Case C-262/21 PPU

Request for a preliminary ruling

Date lodged:

23 April 2021

Referring court:

Korkein oikeus (Supreme Court, Finland)

Date of the decision to refer:

23 April 2021

Applicant:

A

Defendant:

B

K O R K E I N O I K E U S [SUPREME COURT] DECISION
[…] 1 (15)

[…]

Date: 23 April 2021

Number 615

APPLICANT: A

DEFENDANT: B

PROCEEDINGS: Return of the child in application of the Hague Convention

Request for a preliminary ruling from the Court of Justice of the European Union

REQUEST FOR THE APPLICATION OF THE URGENT PROCEDURE

The Korkein oikeus (Supreme Court, Finland) requests that the present reference for a preliminary ruling be dealt with under the urgent procedure in application of Article 107 of the Rules of Procedure of the Court of Justice. The circumstances

that justify the application of the urgent procedure are set out in the accompanying letter.

DECISION OF THE KORKEIN OIKEUS (SUPREMET COURT)

Subject matter of the dispute

1 The present case concerns a request, in application of the Convention on the Civil Aspects of International Child abduction, concluded at The Hague on 25 October 1980 (United Nations Treaty Series, vol. 1343, no. 22514; 'the 1980 Hague Convention'), for the return to Sweden of a child who has been taken to Finland. The question that arises in the present case is whether the removal or retention of a child may be considered to be wrongful where one of the two parents, without the authorisation of the other, has removed the child from the State in which he was habitually resident to another Member State of the European Union after the immigration authority of the State of residence considered that it was in that other Member State that the applications for asylum concerning the child and the parent in question should be examined. **[Or. 2]** The resolution of the case requires that two different systems based on cooperation and trust between Member States of the EU be taken into account. Questions arise as to the interpretation 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 ('the Brussels II bis Regulation'), and of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Dublin III Regulation').

The relevant facts

Background to the dispute

2 Two Iranian nationals, A ('the father') and B ('the mother'), lived first of all in Finland, from 2016, and then in Sweden, from May 2019. On the basis of the residence document issued to the father as an employed person, the mother was issued with residence documents on the ground of family ties, for Finland for the period from 28 December 2017 to 27 December 2021 and for Sweden for the period from 11 March 2019 to 16 September 2020.

3 The common child of the parties, C ('the child') was born in Sweden on 5 September 2019. The child was habitually resident in Sweden and his two parents have joint custody. By a decision of the Swedish authorities of 11 November 2019 (confirmed by judgment of the administrative court of 17 January 2020), the child was taken into care by the authorities and together with his mother was placed in a hostel.

4 On 21 November 2019, the father applied on behalf of the child for a residence document in Sweden on the ground of the father-child family tie. On 4 December 2019, the mother applied on behalf of the child for a residence document in Sweden.

5 On 7 August 2020, the mother submitted an application for asylum in Sweden, for herself and for the child; in support of her application, she relied on domestic violence against her by the father and threats of 'honour' violence made by the father's family in Iran. By decisions of 27 October 2020, the Swedish authority competent in immigration matters (Migrationsverket) rejected the applications for asylum of the mother and the child as inadmissible, decided to take no further action on the application for a residence document submitted by the father on behalf of the child based on the family tie and, by immediately enforceable decisions, transferred the mother and the child to Finland, in application of Article 29(1) of the Dublin III Regulation. On 27 August 2020, Finland confirmed that it was responsible for examining the application for asylum of the mother and the child, in application of Article 12(3) **[Or. 3]** of the Dublin III Regulation. The mother and the child were transferred to Finland on 24 November 2020. On 11 January 2021, the mother applied to Finland for asylum for herself and for the child. On 26 March 2021, the Maahanmuuttovirasto (Immigration Service) withdrew the residence document which the mother had previously been granted in Finland. The application for asylum is pending.

6 On 7 December 2020, the father lodged an appeal against the decision of 27 October 2020 of the Swedish immigration authority concerning the residence document based on the family tie and the transfer of the child to Finland. By judgment of 21 December 2020, the administrative court hearing the appeal (migrationsdomstolen – Administrative Court for Immigration Matters) annulled the decisions of the immigration authority and referred the case back to that authority for a new decision, because the child's father had not been heard during the procedure. By its decision of 29 December 2020, the Swedish immigration authority decided that, now that the child had left the territory, it would take no further action in the cases concerning the child that were pending before it, including the application for asylum which the mother had submitted on behalf of the child. On 19 January 2021, an appeal against that decision was lodged before the administrative court. By judgment of 6 April 2021, the administrative court rejected the claims seeking, in particular, an order that a residence document be issued to the child on the ground of the family tie and that the child be returned to Sweden in application of the Dublin III Regulation.

7 On 5 January 2021, the father again requested to the Swedish immigration authority to issue a residence document on the ground of the family tie. That request is pending.

8 At the same time, proceedings between the parties concerning the custody of the child are pending in Sweden. The Swedish court of first instance (Västmanlands tingsrätt (Court of First Instance, Västmanland, Sweden)), by an interlocutory

order made in November 2020, maintained the joint custody of the child's two parents. The child's mother disputed that court's jurisdiction to deal with the case following the child's transfer to Finland. Examination of the case is continuing.

9 On 21 December 2020, the father brought an action before the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland), seeking an order for the prompt return of the parties' common child to his State of residence, Sweden. The mother submitted, principally, that the action was inadmissible or, in the alternative, that it should be dismissed.

10 In the statement of 26 January 2021 which it communicated to the Helsingin hovioikeus (Court of Appeal, Helsinki), the Swedish immigration authority stated that neither the child nor the mother had a currently valid residence document in Sweden, or the right to enter Sweden or to remain there. **[Or. 4]**

The decision of the Helsingin hovioikeus (Court of Appeal, Helsinki) of 25 February 2021

11 The Helsingin hovioikeus (Court of Appeal, Helsinki) dismissed the application for the return of the child. It found that in this case it could not be considered that the mother had wrongfully removed the child from his country of residence. The child's mother, when she was living in Sweden, had expressly applied for asylum in Sweden for herself and for the child. The mother had submitted her application for sole custody of the child on 2 September 2020, by which date the Swedish immigration authority had already stated that Finland was responsible for examining her application for asylum and the child's. That shows that it was not the mother's intention to change the child's place of residence in a way that would have an impact on international jurisdiction in the custody proceedings.

12 Nor, according to the Helsingin hovioikeus (Court of Appeal, Helsinki), must it be considered that the retention of the child is wrongful, even though the Swedish administrative court subsequently annulled the decision of the Swedish immigration authority and referred the case back to that authority for a new decision, and although the child's father did not give his consent to the child's remaining in Finland. The hovioikeus (Court of Appeal) considered that the mother had been entitled to rely on the information communicated by the Swedish authority competent in immigration matters concerning the immediate enforceability of the decision, the restrictions on the child's entry to the territory and the examination of the child's application for asylum in Finland. Nor could it be inferred that the mother had abused the rules on asylum.

The appeal before the Korkein oikeus (Supreme Court)

13 The father claims in his appeal that the Supreme Court should order the prompt return of the parties' common child to his State of residence, Sweden.

14 In her response, the mother contended that the appeal should be dismissed.

Legal rules

Return of the child

The 1980 Hague Convention

15 Article 1 of the 1980 Hague Convention is worded as follows:

'The objects of the present Convention are:

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; …' **[Or. 5]**

16 Article 3 of the Convention states the following:

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

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

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

17 Article 13 of the Convention is worded as follows:

'… 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. …'

18 Article 20 of the Convention provides as follows:

'The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms'.

European Union law

19 Recital 17 of the Brussels II bis Regulation is worded as follows:

'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 Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. …' **[Or. 6]**

20 Recital 33 of that regulation states that:

‘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 respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union’.

21 Article 2(11) of that regulation provides that a child’s removal or retention is wrongful 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; and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility’.

22 Article 11(4) of the abovementioned regulation provides that

‘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’.

23 Article 24(2) and (3) of the Charter of Fundamental Rights of the European Union provides that

‘In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.’

National law

24 The return of the child is governed by the laki lapsen huollosta ja tapaamisoikeudesta (361/1983) (Law on child custody and the right of access). The provisions of that law correspond to the provisions of the 1980 Hague Convention.

25 Under Article 30 of the Law on child custody and the right of access, as amended by Law 186/1994, the prompt return of a child in Finland who has been wrongfully removed from the State in which he or she was habitually resident, or

who is wrongly retained, must be ordered where the child was habitually resident immediately before his or her removal or retention in a State which is a Party to the Hague Convention of 25 October 1980 on the Civil Aspects of **[Or. 7]** International Child Abduction (the Hague Convention).

26 Under Article 32(1) of the Law on child custody and the right of access, as amended by Law 186/1994, the removal or retention of a child is to be considered wrongful:

(a) where it takes place, in breach of rights of custody, granted to a person, an institution or any other body, solely or jointly, by the law of the State where the child was habitually resident immediately before the removal or retention; and

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

27 Article 34 of the Law on child custody and right of access, as amended by Law 186/1994, deals with the grounds of refusal. Under that provision, a request for the return of the child may be refused

'…

(2) where 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; …

Where the child was habitually resident immediately before his or her removal or retention in a Member State referred to in Article 2(3) of the Brussels II bis Regulation, the arrangements referred to in Article 11(4) of that regulation shall also be applicable where the request for the return of the child is refused under paragraph 1(2) above'.

Transfer of the asylum seeker to the responsible Member State

European Union law

28 Article 12(3) of the Dublin III Regulation (No 604/2013) is worded as follows:

'…

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency …'

29 Article 29 of that regulation provides, as regards transfers, as follows:

‘1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible **[Or. 8]** shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3). …’

National case-law

30 The referring court has never in the past had to rule on a case concerning the return of a child in which it would have been necessary to assess whether a decision concerning the transfer of the examination of an application for asylum, taken on the basis of the Dublin III Regulation in another Member State, has the consequence that the removal of the child from that Member State, or his or her retention, should be considered wrongful in the light of the 1980 Hague Convention or the Brussels II bis Regulation.

31 In the leading decision KKO 2016:65, the referring court dealt with a case in which the father of a child whose parents had joint custody had wrongfully taken that child to Finland. The father and the child had then been granted asylum and refugee status in Finland. The child’s mother had requested the return of the child to her State of residence, Belorussia, on the basis of the 1980 Hague Convention. The referring court considered that the asylum granted to the child did not in itself constitute a reason not to apply the return obligation laid down in the Hague Convention, as return had to be assessed on the basis of the grounds of refusal laid down in the Hague Convention, with the child’s interests being taken into account. There was no obstacle to the child’s return.

32 It follows from the leading decision KHO 2016:168 of the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) that the national authorities rejected a request to renew the child’s residence document on the ground of family ties submitted by the father. According to that decision, a residence document relates to the possibility for the child to reside in Finland. It is not a residence document that may determine the place or country of residence of a child, as the determination of that place or country comes within the decision-making power of the persons having custody of the child, in accordance with the law on child custody and the right of access. The national courts which had examined the question of the custody and the residence of the child considered that the child was under the joint custody of both of his parents and that he lived with his father. After the mother had, without authorisation, taken the child from Finland to Russia, the Russian court responsible for examining the question of the child’s return ordered, under 1980 Hague Convention, the child’s return to the State in which he was habitually resident, Finland. **[Or. 9]**

33 Neither the Brussels II bis Regulation nor the Dublin III Regulation was applied in the abovementioned decisions. In decision KKO 2016:65, no significance was attached to the decision concerning the child's asylum in the context of the assessment of the return of the child. In decision KHO 2016:168, the question of the child's residence document was assessed separately from the questions relating to the place of residence and the return of the child.

The necessity for a preliminary ruling

34 The referring court must adjudicate on the question of the return of the child, as set out in paragraph 1 above. Sweden was the child's State of residence immediately before the alleged wrongful removal. The mother claims before the referring court that Finland became the child's State of residence at the latest when the Swedish immigration authority announced that the child had neither the right to enter nor the right to remain in Sweden, where his asylum dossier has lapsed. The referring court considers that the question before it is not the question, frequently dealt with in the case-law, of a change in the place of residence by reference to the place in which the child was habitually resident. It must resolve a number of questions that depend on the interpretation of the Brussels II bis Regulation in a situation in which it was a decision transferring responsibility for examining an application for asylum, taken on the basis of the Dublin III Regulation, that prompted the child's removal from his State of residence, Sweden. So far as the referring court is aware, the Court of Justice has thus far never taken a position on such questions of interpretation in its case-law.

35 First of all, the question arises in this case whether there has already been a wrongful removal of the child within the meaning of Article 2(11) of the Brussels II bis Regulation and Article 3 of the 1980 Hague Convention. The departure of the mother and child from Sweden and their arrival in Finland were triggered by the request made by the Swedish immigration authority and by its decision on the Member State responsible for examining the application for asylum on the basis of Article 12(3)(a), Article 18(1) and Article 29(1) of the Dublin III Regulation, and of the acceptance of that request by the Finnish immigration authority. The decision of the Swedish immigration authority (of 27 October 2020) relating to the transfer of examination of the dossier meant that the application for asylum concerning the child submitted by the mother in Sweden had become devoid of purpose and that decision contained decisions to the effect that no further action would be taken on the applications for residence documents on the ground of the family ties concerning the child which the father and the mother had each submitted separately. The decision of the Swedish authority competent in immigration matters was immediately enforceable and for that reason both the mother and the child no longer had the right to remain in Sweden. Since it is clear and undisputed that the mother had a right to remain in Finland for a longer period than that for which she had a right to remain in Sweden, she acted appropriately if the matter is considered from the perspective of the mechanism of the Dublin III Regulation. When seen in that light, the case does not involve a wrongful removal

of the child within the meaning of Article 3 of the 1980 Hague Convention and **[Or. 10]** Article 2(11) of the Brussels II bis Regulation.

36 According to the father, however, the mother has in this case used the asylum procedure for purposes other than those for which it was intended and did not seek his consent to take the child from Sweden to Finland. If the case is considered from the perspective of the rules and provisions of the 1980 Hague Convention and of the Brussels II bis Regulation concerning the child's removal, the child, of whom the two parents had joint custody, was wrongfully removed from his State of residence, Sweden.

37 If it is held, as stated in paragraph 35 above, that there was no wrongful removal of a child, it must then be determined whether there is a wrongful retention of the child, within the meaning of Article 3 of the 1980 Hague Convention and Article 2(11) of the Brussels II bis Regulation, since the Swedish administrative court subsequently (on 21 December 2020) annulled the decision of the Swedish immigration authority to transfer to Finland the examination of the child's applications for asylum, to declare that the applications for asylum lodged by the mother in Sweden had become devoid of purpose, and to take no further action on the applications for a residence document for the child submitted by the father and the mother in Sweden. It is apparent from the information obtained from the Swedish authorities, however, that the child and his mother still do not have, in that situation, the right to go to Sweden or to remain there. If that circumstance is deemed relevant, there will not be a wrongful retention of the child.

38 If the abovementioned rules and provisions of the 1980 Hague Convention and of the Brussels II bis Regulation, read with the provisions of the Dublin III Regulation on the transfer of the examination of the asylum application, are interpreted as meaning that a wrongful removal or a wrongful retention of the child has taken place, it is then necessary to examine whether there is an obstacle to the return of the child. The mother relies on Article 13(b) and Article 20 of the 1980 Hague Convention, as provisions which in the present case constitute an obstacle to the return of the child.

39 It is apparent from the documents in the file that the Swedish authorities took the child into care when he was around two months old and that they then placed him with his mother in a hostel. The decision to take the child into care was in force until November 2020. It is apparent from documents in the file that those authorities took the child into care because of domestic violence suffered by the mother. For that reason, it is appropriate in the present case to examine whether the grounds on which the child was taken into care and placed in a hostel constitute an obstacle for the purposes of Article 13(b) of the 1980 Hague Convention, on the ground that the return of the child might expose him, because of the domestic violence suffered by his mother, to physical or psychological harm **[Or. 11]** or otherwise place him in an intolerable situation. The importance of that obstacle is qualified, however, by the fact that the Swedish authorities, by the measures which they adopted for the purpose of taking the child into care and

placing him in a hostel, have previously already made adequate arrangements to secure the protection of the child, within the meaning of Article 11(4) of the Brussels II bis Regulation. There is no reason in this case to consider that it would not be possible to have recourse to such arrangements after the child's return to Sweden.

40 The question of the ground of refusal linked with the alleged domestic violence has been included in the present request for a preliminary ruling because it forms part of the assessment relating to the child's return, even though the referring court has no specific concerns as to the threshold for the application of the ground of refusal based on the existence of a grave risk, or as to Sweden's ability to make adequate arrangements to secure the protection of the child.

41 It is further necessary to address the question of the obstacles to the child's return by considering whether an intolerable situation, within the meaning of Article 13(b) of the 1980 Hague Convention, may exist when the child whose return is ordered, or his mother, who had primary care of the child, has neither a currently valid residence document nor the right to enter the country to which the return of the child is required. When the child, who is now around eighteen months old, lived in Sweden, it was his mother who had primary care of him and it was she who continued to care for him in the hostel where he was placed after being taken into care at the age of around two months. The fact that, owing to the family tie, the child had the right to obtain a residence document in Sweden on the basis of his father's residence document is not necessarily of decisive importance in the context of the assessment of the intolerable nature of the situation.

42 If Article 13(b) of the 1980 Hague Convention must, in those circumstances, be interpreted as meaning that the child's return to Sweden would place him in an intolerable situation, it must then be determined, in the present case, what is to be understood by adequate arrangements to secure the protection of the child after his return, within the meaning of Article 11(4) of the Brussels II bis Regulation. May the concept of adequate arrangements, having regard to the child's best interests, be interpreted as meaning that the authorities of the Member State have a positive obligation to guarantee the mother, in addition to the child, the right to enter the country and to remain there, in order to arrange for the personal care and custody of the child pending completion of the judicial proceedings relating to custody of the child, the right of access and residence which are currently pending in the Member State in question[?] Nor, as regards the mechanism of the Brussels II bis Regulation, is it clear whether, if the child is returned, the Member State which surrenders the child must, on the basis of the principle of mutual trust between Member States, presume that the State of residence of the child will fulfil those obligations, or whether it is necessary **[Or. 12]** to ask the authorities of the State of residence for information concerning the measures actually taken to safeguard the child's interests.

43 If the State of residence of the child, in the event that he is returned, did not have an obligation, under Article 11(4) of the Brussels II bis Regulation, to make

arrangements to secure the protection of the child after his return, would the principle of the child's best interests then have to be interpreted as meaning that the return of the child could not be considered to be consistent with the fundamental principles on the protection of human rights and fundamental freedoms, as required by Article 20 of the 1980 Hague Convention, and, for that reason, would have to be refused[?] That question must be assessed in the light of Article 24(2) and (3) of the Charter of Fundamental Rights. On that occasion, it is necessary to evaluate the child's best interests as a general principle, and in particular the significance which is attributed, in the context of that evaluation, to the right of the child to maintain personal relationships and direct contact with each of its two parents.

44 The question concerning the ground of refusal in Article 20 has been included in the request for a preliminary ruling because that is a provision on which the mother has relied; the referring court makes clear, nonetheless, that it has no particular doubts with regard to the question of the applicability of that provision either.

45 The answers to the questions of interpretation set out above are necessary in order to resolve the dispute in the main proceedings pending before the referring court.

The questions for a preliminary ruling

46 The court, after giving the parties the opportunity to express their views on the content of the request for a preliminary ruling, has decided to stay the proceedings and to refer the questions below to the Court of Justice of the European Union for a preliminary ruling.

1. Must Article 2(11) 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 ('the Brussels II bis Regulation'), relating to the wrongful removal of a child, be interpreted as meaning that a situation in which one of the parents, without the other parent's consent, removes the child from his or her place of residence to another Member State, which is the Member State responsible under a transfer decision taken by an authority in application of Regulation (EU) No 604/2013 of the European Parliament and of the Council ('the Dublin III Regulation'), must be classified as wrongful removal? [Or. 13]

2. If the answer to the first question is in the negative, must Article 2(11) of the Brussels II bis Regulation, relating to wrongful retention, be interpreted as meaning that a situation in which a court of the child's State of residence has annulled the decision taken by an authority to transfer examination of the file, but in which the child whose return is ordered no longer has a currently valid residence document in his or her State of

residence, or the right to enter or to remain in the State in question, must be classified as wrongful retention?

3. If, in the light of the answer to the first or the second question, the Brussels II bis Regulation must be interpreted as meaning that there is a wrongful removal or retention of the child, and that he or she should therefore be returned to his or her State of residence, must Article 13(b) of the 1980 Hague Convention be interpreted as precluding the child's return, either

(i) on the ground that there is grave risk, within the meaning of that provision, that the return of an unaccompanied infant whose mother has personally taken care of him or her would expose that child to physical or psychological harm or otherwise place the child in an intolerable situation; or

(ii) on the ground that the child, in his or her State of residence, would be taken into care and placed in a hostel either alone or with his or her mother, which would indicate that there is a grave risk, within the meaning of that provision, that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation: or

(iii) on the ground that, without a currently valid residence document, the child would be placed in an intolerable situation within the meaning of that provision?

4. If, in the light of the answer to the third question, it is possible to interpret the grounds of refusal in Article 13(b) of the 1980 Hague Convention as meaning 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, must Article 11(4) of the Brussels II bis Regulation, in conjunction with the concept of the child's best interests, referred to in Article 24 of the Charter of Fundamental Rights of the European Union and in that regulation, be interpreted as meaning that, in a situation in which neither the child nor the mother has a currently valid residence document in the child's State of residence, and in which therefore have neither the right to enter nor the right to remain in that State, the child's State of residence must make adequate arrangements to secure that the child and his or her mother can lawfully remain [Or. 14] in the Member State in question? If the child's State of residence has such an obligation, must the principle of mutual trust between Member States be interpreted as meaning that the State which returns the child may, in accordance with that principle, presume that the child's State of residence will fulfil those obligations, or do the child's interests make it necessary to obtain from the authorities of the State of residence details of the specific measures that have been or will be taken for the child's protection, so that the Member State which surrenders the child may assess, in particular, the adequacy of those measures in the light of the child's interests?

5. If the child's State of residence does not have the obligation, referred to above in the fourth question, to take adequate measures, is it necessary, in the light of Article 24 of the Charter of Fundamental Rights, to interpret Article 20 of the 1980 Hague Convention, in the situations referred to in the third question, points (i) to (iii), [Or. 15] as meaning that that provision precludes the return of the child because the return of the child might be considered to be contrary, within the meaning of that provision, to the fundamental principles relating to the protection of human rights and fundamental freedoms?