

Opinion of AG Emiliou on stay of enforcement of final return order in the case C-638/22 PPU

In the case *Rzecznik Praw Dziecka and Others*, C-638/22 PPU, a Polish court asks the Court of Justice in essence whether, in accordance with the Brussels II Regulation and The 1980 Hague Convention on the Civil Aspects of International Child Abduction, a Member State may provide for the possibility of an appeal in cassation (in practice: a third judicial instance) involving a stay of enforcement of a final return order on a simple application by one of the public entities entitled to lodge such an appeal.

AG Emiliou states from the outset that this question calls for a negative answer. His Opinion explains why this is the case.

A summary of the facts of the case reported here case has been already posted online by Marta Requejo Isidro so I am happy to refer to her contribution.

The urgency of the matter has compelled the Court to submit the case, at the request for the referring court, to the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice.

I might add that the provision of national law that made the aforementioned stay of enforcement possible entered into force on 24 June 2022 and the request for a preliminary ruling has been brought before the Court of Justice already on 13 October 2022.

Concerning the preliminary question itself, in his Opinion, AG Emiliou recognizes that the 1980 Hague Convention and the Brussels II bis Regulation do not unify the procedural rules applicable to return applications based on that Convention. Those issues are left to the procedural law of the Member State where a request for a return order is made (point 52).

Nevertheless, the competence of the Member States has its limits. For AG Emiliou, those limits are not respected by the Polish provision in question.

Advocate General argues that by adopting the provision in question, the Polish

legislator has exceeded the limits of its competence: he has rendered the return proceedings ineffective. Furthermore, in doing so, the legislator has also limited the fundamental right to respect for family life and the fundamental right to an effective remedy of the parent requesting the return, despite there being no compelling justification for such limitation and the negative consequences it entails (point 54).

All those aspects are addressed in a detailed manner in the Opinion, so there is still a lot to unpack.

The Opinion is available here (so far only in French).