



## International child abduction: interpretation of Hague Convention by Swiss courts with regard to a child choosing her place of residence did not breach the Convention

In today's Chamber judgment in the case of [Rouiller v. Switzerland](#) (application no. 3592/08), which is not final<sup>1</sup>, 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 the removal of two children from France to Switzerland by their mother, who had been granted residence after her divorce. At first instance a court had taken the view that because of the short distance between the old and new homes there was no real "international child abduction" for the purposes of the relevant Hague Convention. That court had also taken note of a statement by one of the children that she wanted to live in Switzerland and refused to return to France.

However, the Court, like the Cantonal and Federal Courts which had ruled on appeal, found that the children's removal was an "wrongful removal" and that the Hague Convention did not grant a child the freedom to choose where he or she wished to live. The reasons given by one of the children for wanting to remain in Switzerland did not suffice to justify the application of one of the exceptions to a child's return under the Hague Convention – exceptions which had to be interpreted strictly.

### Principal facts

The applicant, Rejane Rouiller, is a Swiss national who was born in 1964 and lives in Binningen (Switzerland) in the Canton of Basle-Rural. She lived with her French husband in Saint-Louis in France, near the Swiss border. They had two children, F. and M., born in 1993 and 1999. They got divorced in 2000 and the local court noted that it had been agreed between them that parental authority in respect of the children would be exercised jointly by both parents. It further decided that the children would principally live with their mother and that the father would have a right of access.

Both parties appealed against the decision: the father challenged the decision establishing the mother's home as the children's place of residence, and the mother sought exclusive parental authority. The Court of Appeal dismissed both appeals.

In May 2006 Ms Rouiller left France and settled in Binningen, in Switzerland, about 7 km from the father's home. In May 2007 the father applied to the court for the return of his children to France, invoking the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980.

On 13 June 2007 the Arlesheim District Court (in Switzerland), after hearing the two children, dismissed the application for their return to France. In the court's view it was not a child abduction

<sup>1</sup> 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)

as such, but rather a breach by Ms Rouiller of the conditions of her residence right, because she had disregarded her ex-husband's firm refusal to allow the children's removal. It further found that, as the old and new homes were not far apart, there had never been any real "abduction". The court took note of a statement by child F. that she wanted to live in Switzerland and refused to return to France.

The father appealed to the Cantonal Court of Basle-Rural, which, in a decision of 4 September 2007, allowed his appeal and ordered the return of the children to France. It took the view that it could not be inferred from the statement of child F. that she loathed or opposed the idea of returning to France. The reasons given by the child did not suffice to justify applying an exception to return under the Hague Convention. The Cantonal Court found that it was not necessary to enter into considerations concerning the children's best interests, which were not relevant in the circumstances, to refuse their return to France.

Ms Rouiller appealed against that decision to the Federal Court, arguing that it was in the children's best interests for them to remain with her in Switzerland. The Federal Court dismissed the appeal and ordered the children's return to France. It took the view that this was a case of international child abduction within the meaning of the Hague Convention. It found the record of the interview with the children to be sufficiently detailed and precise as to the reasons why child F. preferred to remain in Switzerland. In the Federal Court's view it was quite understandable for child F. to prefer to stay in Switzerland after spending two years in Binningen. However, it could not be claimed in the light of the interview record that the child was really against the idea of returning to France. The court observed that opposition for the purposes of the Hague Convention had to be based on comprehensible, specific and strongly asserted grounds.

From 25 January 2008 onwards Ms Rouiller lived in Saint-Louis (France) with her children. Then following a judgment of 13 July 2009 of the Mulhouse *tribunal de grande instance*, which decided that the children should go to school in Switzerland, Ms Rouiller returned to live with her children in Binningen (Switzerland).

## Complaints, procedure and composition of the Court

The applicant complained that the return of her children to France, as ordered by the Swiss courts, constituted a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. Her children had lived with her in Switzerland for almost two years and she claimed that the Swiss courts had been wrong to apply the Hague Convention on the Civil Aspects of International Child Abduction in ordering their return to France. She added that the children's opinion had not been sufficiently taken into account.

The application was lodged with the European Court of Human Rights on 21 January 2008.

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

Guido **Raimondi** (Italy), *President*,  
Işıl **Karakaş** (Turkey),  
András **Sajó** (Hungary),  
Helen **Keller** (Switzerland),  
Paul **Lemmens** (Belgium),  
Robert **Spano** (Iceland),  
Jon Fridrik **Kjølbro** (Denmark),

and also Abel **Campos**, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The Court observed that the first-instance court had rejected the father's application for the children's return to France on the ground that there had been no child abduction as such but rather a breach by the mother of the conditions attached to her right of residence. The court had observed that, in moving to Switzerland, Ms Rouiller had not undermined the father's access right, and it had queried whether the Hague Convention was applicable in so far as the interview with the children had shown clearly and unequivocally that child F. wanted to remain in Switzerland and opposed her return to France.

However, the Court took the view that the children's removal to Binningen, even though that locality was only a few kilometres away, was likely to have consequences that would not be insignificant for the children's future. Having regard to the joint exercise of parental authority, the mother could not, without the father's consent, disregard the conditions of the divorce decree and unilaterally change the children's country of habitual residence.

The Court found, like the Cantonal and Federal Courts, that the children's removal by their mother to Switzerland was indeed an "wrongful removal" and that the Hague Convention did not grant a child the freedom to choose where he or she wished to live. It was of the view that the reasons given by child F. for wanting to remain in Switzerland did not suffice to justify the application of one of the exceptions to a child's return provided for in Article 13 of the Hague Convention, bearing in mind that those exceptions had to be interpreted strictly.

The Court observed that the domestic courts had duly taken into account Ms Rouiller's arguments and had substantiated their decisions by sufficiently detailed reasoning in the light of the exceptions allowed by the Hague Convention.

There had been no violation of Article 8 of the Convention.

*The judgment is available only in French.*

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