



PRESS RELEASE No 31/23

Luxembourg, 16 February 2023

Judgment of the Court in Case C-638/22 PPU | Rzecznik Praw Dziecka and Others (Suspension of the return decision)

EU law precludes national authorities being able, without needing to provide justification, to obtain the suspension of a final decision requiring the return of a child

The need for efficiency and speed which governs the adoption of a decision requiring the return of a child also applies in connection with the enforcement of such a decision

Since 2022, the Polish Code of Civil Procedure enables the Public Prosecutor General, the Commissioner for Children's Rights and the Ombudsman to obtain suspension of the enforcement of a final judicial decision ordering the return of children handed down on the basis of the Hague Convention on the Civil Aspects of International Child Abduction. Those authorities are not required to provide reasons for their request for suspension. That request entails suspension of the enforcement of the decision for a two-month period. In addition, if the authorities referred to above bring an appeal on a point of law against a return decision, the suspension is extended by operation of law until the conclusion of the proceedings before the Supreme Court. Furthermore, even if that appeal were to be dismissed, suspension could once again be obtained in connection with an extraordinary appeal.

Two minor children, born in Ireland to Polish parents, have been resident in Ireland since their birth. During the summer of 2021, the children and their mother went on holiday to Poland, with their father's consent. In September 2021, their mother informed their father that she would remain permanently in Poland with her children. Their father, who had not consented to a permanent relocation of this kind, applied to the Polish courts for the return of his children. The Court of Appeal, Warsaw, confirmed the order of the court of first instance requiring the return of those two children to Ireland. After the return decision became enforceable, the Commissioner for Children's Rights and the Public Prosecutor General each requested suspension of the enforcement of that decision.

The Court of Appeal, Warsaw, has expressed doubts as to whether such a suspension is compatible with the requirement of expedition laid down by the Brussels IIa Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.¹ In addition, given that suspension may be requested by authorities which are not courts and that the exercise of that power is not subject to judicial review, the Polish court has asked the Court of Justice whether the legislation in question is compatible with the fundamental right to an effective remedy enshrined in the Charter of Fundamental Rights of the European Union.

In its judgment, delivered today, the Court recalls that, pursuant to the Brussels IIa Regulation, **the courts of the Member States having jurisdiction are required to adopt a decision requiring the return of the child concerned within a particularly short and strict time limit.** In principle, such a decision must be made no later than six weeks from the date on which the application is lodged, using the most expeditious procedures available in

¹ 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).

national law. It is only in specific and exceptional, duly justified cases that the return of a child who has been wrongfully removed may not be ordered. The Court emphasises, in that regard, that **the Brussels IIa Regulation complements and clarifies the 1980 Hague Convention**. Those two texts form a unitary body of rules which applies to the procedures for returning children who have been wrongfully removed within the European Union.

The Court indicates that **the need for efficiency and speed which governs the adoption of a return decision also applies to national authorities in connection with the enforcement of such a decision**. The enforcement without delay of a decision enabling a child to be returned promptly is also intended to ensure respect for the fundamental rights guaranteed by the Charter of Fundamental Rights, in particular the fundamental rights of the child.

According to the Court, the solution adopted by the Polish legislature may undermine the effectiveness of the Brussels IIa Regulation. The Court emphasises that an initial two-month suspension in itself exceeds the time limit within which the return decision must be adopted according to that regulation. Moreover, given that the authorities empowered to request suspension are not required to provide reasons for their request and that the exercise of that power is not subject to any judicial review whatsoever, **the legislation in question does not guarantee that the return of the child to his or her place of habitual residence may not be suspended except in specific and exceptional, duly justified cases**.

The Court also rejects the argument that that legislation enables the authorities to bring an appeal on a point of law and to avoid the children concerned suffering irreparable harm. In that regard, the Court finds that the judicial protection of a child against such a risk is, in principle, already guaranteed by the existence of a remedy before a judicial body. The Court considers that **EU law does not require Member States to provide an additional level of judicial review in respect of a return decision where that decision has been adopted in a procedure which already provides two levels of judicial review and that procedure enables account to be taken of the existence of risks in the event of the return of the child concerned**. A fortiori, EU law does not permit Member States to couple proceedings brought against such a decision with an automatic suspensory effect, such as that provided for by the Polish legislation in question.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎(+352) 4303 3355

Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎(+32) 2 2964106

Stay Connected!

