



## Proceedings concerning international child abduction ineffective

In today's Chamber judgments in the cases of [Dore v. Portugal](#) (application no. 775/08) and [Karoussiotis v. Portugal](#) (no. 23205/08), which are not final<sup>1</sup>, the European Court of Human Rights held:

By a majority in the case of *Dore v. Portugal*, that there had been a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights;

Unanimously in the case of *Karoussiotis v. Portugal*, that there had been a **violation of Article 8**.

Both cases concerned a child born of one Portuguese parent and one non-Portuguese national and subsequently abducted by the Portuguese parent, and whose other parent sought the child's return – to the United Kingdom and Germany respectively.

The case of *Karoussiotis v. Portugal* raised **a new legal question concerning admissibility**: did the fact that "infringement proceedings" against the respondent State had previously been introduced before the European Commission make the application to the Court inadmissible as it had "already been submitted to another procedure of international investigation or settlement"? (Article 35 of the Convention, admissibility criteria)

### Principal facts

The applicant in the first case was Michele **Dore**, an Italian national who was born in 1963 and lives in London. In 1999 a child was born of his relationship with a Portuguese national. The couple subsequently separated and in February 2006 the mother left for Portugal with the child, without informing the applicant.

In September 2006 Mr Dore requested the assistance of the United Kingdom authorities to secure the child's return, as provided for in the Hague Convention on international child abduction ("the Hague Convention"). He explained that it was likely that the child was attending the British School in Oporto. That same day, the United Kingdom authorities submitted a request to their Portuguese counterparts for the child's return, in conformity with the Hague Convention. The Portuguese police managed to locate the child in March 2007. He was living in Oporto with an aunt and was indeed a pupil at the British School. In June 2007 the Portuguese prosecution authorities filed an application for the child's return, in accordance with the Hague Convention. A hearing took place in the presence of the child's mother and aunt but not Mr Dore, who had not been notified. On 2 July 2007 the court rejected the application for the child's return on the grounds

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

that the child had settled down in his new environment and seemed upset at the thought of seeing his father again. On 13 July and 1 August 2007 the United Kingdom authorities asked their Portuguese counterparts to lodge an appeal against that decision, which they did not do. The Portuguese authorities asked the court if an appeal had been lodged. On 6 September 2007 the court replied in the negative.

In custody proceedings opened before the Family Affairs Court in Oporto, at the mother's request, it was decided that the child would stay with his aunt on his mother's side for the time being. Mr Dore was granted contact rights. The proceedings are still under way.

The applicant in the second case was Diana **Karoussiotis**, a German national who was born in 1980 and lives in Krefeld (Germany). She had a son with a Portuguese national in 2001, but the couple separated and the father was deported from Germany after being convicted of drug trafficking. The son never returned from a visit to Portugal to see his father in January 2005.

In March 2005 Ms Karoussiotis requested the assistance of the German authorities to secure the child's return, as provided for in the Hague Convention. In October 2005 the German authorities sent a request to their Portuguese counterparts for the child's return. On 24 January 2006 the Braga Family Affairs Court ruled against the child's return, considering that he was not being kept in Portugal illegally. On 9 January 2009 the Guimarães Court of Appeal found, on the contrary, that the child had been kept in Portugal illegally but, having regard to European Council Regulation EC 2201/2003 (concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility), considered that it was in the best interests of the child that he should stay in Portugal. The judgment concluded that changing the child's surroundings and taking him away from his great grandmother, who had become his reference person, might upset his mental balance.

In custody proceedings opened before the Braga Family Affairs Court in March 2005, it was decided that the child would stay with his father for the time being. Ms Karoussiotis asked for custody, alleging that the father had agreed. The great grandmother also applied for the child to stay with her. The proceedings are still under way.

In April 2008 Mrs Karoussiotis brought "infringement proceedings" against Portugal before the European Commission for violation of Regulation EC 2201/2003 because of the excessive length of the proceedings before the Braga court. According to the most recent information in the Court's possession, those proceedings are still pending.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained of negligence on the part of the Portuguese authorities in respect of their requests for their children's return.

The Dore v. Portugal application was lodged with the European Court of Human Rights on 20 December 2007. The Italian Government exercised its right to intervene in the case (Article 36 § 1 of the Convention and Rule 44 § 1(b) of the Rules of Court). The Karoussiotis v. Portugal application was lodged with the Court on 14 May 2008.

Judgments were given by Chambers of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,  
Ireneu **Cabral Barreto** (Portugal),  
Dragoljub **Popović** (Serbia),  
İşıl **Karakaş** (Turkey),

Guido **Raimondi** (Italy), *Judges*, and

In the case of *Dore v. Portugal*:  
Danutė **Jočienė** (Lithuania),  
András **Sajó** (Hungary), *Judges*;

In the case of *Karoussiotis v. Portugal*:  
Nona **Tsotsoria** (Georgia),  
Kristina **Pardalos** (San Marino), *Judges*;

and also – in both cases - Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Admissibility of the *Karoussiotis v. Portugal* application

The Court essentially had to decide whether the fact that Mrs Karoussiotis had previously lodged “infringement proceedings” against Portugal before the European Commission made her application to the Court inadmissible because it had “already been submitted to another procedure of international investigation or settlement” (Article 35).<sup>2</sup>

That would indeed have been the case if “infringement proceedings” could be considered, from the procedural viewpoint and that of their potential outcome, as individual applications within the meaning of Article 34 of the Convention.

However, the Court found that this was not the case. The sole purpose of “infringement proceedings” was to secure voluntary compliance by the State concerned with the requirements of European Union law. The European Commission had discretion to launch “infringement proceedings” before the Court of Justice of the European Union, whose judgment had no effect on the complainant’s rights and could not award any individual redress (the Court of Justice could only oblige the State concerned to comply with its obligations).

Mrs Karoussiotis could therefore not be considered to have already submitted her application “to another procedure of international investigation or settlement”. It was therefore admissible.

### Alleged violation of the right to respect for private and family life (in both cases)

The Court reiterated that Article 8 implied the right for a parent to have measures taken with a view to being reunited with his or her child and an obligation for the national authorities to take such action (but this was not an absolute right; among other things, the State had to take the best interests of the child into account). The Court also reiterated that proceedings in this field should be dealt with promptly as the passage of time could have irremediable consequences for the child’s relationship with the remote parent. Indeed, both the Hague Convention and Regulation EC 2201/2003 required the requested authorities to take urgent steps to secure the child’s return. Delays of more than six weeks could give rise to requests for explanations.

In Mr **Dore**’s case the Court noted that it had taken almost six months for the Portuguese authorities to locate the child, even though he was a pupil at the school Mr Dore had suggested from the outset. It had then taken them almost three months more to submit a formal request for the child’s return. Those two delays alone were sufficient to conclude that the Portuguese authorities had not taken sufficient steps to

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<sup>2</sup> A question concerning exhaustion of domestic remedies had also been raised.

deal with the matter with the requisite speed. Also, why had the child's mother and aunt but not Mr Dore been invited to the hearing by the court to which the request for the child's return had been referred? Lastly, the time it took the Portuguese authorities to respond to the United Kingdom authorities' request to lodge an appeal had further delayed matters.

In the **Karoussiotis** case the Court noted that the proceedings concerning the request for the child's return to Germany had taken about three years and ten months in all, at two levels. There was no doubt that the length of the proceedings had penalised Ms Karoussiotis, particularly as her child had been less than four years old when he had left for Portugal. As to the proceedings to determine where the child should live, they were still pending more than five years and eight months later.

In these two cases the Portuguese authorities had not taken effective steps to expedite the proceedings, and this had alienated the children from their parents, the applicants. There had therefore been a violation of Article 8 in respect of both Mr Dore and Ms Karoussiotis.

### Article 41

As Mr Dore had submitted no claim for just satisfaction and Ms Karoussiotis had failed to submit hers in time, the Court made no award in this respect.

### Separate opinion

In the case of *Dore v. Portugal*, Judge Jočienė expressed a separate opinion, which is annexed to the judgment.

*The judgments are available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.