



In ordering a child's return to his mother in the United States, the French authorities did not breach the right to respect for family life

In today's **Chamber judgment**¹ in the case of **Lacombe v. France** (application no. 23941/14) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned proceedings for the return of a child to his mother in the United States under the Hague Convention.

The Court found that the domestic courts had taken due account of the applicant's allegations and that the decision-making process had been fair. The applicant had been able to present his case fully, while the best interests of the child had been defended.

In view of the authorities' margin of appreciation the Court considered that the return decision had been based on relevant and sufficient reasons for the purposes of Article 8 § 2 of the Convention, viewed in the light of Article 13 (b) of the Hague Convention and Article 3 § 1 of the Convention on the Rights of the Child, and that it had been proportionate to the legitimate aim pursued.

Principal facts

The applicant, Jean-Philippe Lacombe, is a French national who was born in 1968 and lives in Nice.

In April 1998 Mr Lacombe married a Mexican national in Mexico, where the couple also had a child. In February 2004 the mother took the child to the United States for two months without telling Mr Lacombe. A divorce was pronounced that year and parental responsibility was assigned jointly to the two parents; however, the residence order was issued in respect of Mr Lacombe and the mother had contact rights. In June 2005 the mother was given residence rights, while the father was granted contact rights.

A first set of proceedings for international abduction was opened in 2005-2006 following Mr Lacombe's departure for France with the child. In a judgment of 19 October 2006 the Marseilles *tribunal de grande instance* (TGI) held that the child's removal had been wrongful within the meaning of Article 3 of the Hague Convention. However, in view of pending proceedings in Mexico for the attempted murder of the applicant, in which the mother was suspected of involvement, the TGI held that there was a grave risk that the child's return would expose him to harm. The court applied Article 13 (b) of the Hague Convention and did not order the child's return to his mother. Following an agreement with the mother, Mr Lacombe agreed to return custody of the child to her.

In April 2007 the family affairs judge at the Mexico Federal District Court removed the applicant's parental responsibility in respect of his child on account of the risk that he would leave the country. In October 2007 the mother left Mexico for the United States, taking the child with her. A warrant for her arrest was issued by the Mexican authorities for child abduction. Having found his child in

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.

Texas in February 2009, the applicant obtained temporary custody from the Texan courts pending a hearing at which the American court was due to rule on the issue of custody. The applicant took his son to Mexico and then to France, without attending this hearing. The American authorities issued an arrest warrant against him for child abduction.

The second set of proceedings for international abduction was opened in 2009-2010. In October 2009 the mother applied to the American Central Authority, requesting the child's return under the Hague Convention. In August 2010 the American courts granted her custody of the child and, during the same period, the Marseilles TGI ordered that he be returned to his mother in the United States. Mr Lacombe handed the child over to the mother but lodged an appeal against that judgment. The Court of Appeal upheld the judgment, finding that the child's habitual residence was indeed in Texas and that he ran no risk of harm in his mother's care. The Court of Cassation dismissed an appeal on points of law lodged by the applicant.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for family life), the applicant alleged a breach of his right to respect for his family life on account of the decision by the French courts to order his son's return to the United States. He complained of a lack of reasoning in the domestic courts' decisions with regard to the existence of a grave risk to the child in the event of his return.

The application was lodged with the European Court of Human Rights on 24 March 2014.

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

Angelika **Nußberger** (Germany), *President*,
Gabriele **Kucsko-Stadlmayer** (Austria),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court noted at the outset that the decisions by the French authorities ordering the return of the child to his mother had been based on the Hague Convention and had been aimed at protecting the rights and freedoms of the child. The interference, which had been in accordance with the law, had therefore pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention.

The Court went on to observe that Mr Lacombe's main argument in the proceedings before the TGI and the Court of Appeal had been that the child's residence in the United States was unlawful. However, the domestic courts had found that the child's legal place of residence when he left for France had indeed been in Texas and that his removal to France by his father had been wrongful.

In the proceedings before the TGI Mr Lacombe had argued that the child was at risk of harm with his mother and wished to remain with his father. However, the Court observed that the TGI had expressly based its decision on the child's interview with the police child protection services. It noted, like the Court of Cassation, that the judge had taken into account the views expressed by the child, who had shown no signs of objecting to returning to the United States. The TGI had properly

examined Mr Lacombe's allegations of risk and had responded to them by means of detailed reasoning.

In the Court of Appeal proceedings, when the return decision had been enforced, Mr Lacombe had again claimed that there was a grave risk of harm to the child, both from the mother herself and from the complete severing of ties with his father. The Court noted that, in giving reasons for its decision, the appeal court had taken into account both aspects of the risk alleged by Mr Lacombe, and had at no point declined to examine an allegation of grave risk. On the contrary, it had found that the child was at no risk of harm in his mother's care after examining the documents in the file. Accordingly, the allegation of grave risk in the event of the child's return to his mother had been effectively examined on the basis of the considerations set out by Mr Lacombe regarding the child's best interests, and the Court of Appeal had given a reasoned decision. The Court also considered that the decision-making process leading to the order for the child's return had been fair. Both Mr Lacombe and the child's mother had been able to present their case fully. The Court of Cassation, for its part, had conducted an effective review as to whether the Court of Appeal had given sufficient reasons for the return decision in the light of the Hague Convention and the child's best interests.

In sum, the Court found that the domestic courts had taken due account of Mr Lacombe's allegations and that the decision-making process in question had been fair and had allowed the applicant to fully present his case while ensuring that the child's best interests were defended. In view of the authorities' margin of appreciation the return decision had been based on relevant and sufficient reasons for the purposes of Article 8 § 2 of the Convention, viewed in the light of Article 13 (b) of the Hague Convention and Article 3 § 1 of the Convention on the Rights of the Child, and had been proportionate to the legitimate aim pursued.

There had therefore been no violation of Article 8.

The judgment is available only in 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.