



Decision not to return a child to her father in the United States taken without a thorough assessment

In today's Chamber judgment in the case [Ilker Ensar Uyanik v. Turkey](#) (application no. 60328/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

This case concerned the proceedings brought in Turkey by the applicant to obtain the return of his child to the United States, where he lived with his wife. She had remained in Turkey with their daughter following a holiday in that country.

In particular, the Court found that the Turkish courts had failed to carry out a thorough assessment of the entirety of the applicant's family situation, omitting, among other things, to examine it in the light of the principles set out in the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention").

Principal facts

The applicant, İlker Ensar Uyanık, is a Turkish national who was born in 1970 and lives in Durham (United States). He married in 2000, and subsequently moved to the United States with his wife. In August 2007 they travelled on holiday to Turkey with their daughter, who had been born in February 2006. His wife and the child did not return to the United States.

Mr Uyanık, who had returned alone, applied to the American Central Authority, requesting the return of his daughter to the United States. The Central Authority made an application to the Turkish authorities. The Izmir Family Court ("the family court"), to which the Izmir public prosecutor had submitted the case, dismissed the applicant's request to have the child returned, referring in particular to the baby's age (25 months) and her need for maternal affection and care.

The applicant appealed, challenging the fact that only the child's age had been taken into account by the Turkish courts, rather than whether or not there was a grave risk that the child's return would expose her to physical or psychological harm. This appeal was dismissed by the Court of Cassation on 1 July 2009.

1 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

In May 2008, by a temporary custody order, the American courts awarded both parents joint legal custody of the child. In April 2009 this temporary custody order became a permanent custody order.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing), the applicant complained that the proceedings before the Turkish courts had been unfair, in that the courts had failed to comply with the provisions of the Hague Convention.

The application was lodged with the European Court of Human Rights on 31 October 2009.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
İşıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 8

The Court decided to examine the applicant's complaint under Article 8.

The Court emphasised that it was not its task to substitute itself for the relevant Turkish authorities in ruling on the child's return to the United States or in examining whether the decision not to return her was lawful within the meaning of the Hague Convention. It did, however, have jurisdiction to review the proceedings before the Turkish courts.

The Turkish courts had found that it was in the child's interest to remain with her mother, but had not examined the circumstances of the case in the light of the principles set out in the Hague Convention, in spite of the public prosecutor's suggestion that it do so. There was also no indication that the family court had considered whether or not the applicant had been granted rights of custody within the meaning of that Convention, under which the retention of a child was wrongful where custody rights had been attributed by the State in which the child was resident. Nor had the family court given sufficient consideration to the fact that the child's presence in Turkey *de facto* rendered illusory the maintenance of ties between the father and child. Finally, while there was no doubt that the girl's very young age was an important criterion in determining her interests, it could not in itself be a sufficient ground in such a dispute.

Thus, given that the Turkish courts had not carried out a thorough assessment of the entirety of the applicant's family situation and that the decision-making process in Turkish law had not met the procedural requirements inherent in Article 8, the Court concluded that there had been a violation of this Article.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicant 12,500 euros (EUR) in respect of non-pecuniary damage.

The judgment is 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.