



## Measures taken by French authorities to protect eight-year-old child from parental abuse were inadequate

In today's Chamber judgment<sup>1</sup> in the case of [Association Innocence en Danger and Association Enfance et Partage v. France](#) (applications nos. 15343/15 and 16806/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, and**

**no violation of Article 13 (right to an effective remedy).**

The case concerned the death in 2009 of an eight-year-old girl (M.) as a result of abuse by her parents. The applications were lodged by two French child protection associations.

The Court found that the "report of suspected ill-treatment" sent by a headteacher in 2008 had triggered the State's positive obligation to carry out investigations. It concluded that the measures taken by the authorities between the time of that report and the child's death had not been sufficient to protect M. from severe abuse by her parents.

As to the civil liability suit against the State for the malfunctioning of the justice system, the fact that the applicant association Innocence en danger had not met the statutory conditions did not suffice for it to find that, as a whole, the remedy was not "effective".

### Principal facts

The applicants were two French child protection associations, whose registered offices are in Paris.

After being born in 2001 to a mother who initially wished to remain anonymous and abandoned her child, M. was collected by her mother one month later. She then lived with both her parents and her siblings. She went to school for the first time in April 2007 at the age of six. She was absent for many days from the various schools in which she was enrolled, changing schools several times whenever her family moved house. From the first school year of 2007-2008 onwards, M.'s teachers recorded various injuries that were regularly observed on the child's body.

In June 2008 a headteacher sent a "child protection report" to the public prosecutor of Le Mans and the president of the *Conseil général* (the competent local authority). She was concerned that following a move M. had not arrived to attend her new school, unlike her brothers and sister. She was worried about this absence since the headteacher of the previous school had informed her of a suspicion of ill-treatment and she had received a school file referring to physical marks noticed on M.'s body by teachers of that school.

On the same day the public prosecutor's office asked the gendarmerie to investigate. In July 2008, the social services informed the public prosecutor's office of recent bruising. A forensic doctor was commissioned. M. was examined a few days later in the presence of her father. The doctor noted numerous non-recent lesions and indicated that he could not rule out violence or ill-treatment. The

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).

following week, M. was questioned on the premises of the juvenile delinquency prevention brigade; the interview was filmed.

In September 2008 the senior police officer in charge drew up a report in which he concluded that, according to the investigation, there was no evidence to presume that M. had been a victim of abuse. In early October 2008 the public prosecutor's office closed the case, considering that the alleged offence was insufficiently made out.

At the end of April 2009 the current headteacher and the school doctor ordered the father to take M. to the paediatric emergency unit, where she remained hospitalised for one month. At the same time, the headteacher reported his concerns to the president of the *Conseil général*, stating that M. had been absent for 33 days since the beginning of the school year and that she often came to school with minor injuries for which there was no obvious explanation.

In June 2009 two social workers visited the child's home on different dates. They concluded that there was no cause for particular concern.

In September 2009 M.'s father reported to the police that his daughter had disappeared from the carpark of a fast-food restaurant. A major search party was deployed to find the child. The following day, the father eventually led the investigators to the location where the child's body was found, the death probably dating back to the night of 6 to 7 August 2009.

In June 2012 the parents were sentenced to 30 years' imprisonment by the Sarthe Assize Court for torture and barbaric acts resulting in death, committed against a minor by a parent. The two applicant associations were joined to the criminal proceedings as civil parties and the parents were ordered to pay them a token euro in damages.

In October 2012 the two associations brought proceedings against the State to establish its civil liability for the malfunctioning of the justice system, arguing in particular that between June and October 2008 the investigation and prosecution services had committed gross negligence, consisting of a series of negligent failings. Their claims were all dismissed.

### Complaints, procedure and composition of the Court

Relying in particular on Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment), the applicant associations complained that the French authorities had failed to protect M. from parental abuse. The Court decided to examine this complaint under Article 3 alone, finding that the dispute concerned the question whether the domestic authorities should have detected the ill-treatment and protected the child from those acts which had ultimately led to her death.

Under Article 13 (right to an effective remedy), the association *Innocence en Danger* complained about the need to establish the existence of gross negligence in order to engage the State's liability for the malfunctioning of the justice system.

The applications were lodged with the European Court of Human Rights on 26 March 2015 and 7 April 2015.

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

Síofra O'Leary (Ireland), *President*,  
Gabriele Kucsko-Stadlmayer (Austria),  
Ganna Yudkivska (Ukraine),  
André Potocki (France),  
Yonko Grozev (Bulgaria),  
Lətif Hüseynov (Azerbaijan),  
Anja Seibert-Fohr (Germany),

and also Victor **Soloveytchik**, *Deputy Section Registrar*.

### Decision of the Court

#### Standing of the applicant associations

The Government argued that the two associations did not have standing to act on behalf of M. in lodging applications with the Court.

The Court, however, took the view that there were exceptional circumstances in which it could be recognised that the two applicant associations, whose goal was precisely child protection and which had actively participated in the domestic proceedings with a procedural status in domestic law, could be regarded as having the status of M.'s *de facto* representatives.

#### Article 3 (prohibition of torture and inhuman or degrading treatment)

The Court noted that, through the headteacher's report of 19 June 2008, the authorities had been made aware of the possibility that M. had suffered ill-treatment and of a potential risk that she might suffer further abuse. The report had triggered the State's positive obligation to investigate the matter.

The Court recognised the difficulties faced by the national authorities in such a sensitive area; they had to strike a balance between not overlooking a danger on the one hand and ensuring respect for family life on the other. It also noted that, on the very day of the report, the prosecutor had been particularly responsive in asking the gendarmerie to carry out an investigation. Moreover, useful measures such as filming the child and having her examined by a forensic doctor had been taken.

However, the Court took the view that a number of other factors had undermined the significance of this finding.

Firstly, in response to the immediate reaction of the public prosecutor's office, the matter was not referred to a police investigator until 13 days later.

Secondly, various signs and indications had been brought to the attention of the authorities as soon as the report of 19 June 2008 had been sent. It would have been useful to have heard from the teachers in order to gather information on the background and the child's reaction when the injuries had been discovered. Teachers played a key role in preventing child abuse, as they observed children closely on a daily basis and were sometimes the only people the child could trust.

It would also have been useful to conduct enquiries in order to shed light on M.'s family environment, especially since the family had moved house several times. The mother had been interviewed, by the senior police officer in charge of the investigation, in a succinct manner, at her own home and not at the police station. Moreover, owing to the father's presence during the forensic medical examination of M. it could hardly be regarded as a genuine interview of the child, in the context of an investigation which involved asking targeted questions.

While it was true that M. had not made any complaints during that interview, it had also been conducted without the participation of a psychologist. Although not mandatory, the presence of such an expert could have been appropriate for the purpose of elucidating any concerns raised by the report and the forensic assessment.

It was not for the Court to call into question the discontinuance of the investigation in itself. On the other hand, the authorities should have taken certain precautions when the decision to discontinue the case had been taken, not simply setting the matter aside. If the public prosecutor's office had informed the social services of its decision while drawing their attention to the need for a social

investigation or at least for some monitoring of the child, it would have increased the chances of an appropriate response from those services after the investigation had been dropped.

In addition, there was no mechanism in place to centralise information (such as the “CRIP”, a collection unit) at the time of the events in the region concerned. The combination of these factors had greatly reduced the chances of any special monitoring of the child and any useful exchange of information between the judicial and social authorities.

The social services, which had eventually become aware of the decision to discontinue the case, had admittedly taken some action, including home visits, in response to the worrying report of 27 April 2009. However, as this report had coincided with M.’s hospitalisation for one month (which had led to contact being made by the paediatric unit), the social services should have been even more vigilant in assessing the child’s situation. Yet in the wake of the decision to discontinue the case, they had not taken any truly meaningful action that would have made it possible to identify the child’s real condition.

The Court thus concluded that the system in place had failed to protect M. from the severe abuse by her parents which had led to her death. **There had therefore been a violation of Article 3 of the Convention.**

### [Article 13 \(right to an effective remedy\)](#)

The Court did not find it unreasonable for the French legislature to have laid down rules for engaging the State’s civil liability in this particular context by requiring the establishment of serious negligence, which could be constituted by an aggregate series of negligent acts resulting in the malfunctioning of the justice system. It also acknowledged that the implementation of these rules in a limited context corresponded to a legislative choice, which took account of the complexity of the justice system and sought to guarantee the orderly exercise of investigative and adjudicatory powers.

In the present case the Court noted that the association Innocence en danger had been able to take proceedings in the ordinary courts in order to obtain an examination of its complaints about the failings that it had attributed to the police and prosecution services. The relevant court had jurisdiction to rule on those complaints and had indeed examined them, without merely confining itself to the acts of serious negligence alone, in proceedings during which the applicant association had been able to submit all its arguments and grounds.

In the Court’s view, the fact that the applicant association’s complaints had been dismissed did not in itself suffice for a finding as to whether or not the remedy was “effective”. The effectiveness of a remedy within the meaning of Article 13 of the Convention did not depend on the certainty of a favourable outcome for the applicant. **There had thus been no violation of Article 13 taken together with Article 3 of the Convention.**

### [Just satisfaction \(Article 41\)](#)

The Court held that France was to pay the applicant association Innocence en Danger a token sum of EUR 1 in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses. The other association had not made any claims by way of just satisfaction.

## Separate opinion

Judges Yudkivska and Hüseyinov expressed a joint concurring opinion. This opinion is annexed to the judgment.

*The judgment is available only in French.*

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## Press Release

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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.