**Article Outlining CJEU Case**

**MCP, C-603/20 PPU**

Anthony Metzer QC and Dr Charlotte Proudman represented the mother at a hearing before the CJEU (appearing remotely) following Mostyn J’s application for an urgent preliminary ruling in [***SS v MCP* [2020] EWHC 2971 (Fam)**](https://www.bailii.org/ew/cases/EWHC/Fam/2020/2971.html). They achieved a successful outcome in what is believed to have been the penultimate hearing in the CJEU from the UK: [***MCP, C-603/20 PPU***](https://curia.europa.eu/juris/document/document.jsf?text=&docid=239243&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=291591)***.***

The background to the original case in the High Court of England and Wales concerned a child abduction matter in which the father had applied for the immediate return of the child from India to the UK, which the mother opposed. There was a background of alleged domestic abuse. The High Court found that the child was habitually resident in India, having spent around two years there, and was now fully integrated into their Indian social and familial environment. However, there was ambiguity in relation to the territorial reach of Article 10 of Brussels IIa, principally as to whether its provisions applied between Member States and third States, such as India. Mostyn J therefore made an urgent application to the CJEU for a preliminary ruling to determine this matter.

Following written observations and oral arguments by the parties and the European Commission, Advocate General Rantos provided his [**Opinion**](https://curia.europa.eu/juris/document/document.jsf?text=&docid=238087&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=291591)in support of submissions made on behalf of the father, concluding that Article 10 of Brussels IIa should be interpreted as meaning that the courts of the Member State in which a child was habitually resident immediately before their wrongful removal or retention, retain their jurisdiction to rule on parental responsibility in respect of that child for an *unlimited period of time*, when a child is abducted to a non-Member State and when he or she acquires their habitual residence in that non-Member State. It is widely acknowledged that the CJEU follow the Advocate General’s reasoning in approximately 70% of its rulings.

Nonetheless, the CJEU elected to take the comparatively rare decision to depart from the Advocate General’s opinion, ruling that in relation to an application concerning parental responsibility, Article 10 of Brussels IIa would *not* apply to a child who had acquired habitual residency in a third State following their abduction to that State; Article 10 only being applicable between Member States. International Conventions, or in their absence, the laws of the individual State, would instead take precedence. In summary, the Court determined:

1. The wording of Article 10, when placed in its context together with its objectives, demonstrates that the article deals *solely* with jurisdiction in cases of child abduction from *one Member State to another*;
2. Article 10 does *not* justify indefinite retention of jurisdiction by the courts of the Member State where the child was habitually resident prior to their abduction, having subsequently obtained habitual residence in a third State;
3. The special rules of jurisdiction stated within Article 10 must be interpreted *restrictively* and therefore should not be extended beyond the situations expressly envisaged and intended by the EU legislature;
4. The EU legislature intended child abduction rules in Brussels IIa to be restricted to situations between Member States, whilst coexisting and operating alongside the 1980 and 1996 Hague Conventions. Were Article 10 to permit the courts of the Member State to retain indefinite jurisdiction, the international conventions would be deprived of any effect. In addition, Members States who ratified or acceded to the Conventions would be forced to operate in a manner incompatible with their international obligations;
5. Were Article 10 to permit courts of a Member State to indefinitely retain jurisdiction, this would render the article incompatible with one of the fundamental objectives pursued by that regulation, namely that of *respecting the best interests of the child*, by giving priority to courts most proximate to the State in which the child has habitual residence;
6. When a child has acquired habitual residency in a third State following their abduction to that State, the jurisdiction of the court seised will be determined in accordance with the *applicable international conventions*, or, in the absence of any such international convention, in accordance with Article 14 of Brussels IIa namely, the *domestic laws of the Member State*.

Proceedings in the High Court of England and Wales had been stayed pending the outcome of the preliminary ruling. They will now commence again with Mostyn J able to make a final determination on the merits of the case within the next few weeks.