



No violation of the right to respect for the private life of an applicant whose ex-husband had submitted emails in evidence to the civil courts

In today's Chamber judgment¹ in the case of [M.P. v. Portugal](#) (application no. 27516/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life and for correspondence) of the European Convention on Human Rights.

The case concerned an applicant who complained about the fact that her former husband had not been punished in criminal proceedings by the Portuguese courts for having accessed emails that she had exchanged on a casual dating site and for submitting them in evidence in civil proceedings for shared parental responsibility and divorce proceedings, initiated by him before the Portuguese courts. It had ultimately been the Spanish courts, to which the applicant had applied first (and not the Portuguese courts, to which her husband had subsequently applied), which ruled on the divorce and granted residence rights to the mother, with access rights for the husband.

The Court found, among other points, that the effects of the disclosure of these emails on the applicant's private life had been limited, as they had been disclosed only in the civil proceedings; public access to files in this type of proceedings was limited. The Court also noted that the emails in question had not ultimately been examined, since the Lisbon Family Affairs Court had not actually ruled on the merits of the husband's requests. In the Court's view, the Portuguese authorities had balanced the competing interests, in compliance with the criteria laid down in its case-law. In addition, given that the applicant had waived the right to any civil claims in the context of the criminal proceedings, the only question which remained to be decided was that of the husband's criminal liability, a matter on which the Court could not rule. The Portuguese State had thus discharged its positive obligation to protect the applicant's rights to respect for her private life and the confidentiality of her correspondence.

Principal facts

The applicant, M.P., is a Spanish national who was born in 1958 and lives in Madrid. In July 2001 the applicant married a Portuguese national, with whom she had two children. The couple divided their time between Portugal and Spain on account of their professional commitments.

In June 2011, the couple's marital relationship having deteriorated, the applicant decided to live permanently in Spain with her children. In July of the same year she asked the Madrid First-Instance Court to order interim measures concerning parental responsibility for the children, with a view to seeking a divorce.

In August 2011 her husband lodged an application with the Lisbon Family Affairs Court, requesting that the children be returned and that their residence be provisionally established in Portugal. He submitted to the case file emails which he had found on the family computer in November 2010, and which had been exchanged between the applicant and male correspondents on a casual dating

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.

website. He claimed that these email conversations proved that his wife had had extramarital relationships during their marriage. Subsequently, in October 2011, he brought divorce proceedings in Portugal.

In September 2013 the Lisbon Family Affairs Court suspended the proceedings pending a decision by the Court of Justice of the European Union (“CJEU”) as to which judicial authority had jurisdiction to determine the dispute. In June 2015 the CJEU held that the first jurisdiction before which the dispute had been brought, namely the Spanish courts, was to decide the case. At the close of the divorce proceedings brought in Spain, the applicant and her husband were divorced; residence rights were granted to the applicant, and her ex-husband was granted contact rights.

In the meantime, in March 2012 the applicant submitted a criminal complaint to the prosecutor at the Lisbon Court, accusing her husband of breach of the secrecy of correspondence within the meaning of Article 194 of the Criminal Code. She alleged that her husband had accessed the inbox of her account on a casual dating website, had printed the emails that she had exchanged with male correspondents and had included them in the case file of the proceedings for shared parental responsibility brought by him before the Lisbon Family Affairs Court.

In October 2012 the prosecutor’s office ordered that the proceedings be discontinued. In November 2012 the applicant asked to be able to participate in the criminal proceedings as an *assistente* and requested that a judicial investigation should be commenced (judicial supervision of the investigation by the investigating judge). However, she did not submit a claim for compensation. The investigating judge issued an order discontinuing the proceedings. The applicant lodged an appeal with the Lisbon Court of Appeal, which held that there was insufficient evidence to order that the husband be committed for trial.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life and correspondence), the applicant complained about the fact that the Portuguese courts had not punished her husband for accessing the emails that she had exchanged on a dating site and submitting them as evidence in the court proceedings brought by him for shared parental responsibility and divorce.

The application was lodged with the European Court of Human Rights on 29 March 2014.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Armen **Harutyunyan** (Armenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),
Ana Maria **Guerra Martins** (Portugal),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private life and correspondence\)](#)

The case concerned interference with the applicant’s private life by a private individual rather than by the State. Her complaints thus related to the State’s positive obligations under Article 8 of the Convention. The Court found as follows.

With regard to the Portuguese legal system, the Court noted that accessing the content of letters or telecommunications without the consent of the correspondents and disclosing the content thus obtained were punishable under criminal law. It noted that, following the criminal complaint lodged by the applicant for breach of her correspondence, the prosecutor's office at the Lisbon Court had opened an investigation. In addition, the applicant had been authorised to participate in the criminal proceedings as an *assistente*, which had enabled her to play an active role in those proceedings. In particular, she had been able to present her evidence, and then to ask that an investigation be opened when the prosecutor's office decided to discontinue the proceedings. Furthermore, she could have submitted a compensation claim when asking that an investigation be opened, but she had not done so and had thus waived this opportunity. In other words, she had asked that the criminal proceedings opened in respect of a breach of her correspondence be continued solely in order to obtain recognition of the alleged breach of her rights. It followed that in cases such as the applicant's, the existing legal system in Portugal afforded adequate protection for the right to respect for private life and the secrecy of correspondence.

As to whether the Portuguese courts had struck a fair balance between the interests at stake, namely, on the one hand, the applicant's right to respect for her private life and, on the other, her husband's right to a reasonable opportunity to present his case – including his evidence – under conditions which did not place him at a substantial disadvantage *vis-à-vis* the applicant in the two sets of civil proceedings which, by their very nature, related to the private life of the couple and of the family.

With regard to the access to the emails, the Court noted that the Lisbon Court of Appeal had found that the applicant had given her husband full access to her email account on the dating website and that, in consequence, these messages formed part of the couple's private life. In the Court's view, the national authorities' reasoning with regard to joint access to the spouses' correspondence was open to debate, especially since there were reasons in the present case to believe that the permission ultimately provided by the applicant to her husband had been given in a situation of conflict. However, the conclusion reached by the domestic courts regarding the issue of access to those emails did not appear sufficiently arbitrary for the Court to substitute its own assessment for theirs.

With regard to the submission of the emails in the proceedings for divorce and shared parental responsibility, the Court agreed with the Lisbon Court of Appeal concerning the relevance of these messages in the civil proceedings in question, which was to give rise to an assessment of the personal situation of the spouses and the family. However, it reiterated that, in such a situation, the interference in private life resulting from the disclosure of such information had to be limited, so far as possible, to what was strictly necessary. In the present case, the Court considered that the effects of the disclosure of the emails in question on the applicant's private life had been limited: those messages had been disclosed only in the civil proceedings, and public access to files was restricted in this type of proceedings. In addition, the messages in question had not been examined in practice, as the Lisbon Family Affairs Court had ultimately not ruled on the merits of the husband's requests.

In consequence, the Court saw no strong reason to substitute its own view for that of the national courts in this case. Firstly, the Portuguese authorities had balanced the competing interests, in compliance with the criteria laid down in its case-law. In addition, given that the applicant had waived the right to any civil claims in the context of the criminal proceedings, the only question which remained to be decided was that of the husband's criminal liability, a matter on which the Court could not rule. The Portuguese State had thus discharged its positive obligation to protect the applicant's rights to respect for her private life and the confidentiality of her correspondence. It followed that there had been no violation of Article 8 of the Convention.

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.