

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 46719/18
Iolanda Maria DE ALMEIDA SEMIÃO
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 6 September 2022 as a Committee composed of:

Armen Harutyunyan*, President,*
Jolien Schukking*,*
Ana Maria Guerra Martins*, judges,*
and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 46719/18) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 September 2018 by a Portuguese national, Ms Iolanda Maria de Almeida Semião, who was born in 1970 and lives in Seixal ("the applicant");

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns criminal proceedings conducted against the applicant for having repeatedly obstructed the rights of contact granted by the Barreiro Family Court to L., her son's father, after their divorce.

2. By a judgment of the Barreiro District Court of 29 September 2017, the applicant was convicted of child abduction (*subtração de menores*) and sentenced to one year's imprisonment suspended on condition that she attend courses on parental alienation. She was also ordered to pay 2,000 euros to the father of her child in respect of non-pecuniary damage. The Barreiro District Court held that it had been proved that the applicant had unjustifiably obstructed the father's rights of contact with his son forty-one times between 4 September 2010 and 23 February 2013.

3. On 22 March 2018, following an appeal from the applicant, the Court of Appeal upheld the judgment.

4. Under Article 6 § 1 of the Convention, the applicant complained of the unfairness of the proceedings brought against her for child abduction. In particular, she submitted that the Family Court's analysis of the case had been inadequate and at variance with the outcome of the criminal proceedings (see paragraph 2 above). Under Article 6 § 1 of the Convention, the applicant also complained of the excessive length of the proceedings.

5. Relying on Article 8 of the Convention, the applicant stated that she and her son had been subjected to secondary victimisation because of countless inquiries, interviews and court hearings.

THE COURT'S ASSESSMENT

A. Complaint under Article 6 § 1 of the Convention (fairness of the proceedings)

6. The Court reiterates that it is not a court of "fourth instance" and that it does not make findings of fact or examine the accuracy of the findings of the domestic authorities. It may challenge those findings only if they can be regarded as arbitrary or manifestly unreasonable (see, for example, *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, ECHR 2015). It is not appropriate for the Court to rule on whether the available evidence was sufficient to convict the applicant and thus to substitute its own assessment of the facts and the evidence for that of the domestic courts. The Court's only concern is to examine whether the proceedings have been conducted fairly and to ensure that in the given case they were compatible with the Convention, while also taking into account the specific circumstances and the nature and complexity of the case (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 49, 18 December 2018).

7. Furthermore, there is no right under Article 6 of the Convention to a particular outcome of criminal proceedings (see *Kart v. Turkey* [GC], no. 8917/05, § 68, ECHR 2009).

8. In the present case, the Court observes that the applicant was able to make submissions concerning the charges against her before the domestic courts, which took those submissions into account in reaching decisions that do not appear arbitrary or manifestly unreasonable, and there is nothing to suggest that the proceedings were otherwise unfair.

9. Accordingly, these complaints are manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Complaint under Article 6 § 1 of the Convention (length of the proceedings)

10. The Court observes that the applicant did not apply for an order to expedite the criminal proceedings as provided by Articles 108 and 109 of the Code of Criminal Procedure, although such an application constitutes an effective remedy under Article 35 § 1 of the Convention, enabling a person to ask the judge to take the necessary steps, such as fixing a date for the hearing or closing the judicial investigation (see *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX). Furthermore, the applicant failed to bring a non-contractual liability action against the State (see *Valada Matos das Neves v. Portugal*, no. 73798/13, § 106, 29 October 2015).

11. Accordingly, this complaint must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

C. Complaint under Article 8 of the Convention

12. Regarding the applicant's allegations of secondary victimisation (see paragraph 5 above), the Court reiterates that the national authorities have positive obligations under Article 8 of the Convention to take all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (see *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII).

13. In the present case, the Court notes that it was the applicant herself who gave rise to the majority of the procedural steps, either by lodging actions, interlocutory applications and complaints, or by failing to comply with the orders determining her parental responsibilities (see paragraph 2 above).

14. There is no appearance of a violation of the applicant's rights with regard to the State's positive or negative obligations under Article 8 of the Convention.

15. Accordingly, this complaint must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

16. As to the applicant's son, he is not an applicant in the present case, the complaint in this regard is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Ilse Freiwirth Deputy Registrar	Armen Harutyunyan President