



Reports of Cases

VIEW OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 16 December 2014¹ⁱ

Case C-498/14 PPU

**RG
v
SF**

(Request for a preliminary ruling from the cour d'appel de Bruxelles (Belgium))

(Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction in matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 11(7) and (8) — Child habitually resident in one Member State wrongfully removed to another Member State — Order on the non-return of the child issued in the latter Member State under Article 13 of the Hague Convention of 25 October 1980 — Legislation of the Member State of origin reserving to a specialised court exclusive jurisdiction to give a ruling following such an order — Effect on substantive proceedings pending before another national court seised on parental responsibility with respect to the child)

I – Introduction

1. This request for interpretation made by the cour d'appel de Bruxelles (Belgium), which is to be heard under the urgent preliminary ruling procedure, concerns Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000² ('the Brussels II bis Regulation').

2. The request has been made in proceedings involving a British national who resides in Belgium and a Polish national living in Poland concerning parental responsibility with respect to their child, who, when a Belgian court was first seised, was habitually resident in Belgium, before he was wrongfully removed to Poland by his mother. The Belgian courts have in their subsequent decisions declared that they have international jurisdiction to determine that dispute, a declaration which has not been challenged by the Polish courts subsequently seised by the mother.

3. At the same time as proceedings were thus commenced with regard to parental responsibility, the father brought an application for the return of the child under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction³ ('the 1980 Hague Convention'). That application was dismissed by a Polish court, as is permitted, exceptionally, under Article 13 of that convention, read together with Article 11 of the Brussels II bis Regulation.

¹ Original language: French.

² OJ 2003 L 338, p. 1.

³ Accessible at the following website: <http://www.hcch.net/upload/conventions/txt28en.pdf>.

4. The father then brought an action before the Belgian court which, under national procedural rules, has special jurisdiction with respect to the examination of the question of custody of the child after such an order on non-return has been issued. Under those rules, the bringing of that action had the effect of staying proceedings under way before any other Belgian court in relation to parental responsibility with respect to that child, in this case the proceedings which are pending before the referring court.

5. That court asks the Court of Justice whether Article 11(7) and (8) of the Brussels II bis Regulation prohibit a Member State⁴ from adopting internal rules for the allocation of jurisdiction of such a nature as to have two consequences: (i) the jurisdiction of a specialised court is given preference when an order is issued in another Member State refusing the return of the child and (ii) all proceedings which have already been brought before another national court which has in principle jurisdiction to rule on the substance are temporarily interrupted.

II – Legal background

A – *The 1980 Hague Convention*

6. All Member States of the European Union are contracting parties to the 1980 Hague Convention, which entered into force on 1 December 1983.

7. Article 1 of the 1980 Hague Convention states that the objects of the convention are ‘to secure the prompt return of children wrongfully removed to or retained in any Contracting State’ and ‘to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States’. Article 3 defines the conditions governing whether the removal or retention of a child is to be considered wrongful under that convention.

8. The first paragraph of Article 12 of that convention, which is in Chapter III, headed ‘Return of children’, provides that ‘[w]here 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’.

9. Subparagraph (b) of the first paragraph of Article 13 of the convention provides that ‘[n]otwithstanding 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 ... 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’.

⁴ In accordance with recital 11 and Article 2(3) of the Brussels II bis Regulation, for the purposes of that regulation, the term ‘Member State’ means all Member States with the exception of Denmark.

B – The Brussels II bis Regulation

10. Recitals 12, 17, 18 and 33 of the Bruxelles II bis Regulation are worded as follows:

‘(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child’s habitual residence, except for certain cases of a change in the child’s residence or pursuant to an agreement between the holders of parental responsibility.

...

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

(18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.

...

(33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the fundamental rights of the child as recognised in Article 24 of the Charter of Fundamental Rights of the European Union.’

11. It is stated in Article 1(1)(b) and (2)(a) of the Brussels II bis Regulation that the regulation is to apply, ‘whatever the nature of the court or tribunal, in civil matters relating to ... the attribution, exercise, ... of parental responsibility’, and inter alia ‘[to] rights of custody and rights of access’. Article 2, points 7 and 9 to 11, of the Brussels II bis Regulation provide definitions, for the purposes of that regulation, of the respective concepts of ‘parental responsibility’, ‘rights of custody’, ‘rights of access’ and ‘wrongful removal or retention’.

12. In Chapter II of that regulation, relating to ‘Jurisdiction’, Section 2 thereof contains Articles 8 to 15, which concern ‘Parental responsibility’. Article 8 lays down a rule of ‘General jurisdiction’ in favour of courts in the territory where the child concerned was habitually resident at the time the court is seised of an action on such matters. Article 10, which governs ‘Jurisdiction in cases of child abduction’, provides that the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention are to retain their jurisdiction, until the child has acquired a new habitual residence in the territory of another Member State, subject to the strict conditions laid down in that article.

13. Article 11 of the Regulation, headed ‘Return of the child’, is worded as follows:

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

...

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

...

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 ... 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. ...

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.’

C – Belgian law

14. Article 1322*i* of the Belgian Judicial Code, inserted by legislation of 10 May 2007⁵ and amended by legislation of 30 July 2013,⁶ is worded as follows:

‘§ 1. An order on the non-return of a child issued by a foreign court, together with all accompanying documents, transmitted to the central Belgian authority in accordance with Article 11(6) of [the Brussels II bis Regulation], shall be sent by registered post to the Registry of the court of first instance attached to the [cour d’appel] within whose jurisdiction the child was habitually resident immediately before the wrongful removal or retention.

§ 2. Upon receipt of the documents, and by no later than the third working day after receipt, the Registrar shall, by judicial notification, communicate to the parties and to the office of the public prosecutor the information referred to in Article 11(7) of [the Brussels II bis Regulation]. The judicial notification shall contain ... an invitation to the parties to lodge submissions at the Registry within three months of the notification. The lodging of submissions shall constitute the bringing of an action before [the Family Court at first instance].

...

§ 4. The bringing of an action before the Family Court shall give rise to the suspension of any proceedings commenced before courts or tribunals relating to a dispute regarding matters of parental responsibility or a related dispute.

...

§ 6. A judgment on the question of the custody of the child delivered in accordance with Article 11(8) of [the Brussels II bis Regulation] may, at the request of one of the parties, also deal with rights of access in the event that the child’s return to Belgium is ordered in that judgment.

...’

15. Further, Article 633*f* of that Code, as amended by the legislation of 30 July 2013, provides that ‘[the Family Court] established at the seat of [the cour d’appel] in whose area of jurisdiction the child was habitually resident before the wrongful removal or retention, shall have sole jurisdiction to hear actions referred to in Article 1322*i*’.

III – The main proceedings, the question referred for a preliminary ruling and the procedure before the Court

16. The child concerned in the main proceedings was born in Poland on 21 December 2011, the child’s father being a British national who has resided in Belgium since 1986 and his mother a Polish national now residing in Poland, the parents not being married to each other.

5 See Article 11 of the loi du 10 mai 2007 visant la mise en œuvre du règlement (CE) No 2201/2003 du Conseil du 27 novembre 2003 relatif à la compétence, la reconnaissance et l’exécution des décisions en matière matrimoniale et en matière de responsabilité parentale abrogeant le règlement (CE) No 1347/2000, de la Convention européenne de Luxembourg du 20 mai 1980 sur la reconnaissance et l’exécution des décisions en matière de garde des enfants et le rétablissement de la garde des enfants ainsi que de la Convention de La Haye du 25 Octobre 1980 sur les aspects civils de l’enlèvement international d’enfants (*Moniteur Belge* of 21 June 2007, p. 34264) [the law of 10 May 2007 for the implementation of the Brussels II bis Regulation, the European Convention (Luxembourg, 20 May 1980) on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and the 1980 Hague Convention], which entered into force on 1 July 2007.

6 Loi portant création d’un tribunal de la famille et de la jeunesse (*Moniteur Belge* of 27 September 2013, p. 68429) [the law on the creation of a court for the family and young persons], which entered into force on 1 September 2014.

17. The mother and the child moved to Brussels in July or August 2012, when the child was approximately seven months old. Throughout the period of their residence in Belgium, the child was living with his mother but met his father regularly.

18. In August and September 2013 the mother and the father attended local mediation services with a view to agreeing accommodation rights with regard to the child, but no agreement was reached.

19. On 16 October 2013 the mother returned to Poland with the child, apparently with the intention of remaining there, without first obtaining the father's consent.

20. On 18 October 2013 the father brought an action before the tribunal de la jeunesse de Bruxelles⁷ [the young persons' court], seeking a ruling on, inter alia, how parental authority over the child was to be exercised and accommodation rights with respect to the child.

21. Further, on 23 October 2013, the father brought an action before the judge of the tribunal de première instance de Bruxelles responsible for hearing applications for interim measures claiming, provisionally and as a matter of urgency, that secondary accommodation rights in respect of the child should be granted to him on alternate weekends. Thereafter, after the father realised that the mother's departure with the child was permanent, he amended his claims.

22. At the same time as bringing various proceedings on parental responsibility,⁸ on 20 November 2013 the father brought an application before the Belgian central authority for the return forthwith of the child to Belgium under the return procedure established by the 1980 Hague Convention.

23. By order of 19 December 2013 the judge of the tribunal de première instance de Bruxelles who was responsible for hearing applications for interim measures rejected the objection of lack of international jurisdiction raised by the mother and, upholding the latest claims made by the father, provisionally granted to the father, inter alia, the exclusive right to exercise parental authority and primary accommodation rights with respect to the child.

24. In a judgment of 13 February 2014, the district court of Płońsk (Poland) held that the child had been wrongfully removed by the mother and that the child had been habitually resident in Belgium before that removal, but it applied the exception laid down in Article 13b of the 1890 Hague Convention and none the less dismissed the father's application for the return of the child.

25. By judgment of 26 March 2014, the tribunal de la jeunesse de Bruxelles declared that it had international jurisdiction to rule on the substance of parental responsibility, rejecting the mother's arguments to the contrary based on Article 15 of the Brussels II bis Regulation.⁹ On the substance, the court ordered, with provisional effect, that parental authority would be exercised jointly by the parents, granted to the mother primary accommodation rights in respect of the child and granted to the father secondary accommodation rights on alternate week-ends, it being his responsibility to travel to Poland.

⁷ As that court was still called before the reform introduced by the abovementioned legislation of 30 July 2013 (see note 6 of this View).

⁸ It is indicated in the order for reference that, in addition to the proceedings brought by the father before the Belgian courts seeking a ruling on parental responsibility with respect to the child, the mother also brought proceedings before the Polish courts with the same aim. Since it is unnecessary to provide details of the latter proceedings in order to answer the question referred, no reference will be made to them in this View. It must however be noted that, having found that a Belgian court had been first seised and had accepted its international jurisdiction, the Polish courts declared that they had no jurisdiction in the matter.

⁹ Under that article, by way of exception and subject to the conditions stated therein, the courts of a Member State having jurisdiction as to the substance of the matter may transfer the case to a court of another Member State which is better placed to hear the case, where that is in the best interests of the child.

26. On 10 April 2014 the Belgian central authority, after receiving from the Polish central authority a copy of the order on non-return issued on 13 February 2014 and the relevant documents, lodged the file at the registry of the tribunal de première instance francophone de Bruxelles [French language court of first instance, Brussels]. The parties were invited to lodge submissions to enable that court to examine the question of custody with respect to the child, pursuant to Article 11(7) of the Brussels II bis Regulation and Article 1322*i* of the Belgian Judicial Code. The father's lodging of submissions, on 9 July 2014, had the effect of seising that court, under Article 1322*i*(2), and correspondingly entailed the staying of all proceedings previously commenced before any other Belgian court seised of an action relating to parental responsibility with respect to that child, under Article 1322*i*(4).

27. Since the father brought an appeal against the judgment delivered on 26 March 2014 by the tribunal de la jeunesse, the cour d'appel de Bruxelles, by interlocutory judgment of 30 July 2014, delivered in the absence of the mother, confirmed the international jurisdiction of the Belgian court to rule on questions relating to parental responsibility. However, having found that the President of the tribunal de première instance de Bruxelles had, in the interim, been seised of an application based on Article 11(6) and (7) of the Brussels II bis Regulation, the cour d'appel reserved its decision on the substance of the matter. It asked the Belgian central authority to send it the entire file sent to the tribunal de première instance de Bruxelles under Article 1322*i* of the Belgian Judicial Code. Provisionally, pending the outcome of the procedure set out in Article 11(6) to (8) of the Brussels II bis Regulation, the cour d'appel ordered the mother to disclose to the father the address of her new place of residence with the child and granted to the father rights of access to the child, to be exercised in Poland. It is stated in the order for reference that the mother did not comply with those provisional measures.

28. Because of the entry into force of the abovementioned legislation of 30 July 2013, on 1 September 2014, the procedure following the Polish non-return order which was before the President of the tribunal de première instance de Bruxelles was again re-allocated to the new tribunal de la famille de Bruxelles.¹⁰ By a final judgment dated 8 October 2014, the latter court referred the case to the cour d'appel de Bruxelles, at the request of the father, on the grounds that 'the Belgian courts had been seised by the [father] before the wrongful removal of the child for the purposes of [Article 11(7) of the Brussels II bis Regulation] and that the substance of the case was pending before [the cour d'appel]'.

¹⁰ See footnote 6 to this View and Article 232 of that legislation.

29. However, the cour d'appel de Bruxelles held that, in the light of the provisions of Article 1322*i* of the Belgian Judicial Code, it could not regard itself as validly seised by that referral judgment.¹¹ Since the cour d'appel entertains doubts as to the compatibility of those national rules with the provisions of the Brussels II bis Regulation and, consequently, as to its own jurisdiction to rule on the dispute in the main proceedings, it decided, by judgment of 7 November 2014 which was received at the Court of Justice on 10 November 2014, to stay proceedings¹² and to refer the following question for a preliminary ruling:

'Are the provisions in Article 11(7) and (8) of [the Brussels II bis Regulation] to be interpreted as precluding a Member State from:

- giving preference to the specialisation of courts in situations of parental child abduction with respect to the procedure provided for in those [provisions] even where a court or tribunal has already been seised of proceedings concerning the substance of parental responsibility in relation to the child?
- removing, from the court seised of proceedings on the substance of parental responsibility in relation to the child, jurisdiction to give judgment on the custody of the child, even though that court has jurisdiction, under international and national law, to give judgment on questions of parental responsibility in relation to the child?'

30. The referring court asked that the case be dealt with under either the urgent preliminary ruling procedure provided for in Article 107 of the Court's Rules of Procedure or the expedited procedure provided for in Article 105 of those rules. On 18 November 2014 the competent Chamber decided that the case should be dealt with under the urgent preliminary ruling procedure.

31. Written observations were submitted to the Court by the Belgian Government and the European Commission, who were represented at the hearing which took place on 11 December 2014.

IV – Analysis

A – Introductory comments

32. As a preliminary, it seems to me helpful to outline the parameters of this request for a preliminary ruling, in the interests of distinguishing matters which are not in this case disputed from those which cause difficulties for the referring court.

¹¹ The referring court considers that, under Belgian law, it can be seised of the procedure set out in Article 11(6) to (7) of the Brussels II bis Regulation only by an appeal brought by a party to the dispute against that judgment.

¹² In its order for reference, the cour d'appel de Bruxelles states that, currently, there is no need to alter the provisional measures relating to the father's rights of access as established in its interlocutory judgment of 30 July 2014, those rights being directly enforceable in Poland by means of the certificate issued in that regard in accordance with Article 41 of the Brussels II bis Regulation.

33. The singularity of this case, compared with previous cases brought before the Court, is that it is based on a conflict of jurisdiction between courts which are situated not in different Member States but within one and the same Member State.¹³ It is apparent from the file that the Polish courts have not challenged the finding made by the Belgian courts that the latter's international jurisdiction in the matter of parental responsibility was established,¹⁴ under Articles 8 and 10 of the Brussels II bis Regulation, by reason of the place where the child was habitually resident when the proceedings were brought before them and before the removal held to be wrongful.

34. On the latter point, I observe that it has also been accepted that there was, in this case, an infringement of the father's rights of custody arising by operation of law, within the meaning of Article 2(9) and (11)¹⁵ of that regulation, since no judgment had been delivered on that subject when the child was taken to Poland by his mother.¹⁶

35. I will add that, notwithstanding that wrongful removal, the Belgian courts who have to date ruled on the substance of the matter have not fundamentally taken issue with the child's principal residence being fixed at the domicile of the mother,¹⁷ subject to the comment that since the decisions concerned, the circumstances have according to the father changed, in that the mother is currently opposed to any direct relationship between him and the child. On the other hand, a Polish court refused to grant the father's application for the return of the child to Belgium, on the basis of the 1980 Hague Convention as complemented by the provisions of the Brussels II bis Regulation.¹⁸

36. It is precisely in the context of that non-return order that the request for interpretation of Article 11(7) and (8) of that regulation is made. In that regard, the referring court submits to the Court a question which has two parts, relating, in essence, to the fact that a rule of national law determines which court, of those situated in the Member State where the child was habitually resident before the removal, is to be regarded as having jurisdiction to decide on the action to be taken following that order.

37. The first part of that question relates to whether those provisions permit a Member State to opt for a specialisation of courts which are to have jurisdiction in that regard, even where proceedings of which the subject-matter is parental responsibility with respect to the child who has been wrongfully removed are already pending before another court of that State. If the answer is that they do, the second part concerns the scope of the jurisdiction of such a specialised court in order to determine, in particular, whether the legislation of a Member State may provide that the seising of that court entails the staying of any other proceedings with that subject-matter which are ongoing in that State.

38. While the referring court leans towards an interpretation of the provisions referred to in the request for a preliminary ruling which would militate against the existence of those two possibilities, both the Belgian Government and Commission support the contrary argument. In my opinion, the latter position is shown to be correct by a teleological interpretation of those provisions of the Brussels II bis Regulation.

13 None the less, the issue is not one purely of national law since it concerns the interpretation of provisions of the Brussels II bis Regulation which have the effect that one or other of the Belgian courts concerned will have international, and not domestic, jurisdiction to determine the dispute (see, by analogy, the circumstances of the cases which gave rise to the judgments in *C* (C-435/06, EU:C:2007:714) and *A* (C-523/07, EU:C:2009:225)).

14 See footnote 8 to this View.

15 On the meaning of those provisions, see the judgment in *McB* (C-400/10 PPU, EU:C:2010:582).

16 On the concept of an infringement of custody rights, see the judgment in *C* (C-376/14 PPU, EU:C:2014:2268, paragraph 60 et seq.).

17 While, by order of 19 December 2013, the judge of the tribunal de première instance de Bruxelles responsible for hearing applications for interim measures, making a provisional order, granted that residence to the father, the tribunal de la jeunesse de Bruxelles, by a judgment on the substance of the matter on 26 March 2014 against which an appeal was brought, granted it on the contrary to the mother, as a situation not altered by the cour d'appel de Bruxelles in the provisional measures it adopted in its interlocutory judgment of 30 July 2014.

18 I repeat that, by decision of 13 February 2014, the district court of Płońsk exercised its discretion, as open to it, by way of exception, under Article 13 of the 1980 Hague Convention, to derogate from the general rule of return forthwith of the child, laid down in Article 12 of that convention.

B – The issue submitted to the Court

1. The relevant rules of EU law

39. In order best to understand what is at issue in this case, it is useful, first, to identify the key elements of the specific body of rules set out in Article 11 of the Brussels II bis Regulation with the aim of facilitating the return forthwith of an abducted child to the country where the child resided before the wrongful removal. The detailed rules adopted for that purpose are designed to enhance, as regards relations between the Member States, the effectiveness of the arrangements established by the 1980 Hague Convention, even though the latter is itself to remain applicable within the European Union.¹⁹

40. Under Article 11(1) of the Brussels II bis Regulation, where a child has been wrongfully removed to or retained in another Member State, one of the holders of rights of custody has the option of applying for the child's return to the competent authorities in that State, on the basis of the 1980 Hague Convention. Recital 17 in the preamble to the Brussels II bis Regulation states that the courts of the Member State to which the child has been removed 'should be able to oppose his or her return in specific, duly justified cases'. That applies, in particular, if 'there is a grave risk that his or her return would expose the child to physical or psychological harm' as laid down in Article 13b of that convention. None the less, it is apparent from Article 11(3) to (5) of the Brussels II bis Regulation that the return without delay of the child is to be the general rule and that a refusal must remain the exception. Consequently, in the system established by the Brussels II bis Regulation, unlike that arising from the 1980 Hague Convention, where the courts concerned oppose return, that does not automatically bring the dispute concerning the return to an end.

41. Where a judgment dismissing the application for return is adopted notwithstanding the restrictions laid down by the Brussels II bis Regulation, the regulation adds a limitation, set out in recital 17, to the effect that 'such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention'. A judgment refusing the return of a child is, to some degree, merely a protective measure, adopted provisionally,²⁰ based on the consideration that the child would be at risk if he or she were to be returned to the country from which the child was wrongfully removed. None the less, it is the courts of that Member State which, under Article 8 of that regulation, have jurisdiction, as the general rule, to rule on the substance of parental responsibility with respect to the child, which is why it is stated that they retain the 'final say'²¹ in such a situation, inter alia on custody with respect to the child, contrary to the system set up by the 1980 Hague Convention.

¹⁹ See the first sentence of recital 17 to the Brussels II bis Regulation, and the judgment in *Rinau* (C-195/08 PPU, EU:C:2008:406, paragraph 66); my View relating to Opinion 1/13 (EU:C:2014:2292, point 84 et seq.); and Opinion 1/13 (EU:C:2014:2303, paragraph 77 et seq.).

²⁰ To that effect, the explanatory memorandum relating to the proposal which led to the adoption of the Brussels II bis Regulation, presented on 3 May 2002 by the Commission [COM(2002) 222 final, OJ 2002 C 203 E, p. 161], stated, in the section headed 'Objective', that 'the Member State to which the child has been abducted may take a *provisional protective measure not to return the child*, which could in turn be *superseded by a judgment on custody* issued by the courts of the Member State of the child's habitual residence' (my emphasis).

²¹ That significant expression is to be found in recital 9 of the first proposal for a regulation on jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility presented by the Commission on 6 September 2001 [COM(2001) 505 final, OJ 2001 C 332 E, p. 269], which stated that 'The rules on jurisdiction should not preclude *measures* in the Member State where the child is present *for the purpose of protecting the child in urgent cases, or organising the exercise of parental responsibility*. However, the courts of the Member State *having jurisdiction as to the substance of the matter should have the final say*, including the possibility to overrule such measures' (my emphasis).

42. I will add that the European Court of Human Rights ('ECtHR') has stated that it is clear from the case-law of the Court of Justice that, in the context of the Brussels II bis Regulation, it is for the courts of the Member State of habitual residence to protect the fundamental rights of the parties concerned.²² That implies, inter alia, that those courts must protect the best interests of the child, which are not necessarily identical with the interests of the child's parents, under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, with the proviso that the obligations which that article imposes on States are interpreted, in the area of international child abduction, in the light of the requirements of the 1980 Hague Convention.²³

43. In order to ensure that the child's situation is re-examined with regard to all the relevant factors, Article 11(6) of the Brussels II bis Regulation requires the court of the Member State where the child is present which has issued a non-return order based on Article 13 of the 1980 Hague Convention, first, to inform 'the court with jurisdiction or the central authority in the Member State where the child was habitually resident'²⁴ and, second, to send to it immediately a copy of that order and copies of all relevant documents, all 'as determined by national law'.

44. Given the wording of Article 11(6), which does not have as one of its objectives the identification of which court, among those situated within the territory to the Member State where the child was habitually resident, ought to receive the information referred to in that provision, I consider that there can be scarcely any doubt that each Member State has the option of designating, by adopting a domestic rule concerning jurisdiction, the national court which is to be the recipient.

45. Article 11(7) provides, moreover, that the court or central authority which receives the information on the non-return order must then notify the parties of it and invite them to make submissions to that court, 'in accordance with national law', 'so that the court can examine the question of custody of the child'.²⁵ It follows from Article 11(8), read together with recital 17 in the preamble to the regulation, that, notwithstanding the initial non-return order, any subsequent decision which involves the return of the child delivered, in this context, by the court having jurisdiction in the Member State of habitual residence,²⁶ is per se enforceable, in other words, without it being necessary to take any steps for the recognition and enforcement of that decision in the Member State where the child is present.²⁷

46. However, the first clause in Article 11(7) is a qualification, that the notification procedure and the decision which it provides for is required '[u]nless the courts of 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'.²⁸ Similar though not identical wording is to be found in recital 18 in the preamble to the Brussels II bis Regulation, which states that '*unless the court in* [the Member State where the

22 See ECtHR, *Povse v. Austria*, Application No 3890/11, § 85 and 86 (accessible at the website: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122449>), a judgment referring to the judgment in *Povse* (C-211/10 PPU, EU:C:2010:400) delivered earlier by the Court of Justice. The ECtHR stated that the applicants could have sought from the courts in Italy, where the child was habitually resident, protection of their fundamental right to respect for family life following the decision ordering the return of the child to Italy.

23 See, inter alia, ECtHR, *X. v. Latvia*, Application No 27853/09, § 93, 96 and 100 (accessible at the website: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-138939>).

24 See also the first sentence of recital 18 of the Brussels II bis Regulation.

25 It is stated in the second subparagraph of Article 11(7) that if no submissions on that subject are received within the time-limit, the court with jurisdiction is to close the case.

26 In spite of the generality of the wording used in Article 11(8), namely 'a court having jurisdiction under [the Brussels II bis Regulation]', I consider, in the light of recital 17, that that wording does not cover any court which would have jurisdiction under any of the articles of that regulation, but rather that court which will have ruled on the custody of the child in the context of the procedure set out in Article 11(6) to (8).

27 In accordance with the rules laid down in Article 40 et seq. of the Brussels II bis Regulation.

28 My emphasis. The plural is used since there is the possibility that a number of courts in that Member State, of the same ranking or otherwise, may already have been seised of the dispute relating to the custody of the child concerned, as was the case in the main proceedings.

child was habitually resident immediately before the wrongful removal or retention] *has been seised, this court*, or the central authority, should notify the parties’.²⁹ That qualification, referring to cases where there are proceedings in parallel at the level of that Member State, constitutes in my opinion the central factor in the request for a preliminary ruling submitted to the Court.

2. The doubts raised by the provisions of EU law concerned

47. The referring court states that, notwithstanding the qualification quoted above, in Article 11(7) of the Brussels II bis Regulation, the Belgian legislation which was designed to implement within domestic law, among other instruments, that regulation³⁰ conferred the particular procedure laid down in Article 11(6) to (8) to the exclusive jurisdiction of specialised national courts,³¹ the seising of which entails the suspension of all proceedings already underway before a Belgian court or tribunal concerning parental responsibility with respect to the child concerned.³²

48. The question arises therefore whether proceedings such as those conducted in the main proceedings, before the tribunal de la jeunesse and then before the cour d’appel de Bruxelles, could be treated as equivalent to proceedings already pending in the Member State of habitual residence, as referred to in that qualification and, accordingly, whether the current domestic rules of jurisdiction under Belgian law are compatible with that provision.

49. In the first place, the wording of the qualification stated in Article 11(7) may lead one to think, as suggested by the referring court, that the EU legislature wanted to maintain the jurisdiction of a court in that Member State which was in the position of being already seised of a dispute relating to the wrongfully removed child, even in the situation where a non-return order has been issued in the Member State where the child is present, in accordance with the general rule of *perpetuatio fori*.³³

50. Such an analysis seems also to be a possibility having regard to the *travaux préparatoires* of the Brussels II bis Regulation. It is clear that, first, the Commission had initially envisaged provisions that, in all cases where such a non-return order had been adopted, that would automatically trigger new proceedings relating to custody in the Member State where the child was habitually resident before the wrongful removal,³⁴ but that, second, that perspective was not the one which was ultimately chosen in the wording adopted, the addition of the qualification being introduced by the Council of the European Union.³⁵

29 My emphasis. I will return to this factor in point 61 of this View.

30 See the draft law which led to the adoption of the abovementioned legislation of 10 May 2007, lodged on 16 March 2007 by the Belgian Government at the Belgian Chamber of Representatives, document 51-3002/001, 2006-2007, p. 3 (accessible at the following website: <http://www.lachambre.be/FLWB/pdf/51/3002/51K3002001.pdf>).

31 In accordance with Articles 633*f* and 1322*i* of the Belgian Judicial Code, quoted in points 14 and 15 of this View, that procedure is reserved to the tribunal de première instance, now the tribunal de la famille, which is established at the seat of the cour d’appel in whose territorial jurisdiction the child was habitually resident immediately before the wrongful removal or retention.

32 See Article 1322*i*(4) of the Belgian Judicial Code.

33 I concur with the Commission that this situation, where courts of *one and the same Member State* are seised concurrently, differs from that conceived by Article 19 of the Brussels II bis Regulation, which governs *lis pendens* occurring ‘[w]here proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of *different Member States*’ (my emphasis). On the other hand, I disagree with the opinion expressed by the Commission at the hearing and consider that the object of the concurrent proceedings here envisaged may be identical where a decision relating to custody determines the place where the child is to live and is, thereby, liable to have an effect on the issue of whether the child is to be returned.

34 See Articles 22 to 24 of the Commission’s proposal [COM(2002) 222 final], now Article 11 of the Brussels II bis Regulation, and the ‘explanatory memorandum’ relating to that proposal, which states on the subject of Article 24(2) that ‘an obligation is placed on *the central authority* of the Member State of the child’s habitual residence immediately before the removal or retention *to seise the courts for this purpose*, while the *possibility* is also left open to *any holder of parental responsibility* to do the same’ (my emphasis).

35 See note of the Presidency of the Council of the European Union of 26 November 2002 (No 14733/02, pp. 5 and 6 and p. 14 et seq.), which does not state clearly what the Council members intended in that regard. Paragraph 17 of that note mentions only that such an order on non-return ‘is *merely an interim measure* and not a decision on the substance of the matter. *It is therefore necessary, in most cases, subsequently to seise the courts of the Member State* where the child was *habitually resident* immediately before the abduction, those courts retaining their jurisdiction to rule on *the substance of the matter*’ (my emphasis).

51. Further, some academic commentators consider that where a court having jurisdiction has already been seised in the Member State where the child was habitually resident, the central authority should send directly to that court the information on the order on non-return and that a specific transmission is necessary solely where such a court has not already been seised, in order to permit the opening of new proceedings following the notification of that same information to the persons concerned.³⁶ That approach might also be supported by the ‘Practice Guide for the application of the new Brussels II Regulation’ which was drawn up, for use by the courts of the Member States, by the staff of the Commission in consultation with the European Judicial Network in civil and commercial matters, even though what is stated there on that subject is not lacking in a degree of ambiguity.³⁷

52. Notwithstanding that there are matters which sow some doubt, it seems to me that there are other considerations, particularly but not exclusively teleological, in accordance with the Court’s settled case-law,³⁸ which must lead to an interpretation of Article 11(7) and (8) of the Brussels II bis Regulation which is more subtle than that envisaged by the referring court.

C – The admissibility of national rules such as those at issue

1. The concentration of jurisdiction in favour of specialised courts

53. The first aspect of the problem which arises here is ascertaining to what extent the provisions of the Brussels II bis Regulation which are the subject of the question referred are intended to govern the allocation of domestic jurisdiction between the courts of the Member State where the wrongfully removed child was habitually resident, where a non-return order has been adopted in the Member State where the child is present.

54. In that regard, it is clear from the Court’s case-law that, even though it is not the aim of the Brussels II bis Regulation to unify the substantive and procedural rules of law in the various Member States, the application of such national rules must not however impair the effectiveness of the provisions of that regulation.³⁹

55. As regards the rules of jurisdiction in the matter of parental responsibility stated in the regulation, including those stated in Article 11 thereof, it is clear from recital 12 in the preamble to the regulation that those rules are shaped in the light of the best interests of the child. The necessity of taking into account that objective ‘above all’, when interpreting those rules, has been repeatedly emphasised by the Court in its case-law relating to the interpretation of the provisions of that regulation.⁴⁰

³⁶ See, inter alia, McEleavy, P., ‘The New Child Abduction Regime in the European Union: Symbiotic Relationship or Forced Partnership?’, *Journal of Private International Law*, 2005, No 1, p. 30 and note 132; Fulchiron, H., ‘La lutte contre les enlèvements d’enfants’, in Fulchiron, H., and Nourissat, C. (Editors), *Le nouveau droit communautaire du divorce et de la responsabilité parentale*, Dalloz, Paris, 2005, p. 249; Pataut, E., ‘Commentaire de l’article 11’, in Magnus, U., and Mankowski, P. (Editors), *Brussels II bis Regulation*, Sellier European Law Publishers, Munich, 2012, p. 142 et seq., paragraph 63.

³⁷ According to that Practice Guide, in the updated version as at 1 June 2005 (accessible at the following website: http://ec.europa.eu/civiljustice/parental_resp/parental_resp_ec_vdm_en.pdf), ‘if a court in the Member State has previously issued a judgment concerning the child in question, the documents shall in principle be transmitted to that court. In the absence of a judgment, the information shall be sent to the court which is competent according to the law of that Member State’ (see p. 36, my emphasis). The Commission submits that the expression ‘in principle’ allows the view to be taken that other arrangements, such as the transfer to a specialised court, are possible. However, the alternative stated at the start of the following sentence, which the Commission neglects to quote, could demolish that analysis.

³⁸ The Court regularly states that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, the judgment in *L*, C-656/13, EU:C:2014:2364, paragraph 38).

³⁹ See, inter alia, the judgments in *Rinau* (EU:C:2008:406, paragraph 82) and *Povse* (EU:C:2010:400, paragraph 78).

⁴⁰ See, inter alia, the judgments in *E*, (C-436/13, EU:C:2014:2246, paragraphs 44 and 45); *C* (EU:C:2014:2268, paragraph 50 and case-law cited); and *L* (EU:C:2014:2364, paragraph 48).

56. In addition, according to recital 33 in its preamble, the Brussels II bis Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union ('the Charter') and seeks in particular to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter. It follows from Article 24(2) and (3), first, that in all actions relating to a child, particularly those taken by public authorities, the child's best interests must be a primary consideration and, second, that every child has the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents.⁴¹

57. In particular, the objective of the provisions of the Brussels II bis Regulation relating to the wrongful removal or retention of a child is to discourage a parent from engaging in such conduct, by ensuring that any attempt to take the law into his or her own hands has no effect on the allocation of jurisdiction, and encouraging the rapid return of the child to the Member State where he or she was resident before the removal.⁴² That objective of expedition is emphasised, particularly by the strict procedural time-limits which are explicitly stated in Article 11 of the regulation.⁴³

58. Having regard to the wording of Article 11(6) to (8), it is in my opinion open to the Member States to allocate to a specialised court the jurisdiction to examine, if one of the parties makes an application to that effect, the question of return and/or custody of the child in the context of the particular procedure laid down in Article 11(7) and (8), even where a court or tribunal has been already seised, separately, of proceedings on the substance of parental responsibility with respect to the child.

59. Those provisions contain, first, express references to the law of the Member States⁴⁴ and, secondly, wording which is at the same time both general and specific⁴⁵ but not definitive,⁴⁶ which allows room for the Member States to choose how to determine the court within their territory which has special jurisdiction to give a ruling on custody with respect to the child following a non-return order.

60. Taking into account the particular purpose of those provisions, it seems to me that Article 11 of the Brussels II bis Regulation constitutes rather a legal rule of a technical nature than a rule which is intended to determine the court which has jurisdiction,⁴⁷ even though it is in Chapter II of that regulation, headed 'Jurisdiction'. The principal aim of Article 11(7), in my opinion, is to determine the detailed arrangements for the notification of information on the non-return order, in order to enable

41 In that regard, see the judgments in *Detiček* (C-403/09 PPU, EU:C:2009:810, paragraphs 53 and 54); *Aguirre Zarraga* (C-491/10 PPU, EU:C:2010:828, paragraph 59 et seq.); *Povse* (EU:C:2010:400, paragraph 64); and *McB.* (EU:C:2010:582, paragraph 60 et seq.).

42 See, inter alia, the judgments in *Rinau* (EU:C:2008:406, paragraph 52); *Povse* (EU:C:2010:400, paragraph 43); and *C* (EU:C:2014:2268, paragraph 67); and paragraphs 15 and 16 of the note of the Presidency of the Council of 26 November 2002.

43 Thus, Article 11(3) requires a court seised of an application for return to issue a decision, as a general rule, 'no later than six weeks after the application is lodged'. Article 11(6) requires the communication of the specified information 'within one month of the date of the non-return order'. Article 11(7) adds that the parties must make submissions 'within three months of the date [when that information is notified]'. In practice, the courts of the Member States are not always able to comply with the first of those time-limits, according to the Report from the Commission to the European Parliament, the Council and the European Economic And Social Committee on the application of Regulation No 2201/2003 repealing Regulation (EC) No 1347/2000, dated 15 April 2014 [COM(2014) 225 final].

44 Reference to the provisions of 'national law' is made both in Article 11(6) (as regards the communication of information on the non-return order to the competent authorities in the Member State where the child was habitually resident) and in Article 11(7) (as regards the requirements pertaining to the notification of that information to the parties and the invitation to the parties to make submissions to the court having jurisdiction).

45 The wording of Article 11(7) is general, in that it mentions as a body 'the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention' and it is specific, in that it refers on three occasions to 'the court' which receives the information laid down in Article 11(6) and which must act thereon, either by issuing a decision, or by closing the case (my emphasis).

46 The opposite is true of a provision the purpose of which is to define the territorial jurisdiction of a court in a way which makes it possible to identify a specific court in a Member State, such as the provision which was the subject of my Opinion relating to the case of *Sanders and Huber* (C-400/13 and C-408/13, EU:C:2014:2171, paragraph 36), currently still pending, which referred to 'the court for the place where the creditor is habitually resident' (my emphasis).

47 In favour of the procedural nature of the rules set out in Article 11, see Devers, A., 'Les enlèvements d'enfants et le règlement "Bruxelles II bis"', in Fulchiron, H. (editors), *Les enlèvements d'enfants à travers les frontières*, Bruylant, Brussels, 2004, p. 40.

the parties to take a position, with full knowledge of the relevant facts, before the court which has jurisdiction under the law of the Member State where the child was habitually resident, with the objective of avoiding the risk of a judicial lacuna following a non-return order, the content of which must be capable of being re-examined.⁴⁸

61. That analysis is not in my opinion called into question by the qualification stated at the beginning of Article 11(7) of the regulation. In that regard, it is necessary to note the peculiarity, as compared with the qualification in Article 11(7) of the regulation, of the qualification stated in recital 18 in the preamble to the regulation. Recital 18 states: ‘*Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties*’.⁴⁹ It may be observed that, contrary to the more general wording of Article 11(7), the qualification in recital 18 relates to the prior seising not of any court whatsoever of the Member State where the child was habitually resident, without any distinction, but of a specific court, namely that court which has jurisdiction in that Member State to receive the file relating to the non-return order.

62. I would add that such a rule for the internal allocation of jurisdiction *ratione materiae* and for the specialisation of courts, in itself, does not impair either the effectiveness of those provisions of the regulation or the principles and objectives which underpin them, and in particular is not necessarily contrary to the abovementioned objective of expedition, even though that rule may be liable to produce detrimental effects in that regard depending on how the rule is applied, as I will explain below.⁵⁰

63. In that respect, it must be emphasised that the rules of Belgian law which are the subject of the request for a preliminary ruling are based on objectives which are compatible with those of the Brussels II bis Regulation. As stated by the referring court, the grounds stated for the Belgian legislation indicated that the specialisation of courts and the concentration of jurisdiction was justified by the technical nature of the court proceedings relating to international child abduction, the desire to improve the effectiveness and rapidity of action of the Belgian courts in this area, and by the intended strengthening of direct cooperation between judges and magistrates of different Member States.⁵¹ I will add that an initial step in that direction had been introduced into Belgian law in 1998, when the 1980 Hague Convention was implemented, but it was reinforced in 2007 when the Brussels II bis Regulation was implemented,⁵² so that the number of courts or tribunals having jurisdiction in that area was reduced from 27 to six, with a possibility of appeal.⁵³

48 In that regard, the Belgian Government stated at the hearing, correctly in my opinion, that ‘The essential aim of Article 11(7) of the regulation is to determine the procedure to be followed in the event that no court has yet been seised, in the State [where the child is habitually resident], of a case relating to parental responsibility ... so that the case can be pursued without jeopardising the objective of expedition. In contrast, if a court has already been seised of the substance of all or part of the case, ... the regulation leaves to the Member States the task of determining what procedure should ensue at national level’. The Commission concurred with that opinion, stating that in the latter situation, ‘the obligation to inform the parties is not laid down by the regulation itself, it is for national procedural law to resolve that issue’.

49 My emphasis.

50 See point 68 et seq. of this View.

51 See the explanatory memorandum relating to Article 3 of the proposed legislation mentioned in note 30 to this View (p. 44 of that proposal).

52 A number of Member States have adjusted their domestic legislation in order to take account of the requirements of that regulation. See Boele-Woelki, K., and González Beilfuss, C., (Editors), *Brussels II bis — Its Impact and Application in the Member States*, Intersentia, Antwerp, 2007.

53 In that regard, see the contribution relating to Belgian law in ‘Special Focus — Concentration of jurisdiction under [the 1980 Hague Convention] and other international child protection instruments’, *The Judges’ Newsletter on international child protection*, published by the Hague Conference on international private law, Volume XX, Summer-Autumn 2013, pp. 5 and 6 (accessible on the following website : <http://www.hcch.net/upload/newsletter/nl2013tome20en.pdf>).

64. As expressly stated in the *travaux préparatoires* of the abovementioned legislation of 10 May 2007,⁵⁴ the Belgian legislature made the choice to ‘fall into line with’ the legislation of the same kind previously adopted in other Member States, specifically in France⁵⁵ and Germany.⁵⁶ A comparative law study undertaken under the aegis of the Hague Conference on international private law confirms that that approach was followed in a number of other Member States.⁵⁷

65. As stated by the Belgian Government and by the Commission, such an approach is consistent with the recommendations, in favour of a concentration of international child abduction cases in a restricted number of courts, which are made in the guides produced within the European Union⁵⁸ and by the Hague Conference on international private law.⁵⁹ It seems to me important to maintain the systems for the specialisation of courts which have been identified as constituting ‘best practice’ in that connection, since the 1980 Hague Convention remains applicable as such between the Member States even though it is complemented by the Brussels II bis Regulation.⁶⁰

66. I am therefore of the opinion that the provisions of the Brussels II bis Regulation do not, per se, preclude a Member State from choosing the specialisation of courts with jurisdiction to rule on the substance of the matter in situations where a child has been wrongfully removed or retained. It is not apparent that such specialisation presents any difficulty if a single set of proceedings concerning the custody of the child is commenced at the request of the parties.

67. On the other hand, doubts can still be raised as to the compatibility with those provisions of the systems laid down in the legislation of the Member States in order to regulate the outcome of concurrent proceedings on the matter. That question arises, in particular, with regard to the rule that all proceedings relating to parental responsibility with respect to the child which are already pending before another, not specialised, court, are to be stayed, as laid down under Belgian law, taking into particular consideration the actual impact which that rule may have on the conduct of proceedings which ought as a general rule to lead to the return forthwith of the child to the Member State where the child was habitually resident.⁶¹

54 See the explanatory memorandum relating to Article 3 of the proposed legislation (p. 44 of that proposal).

55 On that subject, see Article 1210-4 of the French Code of Civil Procedure and Article L. 211-12 of the French Code on Court Organisation, and also Nourissat, C., and Devers, A., ‘Étude 245 — Règles de compétence en matière matrimoniale et responsabilité parentale’, in Canivet, G., and Others (Editors), *Lamy Procédures communautaires*, Paris, 2008, paragraphs 245-205 et seq.

56 See the contributions relating to French and German law, in Special Focus — Concentration of jurisdiction under [the 1980 Hague Convention] and other international child protection instruments’, respectively p. 16 and p. 17 et seq.

57 See in its entirety ‘Special Focus — Concentration of jurisdiction under [the 1980 Hague Convention] and other international child protection instruments’, and in particular the overview by Lortie, P., p. 2 et seq., which states that a concentration of jurisdiction has been effected in relation to the Brussels II bis Regulation in a number of Member States covered in the study, including Germany, Belgium, Bulgaria, Cyprus, Finland, France, Hungary, the Netherlands and the United Kingdom, and that jurisdiction has sometimes been reserved to a single specialised court, inter alia in the Netherlands and Sweden.

58 See the Practice Guide for the application of the new Brussels II Regulation, p. 28, and the report ‘Article 11 working group — Information on national procedures’, 2013 (accessible at the following website: https://e-justice.europa.eu/content_parental_child_abduction-309-fr.do?clang=fr), p. 12 et seq., where it is stated: ‘[t]he following Member States appear not to have implemented concentration: Estonia, Latvia, Lithuania, Poland, Slovenia and Spain’.

59 Guide to good practice under the [1980] Hague Convention — Part II - Implementing measures 2003, p. xii et seq. and p. 29 et seq. (accessible at the following website: http://www.hcch.net/index_en.php?act=publications.details&pid=2781), which lists the advantages offered by such a practice. On the importance of that guide, notwithstanding that it is not binding, see ECtHR, *X. v. Latvia*, cited above, § 36.

60 See point 39 of this View.

61 Except where such a return is demonstrated to be contrary to the best interests of the child.

2. *The staying of all proceedings pending before a non-specialised court*

68. Under Article 1322i(4) of the Belgian Judicial Code, the seising of the specialised court which has jurisdiction to determine the action to be taken with regard to the order on the non-return of a wrongfully removed child, namely the tribunal de la famille of the place where the child was formerly habitually resident, immediately entails the staying of all proceedings already commenced before the national courts and tribunals which are seised of a dispute concerning parental responsibility or a related dispute.

69. The referring court seeks to ascertain from the Court whether, having regard to the particular requirements of expedition and effectiveness⁶² which govern the operation of the rules laid down in Article 11(6) to (8) of the Brussels II bis Regulation in order to facilitate the return of a child who has been wrongfully removed, those provisions preclude the legislation of a Member State from containing such procedural rules.

70. While Member States have a degree of autonomy in matters of procedure,⁶³ it is none the less imperative that they act ‘with due regard for the principles and objectives of [the Brussels II bis Regulation]’, as stated by the Commission in the answer which it proposes should be given to the question referred.

71. In accordance with the Court’s case-law, the purpose of the systems set up by Article 11 of the Brussels II bis Regulation, and in particular the transmission of information as laid down in Article 11(6), is not only to ensure the return without delay of the child to the Member State where the child had been habitually resident immediately before the wrongful removal or retention, but also to enable the court which has jurisdiction in that State to assess the reasoning and evidence on the basis of which the non-return order was issued, since responsibility for that assessment lies, ultimately, with that court.⁶⁴

72. The cour d’appel de Bruxelles refers to various practical and legal considerations, in the light of, in particular, the facts of the main proceedings, in favour of the view that it would be opportune, in the interests of expedition and effectiveness, that it should be not the specialised court designated by Articles 633f et 1322i of the Belgian Judicial Code, but the court which is already seised on the substance, and before which there are pending proceedings relating to parental responsibility, which should give a ruling on custody with respect to the child.⁶⁵

73. In that regard, it is true that the court which was previously seised on the substance may be better acquainted with the details of the situation of the child concerned where it has already instructed enquiry, has heard the parties and has available in the court file the results of investigations,⁶⁶ unlike the specialised court which is seised subsequently. Moreover, it is possible that the course of the proceedings ongoing before the non-specialised court may be just as brief as that of the case brought before the specialised court, where national law provides — as is the case under Belgian law⁶⁷ — that all proceedings relating to parental responsibility are deemed to be urgent and are treated in accordance with the procedures for applications for interim measures, and be even more rapid in practice, where those proceedings are already well under way.

62 On that subject, see, inter alia, point 57 of this View.

63 See point 54 et seq. of this View.

64 The judgment in *Rinau* (EU:C:2008:406, paragraphs 78 to 80).

65 In the main proceedings, the specialised court having jurisdiction appears, it may be added, to have shared that opinion, since the tribunal de la famille de Bruxelles which was seised following the non-return order transferred the case to the cour d’appel de Bruxelles which had been previously seised on the substance of the matter.

66 In this case, the cour d’appel de Bruxelles ordered, in its order for reference, a social enquiry report on the father’s circumstances, in order to investigate in particular what form of accommodation the father could offer to the child, if necessary, and the father’s parental abilities.

67 See Article 198(2) of the legislation of 30 July 2013 mentioned in note 6 to this View.

74. In that context, it seems consistent with the best interests of the child that the court which was previously seised should be able to continue the examination of the case it has already begun and to give a ruling both on the place where the child is to be principally resident and on the consequences of that ruling, in particular the rights of access of the parent with whom the child will not be living.

75. Moreover, on the basis of the observations which it has submitted to the Court, the Belgian Government does not disagree. It emphasises that Article 1322i(4) of the Belgian Judicial Code causes merely the staying of the proceedings pending before a non-specialised court which has already been seised on parental responsibility, and not the divestment of that court of its jurisdiction, as I note is provided for in the legislation of other Member States.⁶⁸

76. The Belgian Government argues, correctly in my opinion, that Article 11(7) of the Brussels II bis Regulation does not preclude the legislation of a Member State from granting to a specialised court the jurisdiction to give a rapid ruling on the question of return, without that court necessarily being obliged to examine at the same time the question of custody with respect to the child, even if those questions are in general closely linked, having regard to the Court's case-law.⁶⁹

77. The Belgian Government states that, under Belgian law, once the judgment relating to return is delivered, the proceedings relating to the substance of the rights of custody, which were under way before the court which had been previously seised — at first instance or on appeal — and have been stayed, must be resumed.

78. The Belgian Government adds that, in this case, the specialised court which received notice of the non-return order had already delivered a decision on the substance of the dispute by a judgment against which an appeal had been brought and that it therefore took the view — because of the 'effet dévolutif' of an appeal under Belgian law⁷⁰ — that it was under an obligation to transfer the case to the cour d'appel,⁷¹ since one of the parties had there expressed the desire that that court of first instance give a ruling on the entirety of the dispute, and not solely on the question of return.

79. I observe that, in this case, that specialised court delivered that decision to transfer three months after the date when it was seised, a period in which the proceedings underway before the cour d'appel de Bruxelles were stayed.

⁶⁸ Thus, under German law, in such circumstances, 'Section 13 of [the federal law of 5 April 1990, as amended] obliges the local court to transfer the proceedings to the specialised court ...' (see 'Special Focus — Concentration of jurisdiction under [the 1980 Hague Convention] and other international child protection instruments', cited above, p. 17). Similarly, under French law, other courts seised of the same dispute or of related disputes are obliged to decline jurisdiction in favour of the court which has special jurisdiction following a non-return order (see Article 1210-9 of the Code of Civil Procedure).

⁶⁹ Referring to the judgments in *Rinau* (EU:C:2008:406, paragraphs 63 and 64) and *Povse* (EU:C:2010:400, paragraph 53), the Belgian Government recalls that the Court has held, first, that, '[a]lthough intrinsically connected with other matters governed by the Regulation, in particular rights of custody, a judgment requiring the return of a child following a judgment of non-return enjoys procedural autonomy, so as not to delay the return of a child who has been wrongfully removed [or retained]', and, secondly, that 'it cannot be inferred from [Article 11(7)] that a decision on the custody of the child is a prerequisite for the adoption of a decision ordering the return of the child', since 'that provision merely indicates the final objective of the ... judicial procedures, namely regularisation of the child's situation' (my emphasis).

⁷⁰ The term 'effet dévolutif' means that the court before which an appeal has been brought is capable of ruling on all matters which are in dispute, including on new facts which have arisen since the date of delivery of the judgment under appeal, such as the subsequent actions of one of parents.

⁷¹ At the hearing, the Belgian Government slightly adjusted that point of view, stating that the specialised court would in fact have sovereign authority to assess, as appropriate and particularly subject to the interests of the child, the merits of the request of one party for a transfer to the cour d'appel jointly of the question of return of the child and the question of custody, pursuant to the rule that the ancillary follows the principal.

80. Care must however be taken that, when Member States implement the Brussels II bis Regulation, the effectiveness of the regulation is not put at risk, particularly in so far as the objective of the return forthwith of the child is made subject, under the legal rules of the Member State where the child was habitually resident before the wrongful removal, to new proceedings brought before a specialised court, irrespective of the stage reached in proceedings previously commenced before a court having jurisdiction to issue a decision on the substance of parental responsibility.⁷²

81. As the Court has previously emphasised, ‘that risk should be particularly balanced because, as far as concerns young children [as applies to the child whose situation is the subject of the main proceedings] 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’.⁷³ Particular care is therefore desirable to ensure that the possibility of the child being returned is achieved and that links with the parent from whom the child has been separated are satisfactorily restored.⁷⁴

82. Further, it is plainly in the interests of the child that the court which is declared to have jurisdiction to issue a decision on rights of custody is that court which has in its possession, first, ‘all the information and all the material needed for that purpose’, particularly on ‘the relationship of the child with both parents, and the parental abilities and characters of the parents’ and, secondly, ‘the time required to make an objective and dispassionate assessment’.⁷⁵

83. That approach is compatible with the spirit of the Brussels II bis Regulation and is supported by the requirements which are imposed by recital 33 in its preamble, which concerns respect for the rights of the child as set out in Article 24 of the Charter. Consequently, I consider that Article 11(7) and (8) of the Brussels II bis Regulation should be interpreted as not prohibiting the adoption of national procedural rules such as those which are the subject of this request for a preliminary ruling, provided however that the effects of those rules are not detrimental to the principles and objectives of that regulation, and particularly those principles and objectives relating to the fundamental rights of the child concerned, in which connection the reasonable duration and the substantive effectiveness of the procedures constitute essential requirements.

V – Conclusion

84. In the light of the foregoing, I propose that the Court reply as follows to the question referred for a preliminary ruling by the cour d’appel de Bruxelles:

Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as not

⁷² See, by analogy, the judgment in *Rinau* (EU:C:2008:406, paragraph 81).

⁷³ *Idem*.

⁷⁴ The ECtHR also stresses that the judicial authorities of a Member State are under an obligation to ‘employ all means necessary to deal diligently with’ proceedings relating to parental responsibility with respect to an abducted child and the child’s return within the scope of the Brussels II bis Regulation, emphasising that ‘the passage of time may have irremediable consequences for the relationship between children and whichever of the parents does not live with them’ (see, inter alia, ECtHR, *Karoussiotis v. Portugal*, No 23205/08, § 85 et seq., accessible at the following website: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-103165>).

⁷⁵ See the judgment in *Povse* (EU:C:2010:400, paragraphs 62 and 66).

precluding, in principle, and subject to the condition that the principles and objectives of that regulation are actually respected, a Member State from adopting national rules which have the effect that:

- (i) the procedure following an order refusing the return of child who has been wrongfully removed, issued by a court of another Member State, which is laid down by Article 11(7) and (8) falls within the exclusive jurisdiction of specialised courts, and
- (ii) the seising of one of those specialised courts causes all proceedings relating to parental responsibility with respect to the child which may be pending before another court of that Member State to be stayed, even where that other court, when it was earlier seised, had jurisdiction, both internationally and nationally, to issue a decision on the substance of the matter.

i — The names in the introductory part have been replaced by letters following a request for anonymisation.