



Brazilian national removed from French Guiana had no chance to challenge removal order

In today's Grand Chamber judgment in the case of [de Souza Ribeiro v. France](#) (application no. 22689/07), which is final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 13 (right to an effective remedy) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the expulsion of a Brazilian national living in French Guiana (an overseas region and *département* of France) with no possibility for him to challenge the lawfulness of the removal measure before it was enforced.

The Court considered that the manner in which the applicant's removal was effected had been extremely rapid, even perfunctory, leaving him no chance, before he was deported, of having the lawfulness of the removal order examined sufficiently thoroughly by a national authority offering the requisite procedural guarantees and without the urgent-applications judge having ruled on his application to have enforcement of the removal order suspended. It pointed out that while States were given some discretion as to the manner in which they conformed to their obligations under Article 13, that should not result in people being denied access to the minimum procedural safeguards needed to protect them against arbitrary expulsion.

Principal facts

The applicant, Luan de Souza Ribeiro, is a Brazilian national who was born in 1988 and lives in Remire Montjoly (French Guiana). He lived in French Guiana with his family from the age of seven until January 2007. In 2006 he was sentenced to two months' imprisonment, suspended, and two years' probation, for possession of drugs.

Mr de Souza Ribeiro was stopped at a road check on 25 January 2007, and when he was unable to show proof that his presence on French soil was legal, he was arrested and an administrative removal order and an administrative detention order were issued against him. At 3.11 p.m. the next day he applied to the Cayenne Administrative Court for judicial review of the removal order, alleging in particular that it was in breach of the Code regulating the entry and residence of aliens and asylum-seekers (CESEDA)² and also relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights. At the same time he lodged an urgent application for the court to suspend the enforcement of the removal order – under the special regime applicable in the Overseas Territories an appeal to the administrative courts does not have automatic suspensive effect³. In his application Mr de Souza Ribeiro referred to the

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here:

www.coe.int/t/dghl/monitoring/execution

² Article 511-4.2.

³ by virtue of the special provisions derogating from ordinary law (CESEDA) adopted "in order to allow for the particular situation and the lasting difficulties encountered with regard to the international movement of people in the *département* of French Guiana" (decision no. 2003-467 of the Constitutional Council of 13 March 2003). French law provides for similar exceptions in another six overseas *départements* and regions and communities

urgent need to suspend enforcement of the removal order and expressed serious doubts about its lawfulness.

At 4 p.m. that same day, barely 50 minutes after having lodged his appeal with the Cayenne Administrative Court, Mr de Souza Ribeiro was removed to Brazil. The same evening the court declared his application for judicial review devoid of purpose as he had already been deported.

In August 2007 Mr de Souza Ribeiro returned to French Guiana illegally. On 4 October 2007 the Cayenne Administrative Court examined his earlier request for judicial review of the initial removal order – which was still pending on the merits – and, on 18 October 2007, it declared the order illegal and set it aside. The court took into account the certificates produced by the applicant showing that he had attended school in French Guiana, and the fact that his mother had resident status. It found that he met the conditions laid down in the CESEDA that should have made him immune to expulsion.

In June 2009 the applicant was issued with a “visitor’s” residence permit, which was renewed until 2012. He now has a renewable residence permit for “private and family life”.

Complaints, procedure and composition of the Court

Mr de Souza Ribeiro alleged that his removal to Brazil had amounted to unjustified interference with his right, under Article 8, to respect for his private and family life. Relying on Article 13 (right to an effective remedy) he complained that it had been impossible for him to challenge the lawfulness of the removal order before it had been enforced.

The application was lodged with the European Court of Human Rights on 22 May 2007. In its Chamber judgment of 30 June 2011 the Court found, by a majority, that there had been no violation of Article 13 in conjunction with Article 8. The Chamber found that although the appeal the applicant had lodged with the administrative court had had no suspensive effect and had not prevented his expulsion, it had eventually resulted in his being issued with a residence permit. It further noted that the expulsion had not lastingly disrupted the applicant’s family life, as he had subsequently been able to make his way back to French Guiana, albeit illegally, and to get a residence permit.

On 27 September 2011 the applicant requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber⁴) and on 28 November 2011 the panel of the Grand Chamber accepted that request. A [Grand Chamber hearing](#) took place in Strasburg on 21 March 2012.

The *Groupe d’information et de soutien des immigrés* (GISTI – Immigrants Information and Support Group), the *Ligue française des droits de l’homme* (LDH – French Human Rights league) and the *Comité inter-mouvements auprès des évacués* (CIMADE – evacuees support group) were given leave to submit joint third-party observations (Article 36 § 2).

(Guadeloupe, Mayotte, Wallis and Futuna, Saint-Barthelemy, Saint-Martin and French Polynesia) and New Caledonia.

⁴ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Françoise **Tulkens** (Belgium),
Nina **Vajić** (Croatia),
Lech **Garlicki** (Poland),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
David Thór **Björgvinsson** (Iceland),
Ineta **Ziemele** (Latvia),
Päivi **Hirvelä** (Finland),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Angelika **Nußberger** (Germany),
Paulo **Pinto de Albuquerque** (Portugal),
Erik **Møse** (Norway),
André **Potocki** (France),

and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Article 13 in conjunction with Article 8

Article 13 guarantees the existence of an effective remedy at the national level, in law and in practice, to enforce the Convention rights and freedoms. The Court pointed out that the States had discretion to decide (margin of appreciation) as to the manner in which they honoured their obligations under Article 13, but that in cases where an alien challenged a removal order alleging interference with his private and family life, it was not necessary for the remedy to have automatic suspensive effect in order for it to be effective, unlike in cases of removal orders challenged on the basis of a risk of inhuman or degrading treatment contrary to Article 3 or a risk of infringement of the right to life (Article 2)⁵.

The Court emphasised that its sole concern, in keeping with the principle of subsidiarity, was to examine the effectiveness of the domestic procedures and ensure that they respected human rights, which in Mr de Souza Ribeiro's case meant determining whether he had had the benefit of effective safeguards to protect him against the execution of a removal order allegedly breaching Article 8.

The Court noted first of all that the applicant had been removed from French Guiana less than 36 hours after his arrest. It noted the cursory nature of the examination of the applicant's situation by the authorities, as demonstrated by the succinct and stereotyped reasoning given and the fact that notice of the order was served on the applicant immediately after his arrest. Also, at the time of his arrest Mr de Souza was protected under French law against any form of expulsion⁶, as subsequently confirmed by the Cayenne Administrative Court when it declared the removal order illegal. Like the Chamber, the Grand Chamber therefore considered that at the time of the applicant's removal to Brazil a serious question arose as to the compatibility of his removal with

⁵ The requirement of a remedy with automatic suspensive effect has also been confirmed by the Court in respect of complaints brought under Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) – see for example [Hirsi Jamaa and Others v. Italy](#) of 23.02.2012.

⁶ According to Article L. 511-4 of the CESEDA, aliens who can prove by any means that they have been habitually resident in France at least since the age of thirteen shall not be required to leave French territory, or made the subject of a removal order.

Article 8 of the Convention, and that he had an “arguable” complaint in that regard for the purposes of Article 13.

The Court then examined the possibilities open to Mr de Souza Ribeiro to challenge the removal order. He had been able to apply to the Cayenne Administrative Court, which fulfilled the requirements of independence, impartiality and competence to examine his complaint, in which he presented detailed proof that most of his private and family life had been spent in French Guiana. The Court was obliged to observe, however, that the fact that Mr de Souza Ribeiro had been deported to Brazil 50 minutes after having applied to the administrative court had effectively ruled out all possibility of any serious examination of his legal arguments. Also, while the urgent proceedings could in theory have been an opportunity for the court to examine the applicant’s arguments and, if necessary, stay the execution of the removal order, in actual fact the urgent-applications judge had been powerless to do anything but declare the application devoid of purpose, because of the haste with which the removal order had been executed. Mr de Souza Ribeiro had thus been deported solely on the basis of the decision of the administrative authority. While the Court was aware of the importance of swift access to a remedy, speed should not go so far as to constitute an obstacle or unjustified hindrance to making use of it, or take priority over its practical effectiveness.

In the light of the above the Court considered that the manner in which the applicant’s removal had been effected was extremely rapid, even perfunctory, depriving him of any chance of having the lawfulness of the removal order examined sufficiently thoroughly by a national authority offering the requisite procedural guarantees.

In addition, while aware of the need for States to combat illegal immigration, the Court could not subscribe to the Government’s argument that the geographical location of French Guiana and the strong pressure of immigration there justified the exception to the ordinary legislation and the manner in which it was applied there. The discretion given to the States as to the manner in which they conformed to their obligations under Article 13 should not result in individuals being denied the minimum procedural safeguards needed to protect them against arbitrary expulsion. The Contracting States had a duty to organise their judicial systems in such a way that their courts could meet the requirements of this provision.

The Court found that the applicant had not had access in practice to an effective remedy when he was about to be deported, in violation of Article 13 in conjunction with Article 8, a situation which was not remedied by the eventual issue of a residence permit.

Just satisfaction (Article 41)

The court held that France was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 12,000 in respect of costs and expenses.

Separate opinions

Judges Pinto de Albuquerque and Vučinić expressed a joint concurring opinion. Judge Kalaydjieva expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available in English and 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.