



Return of child to mother in France without correct procedure was a violation of the Convention

In today's **Chamber** judgment¹ in the case of [F.D. and H.C. v. Portugal](#) (application no. 18737/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the enforcement of a seek-and-find order issued by the French authorities in the context of a custody dispute in respect of H.C. – who had been brought by his father, F.D., to Portugal from France – and his subsequent return to his mother, O.

The Court found in particular that neither father nor son had been heard by a court in Portugal before the decision to return the child had been taken, and the alleged risk to the child of ill-treatment had not been examined, denying them their procedural rights. The Portuguese authorities had ignored F.D.'s rights as the father, and ignored whether the child's return had been in his best interests. The Court also found that the authorities had failed to protect H.C. when he had been taken and kept at a police station while his father had been arrested. Overall, the decision had not been "necessary in a democratic society".

Principal facts

The applicants, F.D. and H.C., are, respectively, a French and Portuguese national and a French national. They were born in 1970 and 2010 and live in Serpins (Portugal) and France respectively. They are father and son.

Following the separation of F.D. from H.C.'s mother, O., in October 2013 the Family Court of Privas in France granted custody of H.C. jointly to F.D. and O., with F.D. having contact rights, but the child's primary residence being with his mother.

Several times in the subsequent couple of years H.C. applied to the Privas Family Court for custody or to have H.C.'s primary residence to be with him, arguing that H.C. was not being properly educated and accusing O. of being violent, alleging that the child was at risk. He was unsuccessful.

On 6 October 2017 when collecting his son from school, F.D. noticed that he had an injury.

On 8 October 2017 F.D. failed to return the child, who he took to Portugal, to O. The child was reported missing. On 11 December 2017 the Privas Family Court granted exclusive custody to O. and suspended F.D.'s contact rights, noting that it had not been established that O. had caused H.C.'s injuries.

On 14 November 2017 O. made a request to the French authorities for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction. This request was sent to the Central Authority designated for the purpose in Portugal, the *Direcção-Geral de Reinserção e Serviços Prisionais*.

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.

A European arrest warrant for F.D. was also issued in January 2018, which was followed by a seek-and-find request through the Schengen Information System being issued for H.C.

In Portugal meanwhile F.D. applied for sole custody with the Family Court of Matosinhos. However, on 15 February 2018 the Portuguese police executed the seek-and-find order, taking H.C. out of school, and keeping him at a police station for several hours. At the same time F.D. was arrested. Later that same day, at the public prosecutor's office in Matosinhos, H.C. was handed over to O. in person. The prosecutor noted the decision of the French courts to grant her custody. In March 2018 the Matosinhos Family Court rejected F.D.'s application for sole custody.

Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy), Mr F.D. complained, in particular, that the proceedings brought against him in Portugal at the request of the French authorities had been unfair, and of H.C.'s return to O. without an assessment of the risk to the child.

The application was lodged with the European Court of Human Rights on 16 April 2018.

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

Lado **Chanturia** (Georgia), *President*,
 Jolien **Schukking** (the Netherlands),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Ana Maria **Guerra Martins** (Portugal),
 Anne Louise **Bormann** (Denmark),
 Sebastian **Rădulețu** (Romania),
 András **Jakab** (Austria),

and also Simeon Petrovski, *Deputy Section Registrar*

Decision of the Court

The Court chose to examine the complaints solely under Article 8. It stated that the return of the child to his mother by the Portuguese authorities had constituted an interference with the applicants' rights under that Article. As regards its accordance with the law, pursuant to Articles 2 and 7 of the Hague Convention the Portuguese authorities had been obliged to take all appropriate measures to ascertain the child's whereabouts. Indeed, despite their having located the child as of at least 15 February 2018 and therefore facing no obstacle to fulfilling their Hague Convention commitments, they had not done so. There had been a lack of action, communication and coordination on the part of the Portuguese authorities in response to the request from the French authorities.

Although the Portuguese Government argued that the return of the child had been based on the provisions of the Brussels II *bis* Regulation, the Court saw no evidence of that. The public prosecutor had ordered the return of the child without any court proceedings. The lawfulness was thus questionable. The Court however was satisfied that the decision to return the child had had a legitimate aim, in this case the protection of O.'s and H.C.'s rights.

In any case the Court held that the interference had not been necessary in a democratic society. In particular, it referred to the fact that neither applicant had been heard by a court, and the risk to the child had not been examined, denying them their procedural rights. Furthermore, that had been aggravated by F.D.'s not having had knowledge of the Portuguese prosecutor's decision; a declaration that the judgment of the Privas Court had been enforceable in Portugal should have been made by a court and therefore it would have been open to appeal. The Portuguese authorities

had ignored F.D.'s rights as the father, and ignored whether the child's return had been in his best interests. As regards the seek-and-find order, the Court reiterated that coercive measures against children were not desirable. Concerning the period following F.D.'s arrest, the Portuguese authorities had failed to comply with their obligations to protect H.C., who had been only seven years old at the time, when he was kept in a police station.

Overall, there had been a violation of Article 8 in respect of both applicants.

Just satisfaction (Article 41)

The Court held that Portugal was to pay the applicants 10,000 euros (EUR) each in respect of non-pecuniary damage, and jointly EUR 6,000 in respect of costs and expenses.

The judgment is available only in English.

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. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on X (Twitter) [@ECHR CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

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

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

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

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

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

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.