

Portuguese authorities lacked diligence in enforcing judicial decision concerning child custody

In today's Chamber judgment in the case of [Santos Nunes v. Portugal](#) (application no. 61173/08), 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.

The case concerned the enforcement of a decision granting Mr Santos Nunes custody of his child, whom the mother had placed in the care of another couple.

The Court held in particular that the unusual situation the authorities had been faced with, which had gone beyond a dispute between biological parents or with the State, had not dispensed them from making every possible effort to have the decision granting the applicant custody of his daughter enforced.

Principal facts

The applicant, Baltasar Santos Nunes, is a Portuguese national who was born in 1979 and lives in Sertão (Portugal). A daughter, E., was born on 12 February 2003 of his casual relationship with a Brazilian national. After having acknowledged paternity in February 2003, following a genetic test, Mr Santos Nunes took steps to secure custody of the child, which he was granted in a judgment of 13 July 2004. The mother had placed the child in the care of a couple, Mr and Mrs G., who refused to hand her over. Mr Santos Nunes applied on several occasions to have the judgment enforced, but to no avail.

In February 2005 the judge summoned Mr and Mrs G. to court to hand E. over to the applicant. Mr G. went alone and refused to reveal the whereabouts of his wife and the child. The security police tried to locate them, but failed. The judge had initially decided that there was no urgency, but in June 2006, noting that the security police had taken no further investigative steps since July 2005, he classified the case as urgent and transferred it from the security police to the criminal investigation branch.

The judge organised meetings between Mr Santos Nunes, the child's biological mother and Mr G. early in 2007, but to no avail. At the judge's request Mrs G. took E. to be examined by a child psychiatrist in March 2007.

By an order issued on 16 April 2007 the judge arranged for a transition period for the execution of the judgment of 13 July 2004, during which E. would continue to live with Mr and Mrs G. but Mr Santos Nunes would be able to visit her.

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 April 2008, based in particular on the opinion of the child psychiatrists, the judge postponed the date on which the child was to be handed over by 90 days. After a further postponement, because of an application by the child's biological mother to have the parental authority reviewed, the child was handed over to Mr Santos Nunes on 19 December 2008. In January 2009 the judge ended the transition period and decided that E. would live with the applicant from then on, thereby finally enforcing the judgment of 13 July 2004. Mr and Mrs G. were subsequently granted access.

Mr Santos Nunes brought legal proceedings against Mr and Mrs G., who were found guilty of child abduction, given a two-year suspended sentence and ordered to pay the applicant damages.

Complaints, procedure and composition of the Court

Mr Santos Nunes complained that the inaction and lack of diligence of the Portuguese authorities and the excessive length of the proceedings to have the decision granting him custody of his daughter enforced had been in breach of Articles 6 § 1 (right to a fair hearing within a reasonable time) and 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 16 December 2008.

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

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 Isabelle **Berro-Lefèvre** (Monaco),
 András **Sajó** (Hungary),
 Işıl **Karakaş** (Turkey),
 Paulo **Pinto de Albuquerque** (Portugal) and
 Helen **Keller** (Switzerland),

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

Decision of the Court

Article 8

The Court decided that the case should be examined under Article 8 alone.

It noted that it had taken four years and five months to have the decision granting the applicant custody of his daughter enforced. It observed that the lack of cooperation shown by Mr and Mrs G., who had twice failed to comply with court summonses, was no excuse for the authorities not to have done everything in their power to protect the family ties.

Indeed, the case had not been given priority treatment until June 2006, in spite of a request to that effect made by Mr Santos Nunes as early as 2004. Then, while taking note of the efforts of the police to locate Mrs G. and the child, the Court expressed surprise that those efforts should have yielded no results, as acknowledged by the authorities themselves, the judge having gone so far as to transfer responsibility for the investigation from the security police to the criminal police. Mrs G. had not presented the child until March 2007.

The Court was aware that this had been a delicate case, with media repercussions. However, the unusual situation the authorities were faced with, which went beyond a

dispute between biological parents or with the State, did not dispense them from making every possible effort to have the decision granting the applicant custody of his daughter enforced, especially considering that in cases like this one, as the Court has already said, the passage of time can have irremediable consequences for relations between the child and the parent who does not live with him or her.

While reiterating that it was not its role to substitute itself for the Portuguese authorities in determining what steps should have been taken, and taking note of the good faith of the domestic courts in protecting the child's welfare from March 2007 onwards, the Court found that the proceedings had shown a distinct lack of diligence, in breach of the applicant's right to respect for his family life. It accordingly held that there had been a violation of Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Portugal was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

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.