to consider that, where children are removed from one Member State to another, there is a relationship of subsidiarity between the Hague route and the normal procedure for the recognition and enforcement of judgments relating to parental responsibility laid down in Regulation No 2201/2003.

68. Article 11 of Regulation No 2201/2003, read in conjunction with the Hague Convention, allows a person who alleges that a child has been wrongfully removed to another Member State to request the competent judicial or administrative authority of that Member State to order the return of the child. If a court of the Member State in which the child is present refuses, pursuant to Article 13 of the Hague Convention, to order the child's return,<sup>16</sup> Article 11(8) of Regulation No 2201/2003 allows a court having jurisdiction under that regulation to adopt a decision ordering return, which is then directly enforceable, without the need for an exequatur procedure, in the Member State of refuge if it has been adopted and certified in accordance with the prescribed procedure.<sup>17</sup>

<sup>16</sup> The adoption of such a non-return decision is a precondition of the application of the specific enforcement procedure laid down in Section 4 of Chapter III of Regulation No 2201/2003, see judgment of 11 July 2008, *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraph 74).

<sup>17</sup> See recitals 17, 18 and 23 of Regulation No 2201/2003. For explanations in that respect see also judgments of 11 July 2008, *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraph 61 et seq.) and of 26 April 2012, *Health Service Executive* (C-92/12 PPU, EU:C:2012:255, paragraph 116 et seq.). See also my View in *Health Service Executive* (C-92/12 PPU, EU:C:2012:177, points 58 and 72 et seq.).

69. In the present case it is common ground that HCC did not adopt that approach and that there was therefore no decision requiring the return of the children within the meaning of Article 11(8) of Regulation No 2201/2003. As it confirmed at the hearing, HCC did not choose that route, in particular, because it is available only in the event of the wrongful removal of a child in breach of rights of custody.<sup>18</sup> Yet at the time of the family's removal to Ireland, HCC was sure that it had rights of custody only in respect of the two older children. It was therefore not certain that the removal of the baby might have been considered wrongful within the meaning of the relevant provisions.<sup>19</sup>

70. That is why HCC directly requested the English High Court to make the children wards of court and to order their return to England, before applying, in accordance with Article 28 of Regulation No 2201/2003, in the Irish High Court for a declaration that the order of the English High Court was enforceable.

***1. It is possible to seek enforcement of a judgment relating to parental responsibility under Regulation No 2201/2003 independently of the Hague route***

71. Regulation No 2201/2003 provides for two distinct options for the enforcement of judgments given by the courts of other Member States: first, the general route involving an application for enforcement in accordance with Section 2 of Chapter III (Article 28 et seq.) and, second, the specific route in the case of judgments that are directly enforceable in another Member State without the need for an enforcement procedure under Section 4 of Chapter III (Article 40 et seq.). The latter option is applicable only for the judgments referred to in Article 11(8) of Regulation No 2201/2003,<sup>20</sup> that is to say, judgments requiring the return of a child given upon completion of the Hague route by a court having jurisdiction after a judgment of non-return has been given by a court of the Member State in which the child is present.

72. According to Article 40(2) of Regulation No 2201/2003, the provisions of Section 4 of Chapter III (on the enforceability of judgments requiring the return of a child which are given upon completion of the Hague route) are not to prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment relating to parental responsibility in accordance with the provisions in Sections 1 and 2 of that chapter.

73. The circumstances of the main proceedings show, moreover, that there may be situations in which a judgment awarding parental responsibility to a person who has remained in a Member State is given only after a child has been removed to another Member State, so that the removal is not wrongful for the purposes of the Hague route. It is inconceivable that such a person should find it impossible in such a case to seek enforcement of the judgment awarding him parental responsibility in the Member State of refuge in accordance with Regulation No 2201/2003.

74. It follows that it does not appear that a person wishing to secure the return of a child who has been removed to another Member State must necessarily attempt to have such return ordered via the Hague route before being able to apply, in accordance with Article 28 of Regulation No 2201/2003, for enforcement of a judgment relating to his parental responsibility delivered in another Member State.<sup>21</sup>

<sup>18</sup> See Articles 1(a), 3 and 12 of the Hague Convention and Articles 2(11)(a) and 11(1) of Regulation No 2201/2003 (points 7, 8, 9, 12 and 13 above).

<sup>19</sup> At the time of the children's removal to Ireland, interim care orders in favour of HCC had been made in respect of the two older children (see point 30 above); on the other hand, as HCC's representative confirmed at the hearing, it is not possible to determine whether the interim care order in respect of the baby was obtained before or after the children's departure (see points 35 and 37 above).

<sup>20</sup> And also for certain judgments relating to rights of access, which are not concerned in the present context.

<sup>21</sup> In the cases giving rise to the judgments of 22 December 2010, *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraph 62 et seq.) and of 9 October 2014, *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 62 et seq.), the parties had, moreover, had recourse to the two procedures in parallel and the Court did not criticise that approach.

75. The doubts raised by the parents and the referring court concerning such an interpretation are unconvincing.

76. Thus, first of all, it is impossible to subscribe to the referring court's view that Article 13 of the Hague Convention provides more reasons for refusing to require the return of a child than Article 23 of Regulation No 2201/2003 provides for refusing the recognition and enforcement of a judgment relating to parental responsibility. In fact, the grounds for refusal and non-recognition laid down in those provisions overlap to a large degree.

77. That is a fortiori the position in so far as Regulation No 2201/2003 attenuates the grounds of refusal to return laid down in the Hague Convention when that convention is applied, in conjunction with that regulation, between Member States of the Union: first, Article 11(4) of Regulation No 2201/2003 tempers the ground of refusal laid down in Article 13(b) of the Hague Convention; and, second, as already explained,<sup>22</sup> a court having jurisdiction as to the substance may, under Article 11 of Regulation No 2201/2003, disregard a non-return judgment delivered by a court in the Member State of refuge, even though, under Article 42(2)(c) of that regulation, it must take into account the reasons that led to the adoption of that judgment of non-return.

78. Next, it does indeed follow from Articles 11(7) and 42(2)(b) of Regulation No 2201/2003 that a judgment requiring return adopted in accordance with Article 11(8) of that regulation cannot be given unless the parties concerned have had the opportunity to be heard. However, it follows from Article 31(2), read in conjunction with Articles 23 and 33 of Regulation No 2201/2003, that a judgment relating to parental responsibility also cannot be declared enforceable in another Member State unless the person against whom enforcement has been sought has had the opportunity to be heard.<sup>23</sup> It cannot therefore be inferred from the fact that the latter provisions were not complied with in the present case<sup>24</sup> that the normal route for the enforcement of a judgment relating to parental responsibility laid down in Article 28 et seq. of Regulation No 2201/2003 generally affords less protection for the rights of the defendant to enforcement than the route laid down in Articles 11, 40 and 42 of that regulation.

79. Nor, last, can an argument be inferred from the fact that some language versions of Regulation No 2201/2003<sup>25</sup> present a difference in wording between Articles 21 and 28 as regards the object of the application for enforcement. Thus, Article 21 does indeed state that 'a judgment given in a Member State' (that is to say, in accordance with the definition in Article 2(4), any judgment relating to parental responsibility) is to be recognised in the other Member States, whereas Article 28 in the language versions concerned provides for an application for enforcement only for 'a judgment on *the exercise*<sup>26</sup> of parental responsibility ... given in a Member State'. However, not only is that difference not present in all language versions of Regulation No 2201/2003, but, moreover, it merely reflects the fact that it is mainly judgments relating to the exercise of parental responsibility that call for enforcement measures and therefore require a judgment authorising enforcement, whereas for

<sup>22</sup> See point 68 above.

<sup>23</sup> See point 118 et seq. below.

<sup>24</sup> See point 121 et seq. below.

<sup>25</sup> This is the case, in particular, as regards the English version ('[a] judgment on the exercise of parental responsibility in respect of a child given in a Member State'); the French version ('[l]es décisions rendues dans un État membre sur l'exercice de la responsabilité parentale à l'égard d'un enfant'); the Spanish version ('[l]as resoluciones dictadas en un Estado miembro sobre el ejercicio de la responsabilidad parental con respecto a un menor'); the Italian version ('[l]e decisioni relative all'esercizio della responsabilità genitoriale su un minore'); the Portuguese version ('[a]s decisões proferidas num Estado-Membro sobre o exercício da responsabilidade parental relativa a uma criança'); or the Dutch version ('[b]eslissingen betreffende de uitoefening van de ouderlijke verantwoordelijkheid voor een kind'). On the other hand, in other language versions of Regulation No 2201/2003, Article 28 makes no such difference; see, in particular, the German version ('[d]ie in einem Mitgliedstaat ergangenen Entscheidungen über die elterliche Verantwortung für ein Kind'); the Danish version ('[e]n i en medlemsstat truffet retsafgørelse om forældreansvar over for et barn'); the Czech version ('[v]ýkon rozhodnutí o výkonu rodičovské zodpovědnosti ve vztahu k dítěti vydaných v členském státě'); or the Estonian version ('[l]apse suhtes vanemlikku vastutust käsitlevat kohtuotsust, mis on tehtud liikmesriigi ja on selles liikmesriigi täitmisele pööratav ning kätte antud').

<sup>26</sup> Emphasis added.



judgments relating to the attribution, delegation or restriction or termination of parental responsibility recognition alone may suffice. Nonetheless, that does not mean that an application for enforcement is precluded in respect of such judgments, which are also necessarily capable, where appropriate, of being enforced.

80. Thus, in particular, in the case of the removal of a child from the Member State of its habitual residence to another Member State, a judgment of a court of the Member State of origin awarding parental responsibility and rights of custody to a parent who has remained in that State may be enforced in the sense that, if the removing parent does not ‘surrender’ the child, the assistance of the public authorities will be necessary in order to recover and return the child. That is a fortiori the position in so far as, under Article 2(9) of Regulation No 2201/2003, the term ‘rights of custody’ within the meaning of that regulation is to include, in particular, the right to determine the child’s place of residence.<sup>27</sup>

81. That interpretation is supported by the wording of the certificate referred to in Article 39 of Regulation No 2201/2003, the standard form of which is set out in Annex II to that regulation. Such a certificate, which was also completed in the present case by the English High Court, must, pursuant to Article 37(1)(b) of Regulation No 2201/2003, be produced by a party seeking enforcement of a judgment relating to parental responsibility. Point 11 of that form specifically provides for the possibility of indicating whether ‘the judgment entails the return of the child’ and the name and particulars of the person to whom the child is to be returned. In addition, point 11 expressly states that ‘this possibility is foreseen under Article 40(2)’.

82. That confirms that the legislature did indeed envisage judgments relating to parental responsibility which entail the return of a child to another Member State and enforcement of which may be sought independently of recourse to the Hague route provided for in Articles 11, 40 and 42 of that regulation.

***2. It is not possible, under Regulation No 2201/2003, to seek enforcement of a judgment requiring the return of a child that is not linked with a judgment relating to parental responsibility***

83. It is necessary to distinguish judgments which entail or require the return of a child to the Member State of origin as a consequence of a judgment relating to parental responsibility and judgments requiring the return of a person, in this instance of a child, to the territory of a Member State independently of a judgment relating to parental responsibility: both types of judgment may entail the return of the child to the Member State of origin, but only the former may be declared enforceable in the requested Member State under Section 2 of Chapter III of Regulation No 2201/2003.

84. Thus, it is certainly not precluded that the courts of the Member States may, on the basis of their national law, require the return of a child to their national territory irrespective of whether a judgment relating to parental responsibility has been given.<sup>28</sup>

85. However, if it does not constitute a judgment requiring return given pursuant to Article 11(8) of Regulation No 2201/2003 (that is to say, a judgment adopted upon completion of the Hague route), such an order requiring return does not fall within the scope *ratione materiae* of Regulation No 2201/2003.

<sup>27</sup> See on this point the View of Advocate General Sharpston in *Rinau* (C-195/08 PPU, EU:C:2008:377, point 52 et seq.).

<sup>28</sup> Articles 18, 29 and 34 of the Hague Convention state that that Convention is not opposed to their doing so.

86. In fact, in accordance with Article 1(1)(b), that regulation is to apply, whatever the nature of the court or tribunal, in *civil*<sup>29</sup> matters relating to, in particular, the attribution, exercise, delegation and restriction or termination of parental responsibility. In that regard, the Court has indeed stated that the expression ‘civil matters’ must not be understood restrictively<sup>30</sup> and covers, in particular, State measures for the protection of a child, such as placement in a childcare unit<sup>31</sup> or a secure care institution.<sup>32</sup>

87. Nonetheless, such a State child protection measure is always connected with the exercise of parental responsibility and must therefore be distinguished from a measure requiring the return of a person, in this instance of a child, to the territory of the court or tribunal concerned independently of any judgment relating to parental responsibility. In fact, the object<sup>33</sup> of such a measure is the exercise, by the Member State concerned, of a supervisory power which goes beyond the scope of Regulation No 2201/2003.<sup>34</sup>

88. It follows from the foregoing that, apart from the cases referred to by Article 11 of Regulation No 2201/2003, a judgment requiring the return of a child to the territory of the court concerned independently of a judgment relating to parental responsibility does not fall within the scope of that regulation. Accordingly, such a judgment cannot be declared enforceable in accordance with the provisions of Section 2 of Chapter III of that regulation.

### 3. *Interim conclusion*

89. As the referring court has observed, the operative part of the English High Court order of 8 September 2017 is made up of several separate elements, namely, in particular, the fact that the children were made wards of court, the order requiring that the children be returned to the territory of the English court, the permission for the children to be taken into care by the Irish child services in time to arrange their return and the fact that the children were to be taken into the custody of HCC after being returned.

90. It is for the referring court to determine, on the basis of the terms of that order and in the light of the remaining circumstances present, whether the return requirement contained in that order could benefit from the exequatur procedure laid down in Section 2 of Chapter III of Regulation No 2201/2003.

91. It follows from the foregoing considerations that the answer to the first question in Case C-325/18 PPU should be that where it is alleged that children have been wrongfully taken from the Member State of their habitual residence to another Member State, a judgment directing the return of those children delivered by a court of the Member State of origin outside the procedure laid down in Article 11 of Regulation No 2201/2003 and independently of a judgment relating to parental

<sup>29</sup> Emphasis added.

<sup>30</sup> See judgments of 27 November 2007, *C* (C-435/06, EU:C:2007:714, paragraph 46 et seq.), and of 21 October 2015, *Gogova* (C-215/15, EU:C:2015:710, paragraph 26). See also my Opinion in *C* (C-435/06, EU:C:2007:543, point 33 et seq.) and my View in *Health Service Executive* (C-92/12 PPU, EU:C:2012:177, point 10 et seq.).

<sup>31</sup> See judgments of 27 November 2007, *C* (C-435/06, EU:C:2007:714, paragraph 24 et seq.) and of 2 April 2009, *A* (C-523/07, EU:C:2009:225, paragraph 21 et seq.).

<sup>32</sup> See judgment of 26 April 2012, *Health Service Executive* (C-92/12 PPU, EU:C:2012:255, paragraph 56 et seq.).

<sup>33</sup> As the Court has explained, in order to determine whether an application falls within the scope of Regulation No 2201/2003, the focus must be on the object of the application: judgment of 21 October 2015, *Gogova* (C-215/15, EU:C:2015:710, paragraph 28); see also, as regards Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), as amended by Commission Delegated Regulation (EU) 2015/281 of 26 November 2014 (OJ 2015 L 54, p. 1) (known as ‘the Brussels I bis Regulation’), among many examples, judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193, paragraph 34).

<sup>34</sup> See on this point the View of Advocate General Mengozzi in *Gogova* (C-215/15, EU:C:2015:725, point 39 et seq.).

responsibility cannot be enforced in accordance with the provisions of Chapter III of that regulation. However, in such circumstances, a judgment relating to parental responsibility delivered by a court of the Member State of origin which entails the return of the child to that Member State may be enforced in accordance with those provisions.

### **C. The second and third questions referred in Case C-325/18 PPU and the question referred in Case C-375/18 PPU**

92. The second and third questions in Case C-325/18 PPU and the question in Case C-375/18 PPU are relevant only if the referring court is seised of an appeal against a judgment authorising enforcement in accordance with Regulation No 2201/2003. Otherwise, the dispute in the main proceedings would fall outside the scope of EU law and the Court would not have jurisdiction to answer the questions put by the referring court.<sup>35</sup>

93. Accordingly, the answers to the second and third questions in Case C-325/18 PPU and to the question in Case C-375/18 PPU are given in case the referring court should conclude that the English High Court order of 8 September 2017 could be declared enforceable in Ireland by the enforcement order of the Irish High Court of 21 September 2017 in accordance with Regulation No 2201/2003, and that the appeal proceedings before it are therefore governed by the terms of that regulation.

#### ***1. The period prescribed (second and third questions referred in Case C-325/18 PPU)***

94. With its second and third questions in Case C-325/18 PPU, which should be dealt with together, the referring court seeks, in essence, to ascertain whether, where enforcement of a judgment authorising enforcement has taken place before that judgment was served, EU law precludes an extension of the time for lodging an appeal against the judgment authorising enforcement prescribed in Article 33(5) of Regulation No 2201/2003.

##### ***(a) Preliminary observations***

95. In the words of Article 33(5) of Regulation No 2201/2003, the time for appealing against the declaration of enforceability is to be one month or two months where the party against whom enforcement is sought is habitually resident in a Member State other than that in which that declaration was given.

96. In the present case, it is common ground that the time for appealing was two months from service of the enforcement order of the Irish High Court of 21 September 2017,<sup>36</sup> that that order was served on the parents on 22 September 2017<sup>37</sup> and that the parents lodged their appeal against the order on 24 November 2017.<sup>38</sup> The referring court therefore proceeds on the premiss that the parents' appeal was lodged 48 hours late.

<sup>35</sup> It is not apparent that in the present case national law refers to the content of Regulation No 2201/2003 in order to determine the rules applicable to a situation governed solely by the national law of the Member State concerned; see, to that effect, order of 12 May 2016, *Sahyouni* (C-281/15, EU:C:2016:343, paragraph 24 et seq. and the case-law cited).

<sup>36</sup> The enforcement order of the Irish High Court of 21 September 2017 specifically states that the deadline for lodging an appeal is two months from service of that order.

<sup>37</sup> See point 44 above.

<sup>38</sup> See point 46 above.

97. It is certainly not for the Court to question that premiss and the underlying findings of fact made by the referring court. In addition, none of the parties seems to question the fact that the date on which time began to run was indeed the date on which the enforcement order of the Irish High Court of 21 September 2017 was served on the parents, that is to say, 22 September 2017.<sup>39</sup>

98. Nonetheless, as the referring court also observes, the national file contains a ‘Memorandum of appearance’ of the parents’ representative dated 27 September 2017, drawn up in accordance with Order 12, Rule 9 of the Rules of the Superior Courts, and the Form No 1 in Part II of Appendix A referred to therein. In that document, the parents’ representative states that he has received the ‘Originating Summons’ and asks to be sent a ‘Statement of claim’, which seems to refer to the application for a declaration of enforceability lodged by HCC with the Irish High Court with a view to securing enforcement of the English High Court order of 8 September 2017.

99. It is for the referring court to examine that factor and to determine whether, on the assumption that it is correct, the fact that the parents had not received HCC’s application for a declaration of enforceability or any other relevant document at the time of service of the enforcement order of the Irish High Court of 21 September 2017 has an *impact on the starting point* of the period for lodging an appeal.

100. In that context, it should be borne in mind that, according to the Court’s case-law, the effective protection of the fundamental rights conferred on individuals by EU law requires that they be given a complete statement of reasons in order to be able to defend themselves in the best possible conditions.<sup>40</sup> In addition, in connection with actions against acts of the EU institutions, the Court has noted that time for the purpose of lodging an appeal can begin to run only from the point at which the person concerned had precise knowledge of the content and the grounds of the act at issue in such a way as to be able to take full advantage of his right to institute proceedings.<sup>41</sup> Last, it is useful to bear in mind the case-law of the European Court of Human Rights, according to which time for the purpose of lodging an appeal can begin to run only from the point at which the appellants were actually in a position to know the judicial decision *in full*.<sup>42</sup>

101. Only if the referring court concludes, on the basis of that examination, that the parents’ appeal was indeed lodged out of time does the question arise whether the period prescribed in Article 33(5) of Regulation No 2201/2003 might be extended in a case in which a judgment authorising enforcement was enforced before it had been served on the defendant to enforcement.

***(b) The possibility of extending the period prescribed in Article 33(5) of Regulation No 2201/2003***

102. According to Article 33(5) of Regulation No 2201/2003, an appeal against a declaration of enforceability must be lodged within one month or two months where the party against whom enforcement is sought is habitually resident in a Member State other than that in which that declaration was given. No extension of time may be granted on account of distance.

<sup>39</sup> A certain confusion in HCC’s written and oral observations, not as to the *starting date of the period*, but as to the *date of the lodging of the appeal*, was clarified at the hearing: HCC had mistakenly stated that a ‘notice of motion’ had already been filed on 19 November 2017, which would have been within the two-month period for lodging an appeal if that period had begun to run on 22 September 2017; the parents confirmed at the hearing, however, that that statement was incorrect and that their appeal had in fact been lodged only on 24 November 2017.

<sup>40</sup> See, to that effect, judgment of 15 October 1987, *Heylens and Others* (222/86, EU:C:1987:442, paragraph 15).

<sup>41</sup> See, in particular, judgments of 5 March 1980, *Könecke Fleischwarenfabrik v Commission* (76/79, EU:C:1980:68, paragraph 7); of 6 July 1988, *Dillinger Hüttenwerke v Commission* (236/86, EU:C:1988:367, paragraphs 13 and 14); of 6 December 1990, *Wirtschaftsvereinigung Eisen- und Stahlindustrie v Commission* (C-180/88, EU:C:1990:441, paragraph 22); of 19 February 1998, *Commission v Council* (C-309/95, EU:C:1998:66, paragraph 18 et seq.); or of 23 October 2007, *Parliament v Commission* (C-403/05, EU:C:2007:624, paragraph 29 et seq.).

<sup>42</sup> See, in that regard, ECtHR, 26 January 2017, *Ivanova and Ivashova v. Russia* (CE:ECHR:2017:0126JUD000079714, paragraph 57 and the case-law cited).

103. In so far as the wording of Article 33(5) of Regulation No 2201/2003 specifies only that no extension of time may be granted on account of distance,<sup>43</sup> it cannot be precluded that time may be extended for reasons *other* than distance.<sup>44</sup>

104. As the parents correctly claim, such a literal interpretation is supported by the fact that Regulation No 2201/2003 also contains very explicit conditions concerning possible exclusions, prohibitions or restrictions of the powers of the courts concerned.<sup>45</sup> Therefore the fact that only an extension on account of distance is expressly prohibited indicates that the EU legislature did not wish to exclude an extension of the time specified in Article 33(5) of Regulation No 2201/2003 for other reasons.

105. A contextual interpretation of the time for lodging an appeal laid down in Article 33(5) of Regulation No 2201/2003 does not lead to a different result. Thus, it is apparent from the structure of Article 33 that the objective of the time for lodging an appeal laid down in paragraph 5 of that provision is to avoid delay in enforcing judgments given in another Member State which have been declared enforceable in accordance with Article 31. That objective may be inferred from the fact that a time limit is applicable, under Article 33(5) of Regulation No 2201/2003, only in respect of an appeal by the *defendant to enforcement*, therefore where a decision authorising enforcement has been taken. Conversely, under Article 33(4) of that regulation, no time limit is prescribed for an appeal lodged by the *applicant for enforcement* where he disputes the rejection, by the court seised, of his application under Article 28 for a decision authorising enforcement of a judgment given in another Member State.

106. It follows that an extension of time is not precluded, in particular, where there is no risk that it will unduly delay enforcement of a judgment which has just been declared enforceable.

107. That is the position in the circumstances of the present case, where the judgment enforcement of which was sought was already enforced before the appeal was lodged, so that an extension of the time for lodging an appeal is no longer capable of delaying enforcement. It might even be maintained that in such a case the appeal lodged by the defendant to enforcement pursuant to Article 33(5) of Regulation No 2201/2003 should, like the appeal of the applicant for enforcement provided for in paragraph 4 of that provision, be capable of being lodged without limitation in time. Without going as far as that, it is sufficient to state that, in such a case, the time limit must not in any event be applied restrictively.

43 The wording of the French version of the regulation ('Ce délai ne comporte pas de prorogation à raison de la distance') is not entirely clear, but it is apparent from other language versions that this does indeed mean that the period cannot be extended on grounds of distance (see the English version: 'No extension of time may be granted on account of distance'; the German version: 'Eine Verlängerung dieser Frist wegen weiter Entfernung ist ausgeschlossen'; the Spanish version: 'Dicho plazo no admitirá prórroga en razón de la distancia'; the Italian version: 'Detto termine non è prorogabile per ragioni inerenti alla distanza'; the Portuguese version: 'Este prazo não é susceptível de prorrogação em razão da distância'; the Dutch version: 'De termijn kan niet op grond van de afstand worden verlengd').

44 This position is also argued by eminent writers on private international law, see for example Schlosser, P.F., *EU-Zivilprozessrecht*, 2<sup>nd</sup> ed., Beck, Munich, 2003, p. 276 No 9; Oberhammer, P., 'Art. 43', *Kommentar zur Zivilprozessordnung*, Vol. 10, 22<sup>nd</sup> ed., Mohr Siebeck, Tübingen, 2011, p. 686 No 11 (both on Article 43 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 012, p. 1) (known as 'the Brussels I Regulation'), which corresponds to Article 33 of Regulation No 2201/2003); Mankowski, P., 'Art 33', *Brussels IIbis Regulation*, Sellier, Munich, 2012, p. 312 No 38; Paraschas, K., 'VO (EG) 2201/2003 Art. 33', *Internationaler Rechtsverkehr in Zivil- und Handelssachen*, 54<sup>th</sup> ed., Beck, Munich, 2018, No 8. In addition, in the judgment of 11 August 1995, *SISRO* (C-432/93, EU:C:1995:262, paragraph 15), the Court seems to have implicitly accepted the possibility of declaring admissible, in application of the national rules of procedure, an appeal lodged after the period of two months laid down in the second paragraph of Article 36 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 ('the Brussels Convention'), which corresponds to Article 33(5) of Regulation No 2201/2003, had expired.

45 See, for example, Article 1(3) of Regulation No 2201/2003: 'This Regulation shall not apply to ...'; Article 11(4) and (5): 'A court cannot'; Articles 22 and 23: 'A judgment ... shall not be recognised'; Article 24: 'The jurisdiction of the court of the Member State of origin may not be reviewed.'; Article 25: 'The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow ...'; Articles 26 and 31(3): 'Under no circumstances may a judgment be reviewed as to its substance'; Article 31(1): '... neither the person ... nor the child shall ... be entitled to make any submissions on the application.'; or Article 34: 'The judgment given on appeal may be contested only by the proceedings ...'.

108. It follows that Regulation No 2201/2003 does not preclude the court with jurisdiction from extending the time for lodging an appeal prescribed in Article 33(5) of that regulation.<sup>46</sup> In application of the principle of the procedural autonomy of the Member States, it is for the domestic legal order of each Member State to regulate the procedural requirements applicable to such an extension.

***(c) The balance to be struck when extending the time for lodging an appeal prescribed in Article 33(5) of Regulation No 2201/2003***

109. Even though Regulation No 2201/2003 does not preclude the extension or re-opening<sup>47</sup> of the time for lodging an appeal prescribed in Article 33(5) of that regulation, the fact remains that the application of that period is the principle to which exceptions can be made only in duly justified cases.

110. In addition, the power of the national court to extend or re-open that period in such cases is limited by the principles of equivalence and effectiveness.<sup>48</sup>

111. First, compliance with the principle of equivalence, which means that the procedural requirements for appeals intended to safeguard the rights which individuals derive from EU law must not be less favourable than those governing similar domestic situations,<sup>49</sup> does not seem to raise any problems in the present case. In fact, it is apparent from the order for reference that Irish law confers on the court jurisdiction to extend the time for lodging appeals in duly justified cases where the application of national law is involved.<sup>50</sup>

112. Second, according to the principle of effectiveness, the procedural requirements of national law must not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order.<sup>51</sup>

113. On that point, in this instance Regulation No 2201/2003 and, more particularly, Section 2 of Chapter III thereof strike a balance between the right conferred on the applicant for enforcement to obtain satisfaction promptly and the right conferred on the defendant to enforcement to challenge effectively, in the requested Member State, enforcement of a judgment given in another Member State.<sup>52</sup> In addition, before all else, the objective of ensuring as much as possible that the best interests of the child are taken into account and to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter nourishes and underlies all the provisions of Regulation No 2201/2003.<sup>53</sup>

<sup>46</sup> In the interest of completeness, it should be noted that the judgments of 4 February 1988, *Hoffmann* (145/86, EU:C:1988:61), and of 16 February 2006, *Verdoliva* (C-3/05, EU:C:2006:113), cited by the referring court and referred to by HCC, do not undermine that interpretation. Thus, the Court did indeed refer in those judgments to the strict nature of the deadline laid down in Article 36 of the Brussels Convention, which corresponded to Article 33(5) of Regulation No 2201/2003. However, in *Hoffmann* the Court merely stated that the provision in question must be interpreted as meaning that a party who has not appealed against the enforcement order referred to in that provision is thereafter precluded, at the stage of the execution of the judgment, from relying on a valid ground which he could have pleaded in such an appeal against the enforcement order (judgment of 4 February 1988, *Hoffmann* (145/86, EU:C:1988:61, paragraph 34). Likewise, in the judgment in *Verdoliva*, the Court merely held that the mere fact that the party against whom enforcement is sought has notice of the decision authorising enforcement cannot replace the requirement of service stipulated in that provision for the purposes of the starting point of the time limit laid down therein (judgment of 16 February 2006, *Verdoliva* (C-3/05, EU:C:2006:113, paragraph 38).

<sup>47</sup> In German law, the period in question cannot be extended, but may be re-opened.

<sup>48</sup> See my Opinion in *Puškár* (C-73/16, EU:C:2017:253, points 46 and 47).

<sup>49</sup> See, in particular, judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12, paragraph 67); and of 21 December 2016, *TDC* (C-327/15, EU:C:2016:974, paragraph 90).

<sup>50</sup> See in that regard the provision of Irish law cited in point 23 above.

<sup>51</sup> See the case-law cited in footnote 49 above.

<sup>52</sup> See, with regard to Article 36 of the Brussels Convention, which corresponded to Article 33(5) of Regulation No 2201/2003, judgment of 16 February 2006, *Verdoliva* (C-3/05, EU:C:2006:113, paragraph 26 et seq.), and also my Opinion in *Verdoliva* (C-3/05, EU:C:2005:722, point 38 et seq. and the case-law cited); to the same effect, as regards Regulation No 2201/2003, see judgment of 11 July 2008, *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraph 101).

<sup>53</sup> See, in particular, recital 33 of Regulation No 2201/2003.

114. It follows that where a national court such as, in this instance, the referring court, applies the procedural requirements of its domestic law when deciding whether to extend the time prescribed in Article 33(5) of Regulation No 2201/2003, that court must take care to preserve the effectiveness of the rights and objectives referred to in the preceding point. That requirement may, in a particular case, make it necessary to extend time, just as it may impose temporal limits on such an extension. In the context of the balancing exercise which it must carry out for that purpose, the court in question must take account of the general structure of the regulation and also of all the contextual elements present in the specific case.

115. In this instance, the referring court will have to take into account, in particular, the following elements.

*(1) The extent to which time is exceeded*

116. Regulation No 2201/2003 seeks not only to permit the prompt enforcement of judgments enforcement of which is sought, but also to ensure legal certainty in the recognition and enforcement of such judgments. However, it may be detrimental to legal certainty to allow the lawfulness of a judgment which has already been enforced to be called in question without any limit in time. That is a fortiori the position where the annulment of the judgment authorising enforcement may lead to the reversal of the factual situation created by the hasty enforcement, that is to say, in a case like this, to the return of the children to the requested Member State.<sup>54</sup> The national court must therefore take into consideration the extent of the time that has elapsed by comparison with the time initially prescribed. In this instance, the delay of 48 hours with which the parents' appeal was lodged is *de minimis*, so that admission of the appeal gives rise to no significant difference by comparison with the initial time prescribed in Article 33(5) of Regulation No 2201/2003.

*(2) The objectives of Regulation No 2201/2003*

117. The objective of Regulation No 2201/2003 is not only to facilitate the recognition and enforcement of judgments relating to parental responsibility given in other Member States, but also to avoid such judgments being declared enforceable if grounds of non-recognition laid down in Article 23 of that regulation preclude their enforceability. The continuation of a factual situation created on the basis of a judgment manifestly vitiated by grounds of non-recognition that has been declared enforceable and enforced without the defendant having had the opportunity to challenge it thus seems to be more problematic in the light of the practical effect of Regulation No 2201/2003, read in conjunction with the Charter, than the admission of an appeal lodged 48 hours after the expiry of the time initially prescribed. That is a fortiori the position where the harm caused to the effectiveness of the provisions of Regulation No 2201/2003 by the wrongful enforcement of a judgment endures as long as the factual situation created on the basis of that enforcement continues.<sup>55</sup>

*(3) Breach of the right to an effective remedy*

118. Unlike the position as regards judgments in civil and commercial matters concerned by Regulation No 1215/2012, known as 'the Brussels I bis Regulation',<sup>56</sup> and judgments concerning rights of access and those requiring the return of the child referred to in Article 40 of Regulation No 2201/2003,<sup>57</sup> the EU legislature expressly did not choose to exempt judgments relating to parental responsibility within the meaning of Regulation No 2201/2003 from the *exequatur* procedure. As the

<sup>54</sup> See point 64 above.

<sup>55</sup> See, to that effect and by analogy, judgment of 10 April 2003, *Commission v Germany* (C-20/01 and C-28/01, EU:C:2003:220, paragraph 36).

<sup>56</sup> See Article 39 of Regulation No 1215/2012, known as 'Brussels I bis'.

<sup>57</sup> See points 66 and 71 above.

Polish Government convincingly observed at the hearing, the Brussels I bis and Brussels II bis Regulations are not identical in that respect, since the latter has as its underlying objective the protection of the best interests of the child. Owing to their sensitive nature and to the importance of the rights of the children and the parents which are involved, judgments relating to parental responsibility do not lend themselves to automatic enforcement without any overview in the requested Member State. The implementation of the exequatur procedure laid down in Section 2 of Chapter III of Regulation No 2201/2003 is therefore an essential precondition to the enforcement of any judgment relating to parental responsibility given in another Member State.<sup>58</sup>

119. That procedure is conceived as consisting, necessarily, of two stages. Thus, in accordance with Article 31(1) of Regulation No 2201/2003, the court to which application for a declaration of enforceability is made is admittedly to give its decision without delay and neither the person against whom enforcement is sought nor the child is at this stage of the proceedings to be entitled to make any submissions on the application. However, in a second stage, before the actual enforcement of a judgment authorising enforcement thus obtained, the person against whom enforcement is sought must have the opportunity to lodge an appeal in order to be able to raise, in particular, one of the grounds of non-recognition set out in Article 23 of the regulation<sup>59</sup> and to challenge the enforcement of the judgment in good time.

120. According to Article 52(1) of the Charter, any limitation on the exercise of fundamental rights is justified only if it respects the essence of the right concerned and if it is necessary and genuinely meets the need to protect the rights and freedoms of others.

121. In that regard, the Court has held that it is only in extraordinary circumstances characterised by absolute urgency and where the best interests of the child imperatively so require and provisional measures adopted under Article 20 of Regulation No 2201/2003 cannot suffice that a judgment authorising enforcement adopted in accordance with that regulation may exceptionally, in derogation from the general rule, become enforceable upon its adoption and be enforced before the close of an appeal procedure. The Court has recognised that such circumstances were present in a case involving the enforcement of a judgment ordering the compulsory placement of a child in a secure care institution in another Member State when the child had already absconded and attempted on several occasions to take her own life and when only the child herself (and not the parents) was opposed to the placement.<sup>60</sup>

122. It is manifestly clear from the facts of the main proceedings that such exceptional circumstances were by no means present in this case. In fact, at the time when the social workers of the CFA and HCC enforced the order of the Irish High Court of 21 September 2017 by removing the children to England without the parents' knowledge, the children were safely placed with a foster family in Ireland. There was therefore neither a risk that the parents would again flee with their children or a risk of harm to the children's welfare that would have required the immediate enforcement of the order authorising enforcement.

<sup>58</sup> See judgment of 26 April 2012, *Health Service Executive* (C-92/12 PPU, EU:C:2012:255, paragraph 118), and my View in *Health Service Executive* (C-92/12 PPU, EU:C:2012:177, point 71 et seq.).

<sup>59</sup> See, to that effect, judgment of 11 July 2008, *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraph 101). See also, in that context, with regard to Article 36 of the Brussels Convention, which corresponded to Article 33(5) of Regulation No 2201/2003, my Opinion in *Verdoliva* (C-3/05, EU:C:2005:722, points 41 and 42): 'Article 36 ... represents the procedural complement to the substantive reasons for denying recognition listed in Articles 27 and 28 of the Brussels Convention.' Furthermore, it also follows from the case-law of the European Court of Human Rights that a defendant to the enforcement of a judgment delivered in another Member State of the Union and benefiting from a mutual recognition mechanism must be able to plead the manifest insufficiency of the protection of a right guaranteed by the European Convention on Human Rights. It is only in the absence of such insufficiency that the presumption of the equivalent protection of the rights guaranteed by the Convention and by EU law may apply and that the courts of the Member States may give full effect to such a mutual recognition mechanism; see ECtHR, 23 May 2016, *Avotiņš v. Latvia* (CE:ECHR:2016:0523JUD001750207, paragraph 116).

<sup>60</sup> See judgment of 26 April 2012, *Health Service Executive* (C-92/12 PPU, EU:C:2012:255, paragraph 121 et seq.).



123. Nor is it possible to see how the urgency in removing the children to England could be such that it was necessary to do so even before service of the order authorising enforcement on the parents, when HCC had allowed almost two weeks to elapse between obtaining the English High Court order of 8 September 2017 and submitting its application for a declaration of enforceability of that order on 21 September 2017.

124. Last, in the present case the immediate enforcement of the judgment authorising enforcement, entailing the return of the children to England, was likely to give rise to irreparable harm owing to what would be at least the temporary separation of the parents and children. The Court has recognised that, in the case of young children, biological time cannot be measured according to general criteria, given the intellectual and psychological structure of such children and the speed with which that structure develops.<sup>61</sup> As the Court has noted, in those circumstances separation is likely to result in an irreparable deterioration of the relationship between the children concerned and their parents and to cause irreversible psychological damage.<sup>62</sup> It follows that, in this case, the effectiveness of the parents' procedural right to an effective remedy also served to determine the effectiveness of the protection of their substantive right to respect for their family life, enshrined in Article 7 of the Charter.

125. In those circumstances, there is no need to rule on whether the limitation thus placed on the parents' right to an effective remedy, as provided for in Article 47 of the Charter, adversely affected the essence of that right within the meaning of Article 52(1) of the Charter. It is sufficient to state that the way in which the Irish and English authorities proceeded constituted a particularly serious breach of the parents' right to an effective remedy which was in no way necessary in order to preserve the safety and the best interests of the children and which was therefore not justified.

*(4) The causal link between the failure to observe the time limit and the administration's conduct*

126. It is certainly not expressly established in the present case that there is a direct causal link between the unjustified breach of the parents' right to an effective remedy, on the one hand, and the parents' failure to observe the time limit prescribed in Article 33(5) of Regulation No 2201/2003 when lodging their appeal against the judgment authorising enforcement, on the other hand. The parents' representatives have indicated, moreover, that that delay was their responsibility and not the parents'.<sup>63</sup>

127. However, as the referring court correctly observes, it cannot be precluded that HCC's conduct and the circumstances of the main proceedings were, taken as a whole, likely to cause the parents to feel a sense of discouragement that led them to think that it was pointless to appeal against the judgment authorising enforcement in Ireland when that judgment had been enforced before it had even been served on them. In those circumstances, it cannot be precluded that such discouragement has an indirect causal link with the delay in lodging their appeal.

128. Thus, in the light of the facts of the main proceedings, first, it is not impossible that there is a causal link between the way in which HCC administered the file of the family in question, on the one hand, and that family's flight to Ireland, on the other hand.<sup>64</sup>

<sup>61</sup> Judgment of 11 July 2008, *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraph 81).

<sup>62</sup> See, among many examples, judgments of 1 July 2010, *Povse* (C-211/10 PPU, EU:C:2010:400, paragraphs 35 and 36); of 5 October 2010, *McB.* (C-400/10 PPU, EU:C:2010:582, paragraph 28); and of 22 December 2010, *Aguirre Zarraga* (C-491/10 PPU, EU:C:2010:828, paragraphs 39 and 40).

<sup>63</sup> See point 46 above.

<sup>64</sup> See, in particular, point 33 et seq. above.

129. Second, the English High Court order of 8 September 2017, which made the children wards of court and directed their return, was made in the parents' absence in circumstances in which, as was confirmed by a number of parties at the hearing, it is at least doubtful that the parents had an effective opportunity to be heard.<sup>65</sup>

130. Third, that order was then declared enforceable in Ireland and unjustifiably<sup>66</sup> immediately enforced, without the parents having the opportunity to challenge it, although they could clearly have relied on certain grounds of non-recognition laid down in Article 23 of Regulation No 2201/2003,<sup>67</sup> notably the fact that HCC's originating summons had not been served on them in good time and that the judgment of the English High Court had been delivered without their having had the opportunity to be heard.

131. Fourth, it is quite logical that, following the return of their children to England, the parents should first of all have sought to challenge the English High Court order of 8 September 2017 in England.

132. Fifth, leave to appeal against that order was refused by the Court of Appeal of England and Wales on the basis of extremely succinct reasoning which does not seem to have taken account of the manifestly problematic nature of the English High Court order of 8 September 2017 in the light of the parents' right to be heard.<sup>68</sup>

133. Those factors, taken as a whole, may have complicated and ultimately delayed the lodging of the parents' appeal in Ireland,<sup>69</sup> even though the referring court notes that their intention to lodge an appeal within the prescribed period may be inferred from various factual elements. As the parents' representatives correctly observed at the hearing, it is important, in that context, to bear in mind that the parents are socially and economically disadvantaged persons who no doubt had fewer resources at their disposal when organising their defence than the administration which they were challenging.

#### (5) *The parties' conduct*

134. There is nothing in the file relating to the main proceedings to suggest that the fact that the parents' appeal was lodged out of time by comparison with the time limit initially prescribed betrays a dilatory intention, a desire to be obstructive or an attempt to circumvent the prescribed time limits, unlike what appears to have been the situation in *Hoffmann*.<sup>70</sup> On the contrary, it is apparent from the facts of the present case that the parents acted in good faith and did what they could to lodge their appeal in time.

<sup>65</sup> See points 38 and 39 above.

<sup>66</sup> See point 125 above.

<sup>67</sup> See point 16 above.

<sup>68</sup> See point 45 above. That decision reads as follows: "There is nothing in the complaints made by the applicants in the documents filed with this court. They had the opportunity to attend the hearing on 8 September but instead absconded. The technical arguments now raised concerning the right to a fair hearing, the right to travel and the use of wardship are empty, particularly as the children are now once again subject to the court's jurisdiction."

<sup>69</sup> In that regard, the Court has recognised in the context of appeals against the acts of the EU institutions that a delay in bringing an appeal may come within the concept of excusable error where the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to pardonable confusion in the mind of a party acting in good faith (judgment of 15 May 2003, *Pitsiorlas v Council and ECB*, C-193/01 P, EU:C:2003:281, paragraph 24). See also in this context ECtHR, 6 December 2001, *Tsironis v. Greece* (CE:ECHR:2001:1206JUD004458498, paragraph 27 et seq.).

<sup>70</sup> See footnote 46 above.

135. On the other hand, it has already been indicated that HCC and its Irish counterparts did not display the requisite diligence in this case.<sup>71</sup> In particular, the overhasty enforcement of the judgment authorising enforcement was not justified.<sup>72</sup> The conduct of those administrations is all the more inexcusable because it is the conduct of administrative authorities which, unlike an abandoned parent in a classic ‘cross-border’ removal situation, are not supposed to have an interest of their own in the return of the children, but should act with the sole aim of doing their utmost to preserve the best interests of the children. However, the way in which the CFA and HCC acted in this case was not consistent with that objective.

**(d) *Interim conclusion***

136. It follows from the foregoing that the answer to the second and third questions in Case C-325/18 PPU should be that in a case concerning the enforcement provisions of Regulation No 2201/2003, the court seised has, by virtue of the principle of the procedural autonomy of the Member States, jurisdiction to extend the time for lodging an appeal prescribed in Article 33(5) of that regulation. It is for the court concerned to assess, on the basis of all the evidence before it and taking account of the principles of equivalence and effectiveness, whether such an extension must be granted. When carrying out that assessment, that court may, in particular, take account of the fact that enforcement of the judgment authorising enforcement before that judgment was served on the defendant to enforcement constituted an unjustified breach of that defendant’s right to an effective remedy enshrined in Article 47 of the Charter.

**2. *The injunction (Case C-375/18 PPU)***

137. As indicated above,<sup>73</sup> following the submission of the reference for a preliminary ruling in Case C-325/18 PPU, the parents made an interlocutory application to the referring court for an injunction against HCC restraining it, pending the outcome of the main proceedings, from proceeding with the adoption of the baby and from commencing adoption proceedings in respect of the two older children.

138. It is in those circumstances that, by its question in Case C-375/18 PPU, the referring court asks the Court whether EU law, and in particular Regulation No 2201/2003, preclude it from granting an injunction (protective measure) against a public body of another Member State preventing that body from commencing proceedings for the adoption of children before the courts of that other Member State when such an injunction proves necessary in order to protect the rights of the parties to an appeal lodged in accordance with Article 33(5) of that regulation.

**(a) *Preliminary observations***

139. In its question, the referring court specifically emphasises the fact that the injunction which it is asked to grant would be addressed to a public authority of another Member State.

140. In that regard, it must be noted that it certainly cannot be precluded that the grant of such an injunction against a foreign public body is apt to raise, in certain circumstances, specific questions relating to constitutional law or public international law.

<sup>71</sup> See, in particular, points 122 et seq. and 128 et seq. above.

<sup>72</sup> See point 122 et seq. above.

<sup>73</sup> See points 51 and 52 above.

141. However, as the referring court correctly notes, in this case it is not a question of interfering with the internal judicial, executive and administrative sovereignty of the United Kingdom, since the injunction which the referring court is asked to grant would be addressed to HCC in its capacity as a party to the appeal procedure before that court. It was HCC itself that initiated the exequatur procedure in Ireland, of which the current appeal procedure before the referring court is merely an extension. It is therefore doubtful that HCC can now avoid the impact of the procedure before the referring court. The idea that a State which intervenes in proceedings before a court of another State submits, for the purpose of those proceedings, to the jurisdiction of that State and cannot therefore claim immunity from jurisdiction is also found in the European Convention on State Immunity.<sup>74</sup>

142. In any event, it is not for the Court to determine whether, in this case, the fact that HCC is a public body of another State might preclude the referring court from addressing an injunction to it in the context of the proceedings before it. In fact, the referring court's question is limited to whether EU law and, in particular, Regulation No 2201/2003 stand in the way of such an injunction.

**(b) *The prohibition of anti-suit injunctions***

143. In so far as the referring court proceeds from the principle that the relevant adoption procedure in the United Kingdom is a judicial procedure or at least requires the intervention of judicial decisions, it wonders whether an injunction ordering HCC not to continue or commence such a procedure amounts to prohibiting HCC from bringing proceedings before the competent English courts and therefore assumes the form of an anti-suit injunction prohibited by the judgments of the Court in *Turner*<sup>75</sup> and *Allianz and Generali Assicurazioni Generali*.<sup>76</sup>

144. By way of preliminary point, it should be noted that it is apparent from a letter sent to the referring court by HCC on 27 March 2018 that the placement order authorising HCC to seek potential adoptive parents for the baby and to place him temporarily with them had already been made on 21 December 2017.<sup>77</sup> In addition, HCC states that a future request for an adoption order for the baby would now have to be made by those potential adoptive parents. It is therefore not at all clear whether the fact that the referring court is enjoining HCC not to continue the procedure for the adoption of the baby would actually entail prohibiting HCC from seising an English court. Furthermore, HCC reiterated at the hearing in the present proceedings that it had not contemplated commencing an adoption procedure in respect of the two older children.

145. In those circumstances, it is for the referring court to determine whether the injunction which the parents ask it to grant actually incorporates an 'anti-suit element' in the sense that it would prohibit HCC from seising an English court. If that is not the case, it is not apparent how the grant of such an injunction might be problematic in the light of the Court's case-law relating to anti-suit injunctions.

146. In any event, it must be stated that even on the assumption that such a protective injunction granted by the referring court would have the effect of temporarily preventing HCC, pending the outcome of the main proceedings, from seising an English court with a view to the adoption of the baby or the two older children, such an injunction would not be prohibited by Regulation No 2201/2003 or other provisions of EU law.

<sup>74</sup> Council of Europe, European Treaty Series — No 74.

<sup>75</sup> Judgment of 27 April 2004, *Turner* (C-159/02, EU:C:2004:228).

<sup>76</sup> Judgment of 10 February 2009, *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69).

<sup>77</sup> See point 47 above.

147. In the first place, the injunction which the parents ask the referring court to grant against HCC is not an ‘anti-suit’ injunction but a ‘freezing’ or ‘Mareva’ injunction. The purpose of such an injunction is not to prevent the party against whom it is granted from seising another court, but to prevent that party from creating, before the outcome of the proceedings, an irreversible *fait accompli* that would render the decision to be taken at the end of the proceedings devoid of purpose. The object is therefore to maintain the factual status quo until the end of the proceedings.<sup>78</sup>

148. In the second place, even on the assumption that such a ‘freezing’ injunction incorporates, in the circumstances of the main proceedings, an ‘anti-suit element’, in the sense that it would prohibit HCC from seising an English court, it would not fall within the scope of the case-law relating to the prohibition of ‘anti-suit’ injunctions.

149. In that regard, the Court held in *Turner* and *Allianz and Generali Assicurazioni Generali* that an anti-suit injunction, that is to say, an injunction intended to prohibit a person from commencing or continuing a procedure before the courts of another Member State, was incompatible with the Brussels Convention and Regulation No 44/2001, known as ‘the Brussels I Regulation’, since such an injunction does not observe the principle that every court seised itself determines, under the rules applicable to it, whether it has jurisdiction to resolve the dispute before it.<sup>79</sup> Such an interference with the jurisdiction of a court of another Member State is also incompatible with the system of mutual trust which forms the basis for the establishment of a mandatory system of jurisdiction which all courts falling within the scope of those legal instruments are required to respect.<sup>80</sup>

150. However, the reasoning behind that prohibition of anti-suit injunctions cannot be applied by analogy in the circumstances of the present case.

151. Thus, in the cases in which the Court found that anti-suit injunctions were incompatible with the legal instruments adopted under the Brussels-Lugano system, those injunctions were intended to prevent a party to a dispute pending before a court of one Member State from commencing or continuing judicial proceedings against the other party to the same dispute and *concerning the same subject matter* before a court of another Member State.<sup>81</sup> In such circumstances, an anti-suit injunction granted by the first court actually amounts to a circumvention of the rules on jurisdiction laid down in the Brussels-Lugano instruments and to an interference with the jurisdiction of the second court to apply those rules itself.

152. However, as the United Kingdom Government also noted at the hearing, in the present case the situation is radically different.

153. In fact, it is not a question of preventing HCC from seising a court of another Member State concerning the same subject matter as that of the dispute pending before the referring court, since a judicial adoption procedure subsequently commenced or continued in England has a completely different subject matter. There cannot therefore be either a *lis pendens* or a conflict of jurisdiction between the two courts concerned.

<sup>78</sup> In financial matters, such a freezing injunction orders the provisional freezing of assets to prevent the creditor being deprived of access to the debtor’s assets as a result of a prior disposal of those assets (see my Opinion in *Meroni*, C-559/14, EU:C:2016:120, point 2). The Court saw no disadvantage in such an injunction even where a person who may be affected by it has not been heard, provided that that person is entitled to rely on his rights before the court that granted that injunction (see judgment of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 54).

<sup>79</sup> Judgments of 27 April 2004, *Turner* (C-159/02, EU:C:2004:228, paragraph 25); of 10 February 2009, *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69, paragraph 29); and of 13 May 2015, *Gazprom* (C-536/13, EU:C:2015:316, paragraph 33).

<sup>80</sup> Judgments of 27 April 2004, *Turner* (C-159/02, EU:C:2004:228, paragraph 24); of 10 February 2009, *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69, paragraph 30); and of 13 May 2015, *Gazprom* (C-536/13, EU:C:2015:316, paragraph 34).

<sup>81</sup> Judgments of 27 April 2004, *Turner* (C-159/02, EU:C:2004:228, paragraph 9 et seq.) and of 10 February 2009, *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69, paragraph 11 et seq.).

154. That is a fortiori the position in so far as Regulation No 2201/2003 governs conflicts of jurisdiction between the courts of the Member States only in respect of decisions which fall within its scope. The decision on adoption and the related preparatory measures do not fall within the scope of Regulation No 2201/2003 and there can therefore be, in the main proceedings, no such conflict within the meaning of that regulation.<sup>82</sup>

155. It follows that the principles deriving from the case-law relating to anti-suit injunctions cannot preclude, in the present case, the grant by the referring court of a protective injunction against HCC ordering it not to continue or commence an adoption procedure in England.

***(c) The usefulness of a protective injunction in the circumstances of the main proceedings***

156. Nor, in the circumstances of the present case, do the general structure of Regulation No 2201/2003 and the underlying principle of mutual trust preclude the grant of a protective injunction against HCC by the referring court.

157. Thus, Article 20 of Regulation No 2201/2003 allows for provisional measures only where the court of a Member State must take such measures as a matter of urgency in respect of persons or assets in that Member State. However, that jurisdiction is explicitly provided for only because it must be capable of being exercised in circumstances in which it derogates from the substantive jurisdiction of the court of another Member State.<sup>83</sup>

158. Accordingly, the fact that only such provisional measures are explicitly provided for is wholly without prejudice to the fact that the courts of the Member States may, in the areas of jurisdiction conferred on them by Regulation No 2201/2003, adopt provisional measures in order to ensure the effectiveness of the proceedings before them.

159. Such measures may prove necessary, in particular, in a case such as the present one where one party, in fact HCC, provides no guarantee to the court concerned that it will comply with the judgment that will be given in the proceedings with which that court is seised in accordance with Regulation No 2201/2003.

160. In that context, the referring court correctly states that it should certainly not normally be necessary to grant a protective injunction against a public body of another Member State which is a party to such proceedings, since such a body should participate in those proceedings and agree to comply with the decision that will be taken.

161. However, as is clear from the facts of the main proceedings, in this instance HCC participated only in the proceedings on appeal before the Irish High Court against the enforcement order of the Irish High Court of 21 September 2017, which were closed on 18 January 2018. Conversely, HCC decided that it would no longer participate in the proceedings on appeal initiated by the parents against the order of the Irish High Court of 18 January 2018 before the referring court. In addition, HCC has informed the referring court that in any event it had no intention of returning the children and that an adoption procedure had been commenced in respect of the baby. HCC maintained in that regard that the English courts have jurisdiction to determine the case and that the children have never come within the jurisdiction of the Irish courts. That opinion is the result, however, without prejudice to the question of substantive jurisdiction in the present case, of a misreading of Regulation No 2201/2003. In fact, as the Commission, in particular, confirmed at the hearing, that regulation expressly provides that the courts of the requested Member State are to have jurisdiction to determine appeals against judgments authorising enforcement.

<sup>82</sup> See, to that effect, judgment of 13 May 2015, *Gazprom* (C-536/13, EU:C:2015:316, paragraph 36).

<sup>83</sup> See, to that effect, judgment of 23 December 2009, *Detiček* (C-403/09 PPU, EU:C:2009:810, paragraph 38).

162. HCC therefore first of all invoked Regulation No 2201/2003 in its favour in order to obtain enforcement of the English High Court order of 8 September 2017 and to that end initiated the exequatur procedure in accordance with Article 28 of that regulation. Next, acting with its Irish counterparts, it circumvented the procedural obligations laid down in that regulation by enforcing the judgment authorising enforcement before that judgment had been served on the parents. Last, it did not consider that it was required to participate until the end in the proceedings on appeal initiated against the judgment authorising enforcement and does not plan to comply with the decision taken by the court having jurisdiction at the close of those proceedings.

163. In those circumstances, HCC has not provided the guarantees necessary for the implementation of the principles of mutual recognition and mutual trust, which nonetheless constitute the basis of the functioning of the mechanisms established by Regulation No 2201/2003. As the Court has recently observed, a system of mutual trust and mutual assistance means that it is for the participating national authorities to create the conditions under which their counterparts in other Member States will be able to grant their assistance in a meaningful manner and in conformity with the fundamental principles of EU law.<sup>84</sup>

#### ***(d) Interim conclusion***

164. The answer to the question for a preliminary ruling in Case C-375/18 PPU should be that European Union law, in particular the provisions of Regulation No 2201/2003, does not preclude a court of a Member State from granting against a public body of another Member State which is a party to proceedings before that court an injunction (protective measure) prohibiting that body from commencing or continuing proceedings for the adoption of children before the courts of that other Member State.

### **VI. Conclusion**

165. Having regard to the foregoing considerations, I propose that the Court answer the questions referred by the Court of Appeal, Ireland in Case C-325/18 PPU as follows:

- (1) Where it is alleged that children have been wrongfully taken from the Member State of their habitual residence to another Member State, a judgment directing the return of those children delivered by a court of the Member State of origin outside the procedure laid down in Article 11 of Regulation No 2201/2003 and independently of a judgment relating to parental responsibility cannot be enforced in accordance with the provisions of Chapter III of that regulation. However, in such circumstances, a judgment relating to parental responsibility delivered by a court of the Member State of origin which entails the return of the child to that Member State may be enforced in accordance with those provisions.
- (2) In a case concerning the enforcement provisions of Regulation No 2201/2003, the court seised has, by virtue of the principle of the procedural autonomy of the Member States, jurisdiction to extend the time for lodging an appeal prescribed in Article 33(5) of that regulation. It is for the court concerned to assess, on the basis of all the evidence before it and taking account of the principles of equivalence and effectiveness, whether such an extension must be granted. When carrying out that assessment, that court may, in particular, take account of the fact that enforcement of the judgment authorising enforcement before that judgment was served on the defendant to enforcement constituted an unjustified breach of that defendant's right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>84</sup> See judgment of 26 April 2018, *Donnellan* (C-34/17, EU:C:2018:282, paragraph 61).

166. In addition, I propose that the Court should answer the question referred by the Court of Appeal, Ireland in Case C-375/18 PPU as follows:

European Union law, in particular the provisions of Regulation No 2201/2003, does not preclude a court of a Member State from granting against a public body of another Member State which is a party to proceedings before that court an injunction (protective measure) prohibiting that body from commencing or continuing proceedings for the adoption of children before the courts of that other Member State.