



French authorities' failure to comply with an order to return children to their mother in the United Kingdom breached the right to respect for private and family life

In today's Chamber judgment in the case of **Raw and Others v. France** (application no. 10131/11), which is not final¹, the European Court of Human Rights held, by a majority, 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 failure to execute a judgment confirming an order to return underage children to their mother in the United Kingdom, their divorced parents having shared residence rights. The children wished to stay with their father in France.

The Court held that although children's opinion had to be taken into account when applying international law, notably the Hague Convention and Brussels Regulation II *bis*, their objections were not necessarily sufficient to prevent their return.

Principal facts

The applicants are Samantha Raw, who was born in 1972 and is a British national, and two of her minor children, A. and C.. Ms Raw had two children, D. and A., who were born in 1995 and 1997 respectively, then a third child, C., who was born in 2000 to another father. D., who reached the age of majority in January 2013, did not express a wish to pursue the proceedings.

Ms Raw and the father of D. and A. separated in 1999. In March 2001 Ms Raw and her children left France and settled in the United Kingdom. The divorce was pronounced on 21 June 2001. By a judgment of 10 January 2002, the family judge at La Roche-sur-Yon *tribunal de grande instance* held that parental authority was to be exercised jointly by both parents and decided that D. and A. should habitually live with their mother in the United Kingdom. He granted the father visiting and residence rights.

On 28 December 2008, while D. and A. were in France for Christmas and were due to return to their mother, their father went to the police station in La Roche-sur-Yon, referring to his children's suffering, their fear of returning to the United Kingdom, the educational shortcomings in that country, instances of ill-treatment and the threats made by their son D. to harm himself or to attack his mother were he obliged to return.

By an order of 2 January 2009, after having heard D. and A., the children's judge for La Roche-sur-Yon provisionally awarded residence rights to their father; the reason given was the unhappiness expressed by the adolescents. The judge also ordered an investigative measure, intended, among other things, to establish the educational

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

abilities of each of the parents. He commissioned a report from an association specialised in welfare support. Drawn up by a psychologist and a welfare assistant and dated 3 February 2009, the report recommended that D. and A. be looked after by their father.

Ruling on an application by Ms Raw, the High Court of Justice held on 9 January 2009 that the retention of D. and A. by their father was wrongful and ordered that they be returned to their mother. The High Court made the children wards of court until further order.

On 12 January 2009 Ms Raw submitted a request for return to the Official Solicitor of the International Child Abduction and Contact Unit, the central authority for England and Wales for the purposes of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, on the basis of that Convention and of the Brussels Regulation II *bis*. The Central Authority for England and Wales transmitted the request to the French Central Authority, which sent it to the Poitiers Public Prosecutor's Office for examination by the family judge.

On 2 February 2009 the family judge ordered that D. and A. be returned to Great Britain, finding that the order of 2 January 2009 did not remove the unlawful nature of the retention. In view of the protection measure imposed by the High Court of Justice – the children having been made temporary wards of court –, the father could not rely on Article 13 of the Hague Convention, which permitted the State authorities not to order the child's return. She pointed out that Article 11 of Brussels Regulation II *bis* specified that a court could not refuse to return a child on the basis of Article 13 of the Hague Convention if adequate arrangements had been made to secure protection of the child after his or her return; in this case, D. and A. having been made wards of court, their well-being would be appropriately monitored in their country of habitual residence.

On 17 March 2009 Ms Raw lodged a complaint alleging failure to return the children.

On 16 April 2009 the Poitiers Court of Appeal upheld the order of 2 February 2009, finding that, having regard to the decisions of the High Court of Justice, all the measures had been taken in the children's interest to provide the best conditions for their return to Great Britain, and that their objections alone were insufficient to prevent it.

On 25 May 2009 a meeting was organised between D. and A. and a welfare facilitator. A mediated meeting between D. and A. and their mother took place on the morning of 4 June 2009 in a neutral setting, in the presence of the welfare facilitator, their father, an educator and a psychologist. This attempt to re-establish contact was unsuccessful on account of the children's negative reaction: D. attacked his mother physically and A., shouting and crying, refused to meet her.

Ms Raw's lawyer wrote to the French Minister of Justice on 6 October 2009, complaining about the French authorities' refusal to use police force to ensure execution of the judgment of 16 April 2009. Until the end of April 2010 the French Central Authority and the prosecutor's office exchanged information about the case, but no measure was taken to encourage compliance with that judgment.

On 29 April 2010, the Poitiers Public Prosecutor's Office informed the lawyer and the French Central Authority that the Public Prosecutor had received Ms Raw on 27 April 2010 in order to take stock of the situation; he had reminded her that, although the judgment ought to be executed, he would not order its enforcement, considering that, "given the children's ages and personalities, it would not be apt to implement it".

On 28 July 2010 the Central Authority for England and Wales wrote to the French Central Authority requesting execution of the judgment of 16 April 2009, and specifying that Ms

Raw was available to come to France to collect her children. The French Central Authority transmitted this request and the Poitiers Public Prosecutor confirmed his refusal.

In December 2009 A. secretly asked his mother to come and collect him. She did so, and took him back to the United Kingdom. The Hague Convention no longer applies to D.'s situation, since he reached the age of 18 on 9 January 2011. He continues to live with his father in France.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 8 of the Convention, the applicants complained about the failure by the French authorities to ensure that the children D. and A. were returned to Great Britain.

The application was lodged with the European Court of Human Rights on 7 January 2011.

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

Mark **Villiger** (Liechtenstein), *President*,
 Angelika **Nußberger** (Germany),
 Boštjan M. **Zupančič** (Slovenia),
 Ann **Power-Forde** (Ireland),
 André **Potocki** (France),
 Paul **Lemmens** (Belgium),
 Helena **Jäderblom** (Sweden),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8

The Court reiterated that the Convention must be applied in accordance with the principles of international law. With regard to the positive obligations imposed on States by Article 8 in the matter of reuniting a parent with his or her children, these had to be interpreted in the light of the Hague Convention on the Civil Aspects of International Child Abduction and the Convention on the Rights of the Child, dated 20 November 1989, which emphasised the paramount nature of the child's interests.

The Court noted the rapidity with which the French authorities reacted once the procedure provided for by the Hague Convention had been launched. It considered it appropriate, particularly in view of the report of 3 February 2009, prepared at the request of the children's judge of La Roche-sur-Yon, that the authorities had waited until the issue of the application of Article 13 of the Hague Convention had been finally decided before ruling on the return of D. and A. to their mother in Great Britain. The children's best interests called for a certain prudence on the part of the authorities where tangible factors – such as those identified in that report – gave grounds for considering that their return could be detrimental to them.

The Court noted that the French authorities had used various methods to convince the father of D. and A. to cooperate in organising their return to the United Kingdom.

Thus, the father agreed to take his sons back to the United Kingdom provided that an education service assisted him in explaining to them the conditions of their return and

that contact be re-established with their mother in advance, under the auspices of an external education service. As the mediated meeting between D. and A. and their mother, which took place on the morning of 4 June 2009, had failed completely and D. and A. had been deeply affected by that event, the Court considered it understandable that the public prosecutor at the Poitiers Court of Appeal had decided that, as things stood, a return to their mother in the United Kingdom could not take place.

The Court noted that the French Central Authority had nonetheless pursued its efforts, in collaboration with the Central Authority for England and Wales. Thus, it received an assurance from the High Court of Justice that the children would not be handed over to their mother on returning to the United Kingdom and would not have contact with her and that, if he so decided, their father could remain with them pending an assessment of their interim residence. The Court noted, however, that the French authorities gradually reduced their activity. Thus, no measure likely to encourage compliance with the judgment of 16 April 2009 was taken between the autumn of 2009 and 29 April 2010, when the French Central Authority unsuccessfully invited the father to make contact with it for the purpose of arranging a meeting. It did not appear from the file that the authorities took any significant steps after that date.

The Court did not dispute the authorities' decision to give priority to an approach based on cooperation and negotiation. Indeed, Article 7 of the Hague Convention stressed the need to seek an amiable resolution. The Court considered that the decision by the Public Prosecutor at the Poitiers Court of Appeal not to resort to forcible execution of the judgment of 16 April 2009 and the Prefect's decision of 19 August 2009 to refuse the use of police force were not open to criticism. The Court considered, however, that coercive measures could have been taken against the father. In this respect, it failed to understand why the relevant French authorities had not taken any action on the complaint filed by Mrs Raw on 17 March 2009 alleging failure to return the children.

The Court was aware that one of the difficulties faced by the authorities in this case arose from the attitude of the children themselves, who had clearly stated their refusal to return to their mother in the United Kingdom. It considered, however, that that attitude was not necessarily immutable. It further observed that, although the children's opinion had to be taken into account when applying the Hague Convention and Brussels Regulation II *bis*, their objections were not necessarily sufficient to prevent return.

The Court concluded that the French authorities had not taken all of the measures that they could reasonably have been demanded of them to facilitate execution of the Poitiers Court of Appeal's judgment of 16 April 2009, ordering the return of D. and A. to the United Kingdom. By 5 votes to 2, the Court held that there had been a violation of Article 8 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that France was to pay the applicants jointly 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,500 in respect of costs and expenses.

Separate opinions

Judges Nußberger and Lemmens expressed separate opinions, which are annexed to the judgment.

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.