

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF IGLESIAS GIL AND A.U.I. v. SPAIN

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Iglesias Gil and A.U.I. v. Spain* (application no. 56673/00). The Court held unanimously that there had been a **violation of Article 8** (right to respect for family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 20,000 euros (EUR) for non-pecuniary damage and EUR 14,000 for costs and expenses.

(The judgment is in French only.)

1. Principal facts

The applicants, María Iglesias Gil and her son A.U.I., of whom she has custody, are Spanish nationals who were born in 1965 and 1995 respectively and live in Vigo.

In 1989 the first applicant married A.U.A. After their divorce in 1994 they had a son, A.U.I. The first applicant was awarded custody of the child, while the father was granted access. On 1 February 1997 A.U.A. took advantage of his right of access to abduct the child and run off with him to the United States.

The first applicant lodged a criminal complaint alleging abduction of a child against A.U.A. and the members of his family who, she alleged, had collaborated in the abduction. She asked the investigating judge to take certain investigative measures in connection with the offences of abduction, contempt of court and failure to comply with the judgment of the family-affairs judge. However, all her requests were refused. The judge also refused an application she had made for an international search and arrest warrant to be issued against A.U.A., on the ground that according to established case-law, a person having joint parental responsibility could not be prosecuted for abducting the child concerned. The first applicant appealed to the Pontevedra *Audiencia Provincial* and the Constitutional Court, but her appeals were dismissed.

On 3 July 1998 the investigating judge provisionally discontinued the proceedings against A.U.A. on the ground that, as he could not be questioned, he could not be charged under the

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Code of Criminal Procedure. The first applicant appealed against that decision to the Pontevedra *Audiencia Provincial* and the Constitutional Court. Her appeals were dismissed, as was her application challenging the judge and requesting that the proceedings be annulled.

In a judgment of 12 February 1999 the first applicant was granted full parental responsibility for the child. On 8 June 2000, when A.U.A. and the child returned to Spain on a visit, the first applicant managed to take her son back with police assistance.

2. Procedure and composition of the Court

The application was lodged on 22 December 1999 and declared admissible on 5 March 2002. A hearing was held on 10 December 2002.

Judgment was given by a Chamber of 7 judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish),
Antonio **Pastor Ridruejo** (Spanish),
Elisabeth **Palm** (Swedish),
Marc **Fischbach** (Luxemburger),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan), *judges*,

and also Michael **O’Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The first applicant, acting in her own name and in her capacity as her son’s legal guardian, complained of a violation of Article 8 of the Convention. She alleged that the Spanish authorities had not taken sufficient steps to ensure rapid execution of the court decisions in her case and to facilitate the return of her son to her. In particular, she complained that the judicial authorities had not dealt diligently with her complaint alleging abduction.

Decision of the Court

The Court reiterated that Article 8 of the Convention included a parent’s right to have measures taken to reunite him or her with the child and an obligation on the national authorities to take such action. The positive obligations imposed on the Contracting States by Article 8 with regard to reuniting a parent with his or her children had to be interpreted in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

1. This summary by the Registry does not bind the Court.

What was decisive was whether the national authorities had taken all the steps that could reasonably be demanded of them to facilitate the execution of the court decisions by which the first applicant had been awarded custody and sole parental responsibility for her child. In that connection, the Court noted that the courts dealing with the case had taken a number of steps in accordance with the legislation in force. However, as the case primarily concerned the removal and wrongful retention of the child, the Court set out to examine, in the light of the international obligations deriving from the Hague Convention, whether the national authorities had made adequate and effective efforts to enforce the first applicant's right to the return of her child and the child's right to join his mother.

The Court observed that both Spain and the United States, where the child had been taken, were contracting parties to the Hague Convention. Furthermore, Institutional Law no. 1/1996 of 15 January 1996 required the national authorities to take any measures to ensure respect for the rights of minors in accordance with the international treaties ratified by Spain.

In the present case, the situation resulting from the fact that the child's father had taken him to the United States and kept him there was wrongful within the meaning of Article 3 of the Hague Convention, and indisputably fell within the scope of that instrument. Furthermore, Articles 6 and 7 of the Hague Convention required central authorities to cooperate and promote cooperation with each other in order to discover the whereabouts of children who had been wrongfully removed or retained and to secure their return to the parent who had custody of them. Article 11 of the Hague Convention required the authorities of all Contracting States to act expeditiously in proceedings for the return of children. The Court noted that the competent national authorities were entitled to take such measures of their own motion. Moreover, Institutional Law no. 1/1996 gave the courts the power, in particular, to take any appropriate measures of their own motion to prevent children from being exposed to danger or from suffering harm.

The Court considered that once the Spanish judicial authorities had found the child's abduction to have been wrongful, the competent national authorities should have taken appropriate measures, as laid down in the relevant provisions of the Hague Convention, to secure the return of the child to his mother. However, none of the measures listed in those provisions had been taken by the authorities to facilitate the execution of the decisions in favour of the first applicant and her child.

Having regard to the findings it had reached, the Court considered that the applicants' complaints relating to the criminal proceedings no longer had a significant bearing on the present case. It observed in that connection that, contrary to what the first applicant had maintained, the criminal courts could not be said to have been totally inactive, and noted that a law enacted in Spain on 10 December 2002 had reinforced measures to combat child abduction.

Accordingly, notwithstanding the respondent State's margin of appreciation in the matter, the Court concluded that the Spanish authorities had failed to make adequate and effective efforts to enforce the first applicant's right to the return of her child and the child's right to join his mother, thereby breaching their right to respect for family life, as guaranteed by Article 8 of the Convention.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.