



## Child's return to father in Japan under the Hague Convention did not breach mother's right to respect for family life

In today's **Chamber** judgment<sup>1</sup> in the case of [Verhoeven v. France](#) (application no. 19664/20) the European Court of Human Rights held, by six votes to one, that there had been:

**no violation of Article 8 (right to respect for family life) of the European Convention on Human Rights.**

The case concerned the decision of the French courts to order the return of the applicant's son to Japan under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. The applicant, a French national, had married a Japanese national in France and subsequently moved to Japan with him, where the couple had had a child in 2015. The applicant had returned to France with the child in 2017 and filed a petition for divorce.

On 2 October 2017 the child's father had lodged an application for assistance in securing the return of the child with Japan's Minister of Foreign Affairs.

Examining the decision-making process applied by the judicial authorities, the Court observed that the domestic courts had not ordered the child's return automatically or mechanically but had duly taken into account the applicant's claims in fair and adversarial proceedings. It further noted that the courts had given reasoned decisions that had sought to serve the child's best interests and had ruled out any grave risk, be it of alleged violence or of severed ties with the applicant.

The Court thus found that there had been no violation of Article 8.

### Principal facts

The applicant, Marine Verhoeven, is a French national who was born in 1988 and lives in Salles d'Aude (France).

In 2007 Ms Verhoeven married a Japanese national, K., in France and subsequently moved to Japan with him. The couple had a child, L., in 2015. Ms Verhoeven returned to France with the child in July 2017, stated her intention to remain in the country and filed a petition for divorce.

On 2 October 2017 K. lodged an application for assistance in securing the return of the child with Japan's Minister of Foreign Affairs. On 20 November 2017 Japan's Central Authority requested that the French Ministry of Justice, in its capacity as the Central Authority for the application of the Hague Convention, order L.'s return. To that end, on 8 January 2018 the public prosecutor at the Montpellier *tribunal de grande instance* summoned Ms Verhoeven to appear before the court.

In a decision of 8 February 2018 the *tribunal de grande instance* found that the child's removal had been wrongful, within the meaning of Article 3 of the Hague Convention, as the parents had jointly exercised parental authority until the journey to France.

Ms Verhoeven appealed against that decision on 20 February 2018.

In a judgment of 12 July 2018 the Montpellier Court of Appeal upheld the decision in its entirety.

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](http://www.coe.int/t/dghl/monitoring/execution).

Ms Verhoeven lodged an appeal on points of law. On 22 November 2018 the Court of Cassation quashed the judgment in its entirety and remitted the case to the Toulouse Court of Appeal.

In a judgment of 4 July 2019 the Toulouse Court of Appeal upheld the decision of 8 February 2018 and ordered L.'s return. Like the first-instance court, it found no clear evidence of the father's unambiguous acquiescence to the applicant's remaining in France with the child. Allegations that the father was a danger to the child were unfounded, it further held, and the alleged risk that ties between the child and the applicant would be severed on account of Japanese parental-rights and other legislation had not been demonstrated.

Ms Verhoeven lodged an appeal on points of law, which the Court of Cassation dismissed on 21 November 2019.

On 26 December 2019 the public prosecutor notified the applicant of an order to return the child to his father. The order was executed that day in the presence of the police and K.'s lawyer.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for family life), the applicant submitted that the decision of the French courts to order her son's return to Japan had breached her rights.

The application was lodged with the European Court of Human Rights on 13 March 2020.

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

Georges **Ravarani** (Luxembourg), *President*,  
Lado **Chanturia** (Georgia),  
Carlo **Ranzoni** (Liechtenstein),  
Mārtiņš **Mits** (Latvia),  
Stéphanie **Mourou-Vikström** (Monaco),  
Mattias **Guyomar** (France),  
Kateřina **Šimáčková** (the Czech Republic),

and also Martina **Keller**, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The Court noted that the return decisions issued by the French authorities had been based on the relevant Hague Convention – a treaty incorporated into French law – and aimed to protect the rights and freedoms of both K., the child's father, and L., the child himself. The interference in issue had been in accordance with the law and pursued a legitimate aim.

The Court successively examined the domestic courts' decisions as to whether the father had acquiesced to the child's retention in France, whether the child's best interests had been served, and particularly whether all "grave risks" had been ruled out in relation to the father's alleged violence, the child's young age and the possible deprivation of a relationship with his mother.

First, the Court considered the applicant's claim that K. had subsequently acquiesced to the retention of the child in France and that the Hague Convention thus did not apply. It noted that the domestic courts had effectively examined the matter and provided extensive reasoning in their decisions. Moreover, the applicant had stopped relying on this ground to argue that the French authorities should have refused to order L.'s return to Japan.

Second, the Court turned to the applicant's claim that the child was in danger with his father because of the father's alleged violence toward the applicant in Japan, with the risk that the child

might become an indirect victim of such treatment. It observed that the domestic courts had all emphasised that the applicant had not provided any evidence of domestic violence except for one episode, which could not have exposed the child to any form of psychological harm. The domestic courts had thus given sufficient reasons for their return decision when assessing the alleged risk of L.'s being exposed to physical harm. They had also been at pains to note that no violence or corporal punishment against the child had been alleged.

The Court thus concluded that the domestic courts had examined the applicant's claim effectively while keeping the child's best interests in mind.

Third, the Court considered the argument that separating the child from the applicant would amount to psychological harm. It noted that the domestic courts had effectively examined the risk of trauma to the child if he were to be returned to Japan. They had found that L.'s integration in France had not been an impediment to his return and that the very purpose of the return had been to restore the child's peaceful existence with his father and father's family, from whom he had been abruptly separated. Furthermore, the domestic courts had explicitly refused to grant an expert assessment of the matter, holding that nothing in the case file had suggested that one would be useful or necessary, as L. had faced no specific danger by returning to his other parent in Japan.

Lastly, the Court examined the decision-making process applied in relation to the applicant's argument that there was a risk of all ties between L. and herself being severed because, under Japanese law, she would be deprived of her parental rights and ability to reside in the country, in particular following a divorce. The Court noted that the Court of Cassation, in its first decision, had quashed the Court of Appeal's judgment on the grounds that the lower court had not examined whether the application of Japanese law would deprive the applicant of her parental rights and lead to a severance of all ties between mother and child. The Court of Appeal to which the case had been remitted had subsequently pointed out that Japan had ratified the Hague Convention, that Japanese law thus provided for mediation procedures and that it had not been possible to predict the legal position that might arise as a result of divorce proceedings in Japan. It had further stated that the applicant had not shown that she had been unable to reside in Japan, whereas the father had made "various friendly proposals that would [have allowed] her to live there with the child". Following a fresh appeal on points of law, the Court of Cassation had delivered a second decision finding that the lower court to which the case had been remitted had performed the appropriate examination, despite the allegations to the contrary. The Court of Cassation had also specifically pointed out that France had accepted the ratification of the Hague Convention without reservations and that, to assess whether there was a grave risk of harm, its authorities could thus rely on information from Japan's Central Authority or any other competent authority of the State of the child's habitual residence.

The Court acknowledged the international attention surrounding access rights in Japan when one of the parents was a non-Japanese national. It then found that the French courts had given sufficient reasons for their return decision when assessing the "grave risk" for L. that all ties between the applicant and the child might be severed.

The Court thus found that the domestic courts had not ordered the child's return automatically or mechanically but had duly taken into account the applicant's claims in fair and adversarial proceedings, giving reasoned decisions that sought to serve the child's best interests.

There had therefore been no violation of Article 8.

## Separate opinion

Judge **Mits** expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR CEDH](https://twitter.com/ECHR_CEDH).

### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: + 33 3 90 21 42 08

**We are happy to receive journalists' enquiries via either email or telephone.**

**Denis Lambert** (tel.: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

**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.