



## No violation of the Convention by the Portuguese civil courts in decisions concerning a book about Madeleine McCann's parents

In today's Chamber judgment<sup>1</sup> in the case of [McCann and Healy v. Portugal](#) (application no. 57195/17) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned statements made by a former detective inspector – in a book, a documentary and a newspaper interview – about the applicants' alleged involvement in the disappearance of their daughter, Madeleine McCann, who went missing on 3 May 2007 in southern Portugal. Before the Court, the applicants alleged that there had been a violation of their right to reputation and to their right to be presumed innocent.

The Court considered that, even assuming that the applicants' reputation had been damaged, this was not on account of the argument put forward by the book's author but rather as a result of the suspicions expressed against them, which had led to their being placed under investigation in the course of the criminal investigation (the prosecutor's office decided to take no further action in July 2008) and had led to intense media attention and much controversy. The information had thus been brought to the public's attention in some detail even before the investigation file was made available to the media and the book in question was published. It followed that the national authorities had not failed in their positive obligation to protect the applicants' right to respect for their private life.

The Court also considered that in the Supreme Court's judgments of January and March 2017 – concerning the civil claims lodged by the applicants – it had not made comments implying any guilt on the part of the applicants or even suggesting suspicions against them with regard to the circumstances in which their daughter had disappeared. The applicants' complaint concerning their right to be presumed innocent was thus manifestly ill-founded.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

### Principal facts

The applicants, Gerald Patrick McCann and Kate Marie Healy, are British nationals who were both born in 1968. They live in Leicestershire, in the United Kingdom.

In May 2007, while the applicants were on holiday with their three children in southern Portugal, their daughter Madeleine McCann, then aged three, disappeared. On the following day an investigation was opened by the prosecutor's office, whose lines of enquiry focused on a probable abduction. The investigation was entrusted to Inspector G.A. from the criminal investigation department.

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).

Biological and blood samples were subsequently detected by British sniffer dogs inside the holiday apartment and in the trunk of a vehicle that the applicants had rented a few days after their daughter's disappearance. As a result, the parents were placed under investigation in September 2007. They were suspected of having hidden their daughter's body following her death, possibly as a result of an accident inside the apartment, and of having staged an abduction. Those proceedings were discontinued in July 2008.

In the meantime, in October 2007, Inspector G.A. was removed from the investigation. He retired in July 2008. In the same month he published a book in which he alleged, among other claims, as follows: "Madeleine McCann died inside the apartment; an abduction was staged; death could have occurred following a tragic accident; evidence proved negligence on the part of the parents with regard to the care and safety of the children". G.A. also gave a newspaper interview in which he repeated his theory. The book was subsequently adapted as a documentary programme, which was made commercially available from April 2009.

In consequence, the applicants brought interlocutory civil proceedings in Portugal, seeking an injunction to have the book and documentary banned, and the seizure of G.A.'s assets.

They then lodged civil actions against the author of the book (G.A.), the publisher, the production company which had made and marketed the documentary, and the television channel which had broadcast it. These were dismissed by the Portuguese courts. In particular, the Supreme Court delivered two judgments, on 31 January and 21 March 2017 respectively, in which it considered that there had been no unlawful interference with the applicants' right to their reputation and that the principle of the presumption of innocence was not relevant to the case. It also noted that the statements made by G.A. had not been new, since they were set out in a police report of 10 September 2007, itself contained in the investigation file, to which the press had been given access. It further held that these statements, which had thus already been widely commented and discussed, represented a subject of public interest, and that the applicants, who had deliberately sought media coverage, had to be regarded as "public figures", who were as a result inevitably subjected to more attentive scrutiny of their every word and deed.

## Complaints, procedure and composition of the Court

The applicants relied on Article 6 (right to a fair hearing), Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) of the Convention.

Firstly, they alleged that the statements made by G.A. had damaged their reputation, their good name and their right to be presumed innocent, and complained that they had been unsuccessful in the proceedings before the national civil courts. The Court decided to examine this complaint under Article 8 of the Convention, and more specifically in terms of the positive obligations arising from that provision.

Secondly, they alleged that the reasoning contained in the Supreme Court's decisions of 31 January and 21 March 2017 at the close of their civil claims had breached their right to be presumed innocent. The Court decided to examine this complaint under Article 6 § 2 (presumption of innocence).

The application was lodged with the European Court of Human Rights on 28 July 2017.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,  
Tim **Eicke** (the United Kingdom),  
Yonko **Grozev** (Bulgaria),  
Armen **Harutyunyan** (Armenia),  
Pere **Pastor Vilanova** (Andorra),

Jolien Schukking (the Netherlands),  
Ana Maria Guerra Martins (Portugal),

and also Ilse Freiwirth, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The Court noted that the contested statements made by G.A. in the book, documentary programme and interview concerned the applicants' alleged involvement in hiding their daughter's body, based on an assumption that they had staged an abduction and on a presumption of negligence towards her. In the Court's view, these statements were sufficiently serious to render Article 8 of the Convention applicable.

It further noted that the book, the documentary based on it and the interview given by G.A. to a daily newspaper concerned a debate of public interest. It considered that the contested statements constituted value judgments which had a sufficient "factual basis". Indeed, the elements on which the scenario advanced by G.A. was based were those which had been gathered during the investigation and had been brought to the public's attention. Additionally, this theory had been entertained in the context of the criminal investigation and had even led to the applicants being placed under investigation on 7 September 2007. Furthermore, the criminal case had attracted extensive public interest both nationally and internationally and had given rise to considerable discussion and controversy. As the Lisbon Court of Appeal and the Supreme Court had noted, the disputed statements had undeniably formed part of a debate of public interest, and G.A.'s theory had accordingly been one of several opinions.

It also noted that the criminal case had been discontinued by the prosecutor's office on 21 July 2008. In this connection, the Court held that, had the book been published before the decision by the prosecutor's office to discontinue the proceedings, the statements in question could potentially have undermined the applicants' right to be presumed innocent, guaranteed by Article 6 § 2 of the Convention, by prejudging that entity's assessment of the facts. Given that the statements were in fact made after the case had been discontinued, it had been the applicants' reputation, guaranteed by Article 8 of the Convention, and the public's perception of them, which had been at stake.

In the present case, the Court nevertheless considered that, even supposing that the applicants' reputation had been damaged, this had not been on account of the hypothesis put forward by G.A., but as a result of the suspicions expressed against them, which had led to their being placed under investigation in the course of the proceedings and had given rise to extensive media attention and much controversy. The information had been thus brought to the public's attention in some detail even before the investigation file had been made available to the media and the book in question had been published.

With regard to the applicant's allegations of bad faith on G.A.'s part, the Court noted that the book had been published three days after the proceedings had been discontinued, which implied that it had been written, then printed, while the investigation had still been underway. The Court held that, in choosing to make the book available for sale three days after it had been decided to discontinue the case, G.A. could, as a matter of prudence, have added a note informing the reader about the outcome of the proceedings. However, the failure to insert any such note could not, in itself, prove bad faith on his part. The Court noted that the documentary did refer to the fact that the case had been discontinued.

Furthermore, the applicants had continued their media campaign after the book's publication. In particular, they had cooperated in a documentary programme about their daughter's disappearance

and continued to give interviews to the international media. While the Court understood that the book's publication had undeniably caused anger, anguish and distress to the applicants, it did not appear that the book, or the broadcasting of the documentary, had had a serious impact on the applicants' social relations or on their legitimate and ongoing attempts to find their daughter.

The Court also specified that while, admittedly, the statements in question were based on G.A.'s in-depth knowledge of the case file as a result of his role, there was no doubt that their content had already been known to the public, given the extensive media coverage of the case and the fact that the investigation file had been subsequently made available to the media after the investigation had been closed. For that reason, it held that the contested statements were merely the expression of G.A.'s interpretation of a high-profile case which had already been widely discussed. In addition, it did not appear that G.A. had been motivated by personal animosity towards the applicants.

Lastly, the Court shared the Government's opinion as to the chilling effect that a ruling against G.A. would have had, in the present case, for freedom of expression with regard to matters of public interest. It further noted that, although the Supreme Court had been assessing the case at final instance, it had carried out a detailed analysis of the balance to be struck between the applicants' right to respect for their private life and G.A.'s right to freedom of expression, assessing them in the light of the criteria identified in its case-law and referring at length to the Court's case-law. Having regard to the discretion ("margin of appreciation") afforded to the national authorities in the present case, the Court saw no strong reason to substitute its own view for that of the Supreme Court. It could not therefore be stated that the national authorities had failed in their positive obligation to protect the applicants' right to respect for their private life within the meaning of Article 8 of the Convention. It followed that there had been no violation of Article 8 of the Convention.

#### Article 6 § 2

The civil proceedings in this case related to two claims lodged by the applicants. The first claim had sought compensation on account of the alleged damage to their reputation and their right to the presumption of innocence, resulting, in their view, from the statements made about them by G.A. The second had sought an injunction banning the sale of the contested book and documentary. The civil proceedings had not therefore related to a "criminal charge" against the applicants. In addition, they had not been linked to the criminal proceedings opened after the disappearance of their daughter in such a way as to fall within the scope of Article 6 § 2 of the Convention.

As a subsidiary consideration, even supposing that Article 6 § 2 of the Convention was applicable to the civil proceedings in issue in this case, it did not appear that, in its judgments of 31 January 2017 and 27 March 2017, the Supreme Court had made comments implying any guilt on the part of the applicants or even suggesting suspicions against them with regard to the circumstances in which their daughter had disappeared. In consequence, the Court concluded that the applicants' complaint under Article 6 § 2 on account of the reasoning in the Supreme Court's judgments was manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and, as such, inadmissible.

*The judgment is available only in French.*

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