



Return of child to Thailand, ordered by Switzerland in international child abduction case, did not violate the Convention

In today's Chamber judgment¹ in the case of [S.N. and M.B.N. v. Switzerland](#) (application no. 12937/20) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to private and family life) of the European Convention on Human Rights.

The case concerned the return of the daughter (M.B.N.) of the first applicant (S.N.) to Thailand (where the father, a French national, lives) ordered by the Swiss courts in an international child abduction case.

The Court found that, in proceedings which had been adversarial, fair and included hearings, the Swiss courts had based their judgments on the relevant facts of the case and had taken due account of all the parties' arguments. They had also given detailed decisions which they regarded as serving the best interests of the child while ruling out any serious risk for her. Moreover, the competent authorities had taken the appropriate steps to ensure the child's safety in the event of her return to Thailand. The decision-making process had thus met the requirements of Article 8 of the Convention.

Principal facts

The applicants, S.N. and M.B.N., are both Swiss nationals. S.N., born in 1971, was married to F.B., a French national, with whom she had a daughter (M.B.N.) in 2012. In 2013 the family moved to Thailand where S.N. owned a villa with two separate flats. In 2014 the couple decided to separate and agreed that the child would have three consecutive days of alternate residence with each parent.

In 2016, while on holiday in Switzerland, S.N. filed a request for marital settlement measures. The following month she reported suspicions of sexual abuse by the father to the Child Protection Service. She subsequently withdrew her request for marital settlement measures and returned to Thailand, where the couple agreed to alternate residence arrangements for their daughter.

In 2017 S.N. filed for divorce in Thailand and requested that parental authority and custody of the child be awarded to her. Subsequently, fearing the outcome of the proceedings, she left Thailand for Switzerland at the end of April 2018 with M.B.N.

In 2018 S.N. filed for divorce in Switzerland and requested parental authority and custody of her daughter.

In the same year the father submitted a request to the Federal Office of Justice in Bern for the return of his daughter. S.N. then filed a complaint with the Vaud cantonal police for indecent assault allegedly committed by the child's father in Thailand. She then sought an order to suspend 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.

father's personal relations with the child and to ban him from living near or contacting her and their daughter.

In 2019 the Cantonal Court ordered the child's return to Thailand and set a deadline of 20 August 2019 for voluntary compliance. S.N. appealed against this judgment, but the Federal Court found that the Cantonal Court had assessed the possibility of a return to Thailand in a comprehensive and concrete manner and on a current basis, and thus that the child could reasonably be required to return accompanied by her mother.

The applicants currently reside in Switzerland.

Complaints, procedure and composition of the Court

Mother and child alleged that there had been a violation of Article 8 (right to respect for private and family life) of the Convention. They claimed in particular that the Swiss courts had not effectively examined whether there would be a serious risk for the child on her return.

The application was lodged with the European Court of Human Rights on 3 March 2020.

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

Georges Ravarani (Luxembourg), *President*,
Dmitry Dedov (Russia),
María Elósegui (Spain),
Darian Pavli (Albania),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),
Andreas Zünd (Switzerland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

Article 8

The Court observed that the Federal Court's order for the child's return had constituted an interference with the applicants' right to respect for their family life. That interference was provided for by the Hague Convention, which was incorporated into the Swiss legal order, and pursued the legitimate aim of protecting the rights and freedoms of the child and her father.

As to whether the interference was necessary in a democratic society, the Court had to ascertain whether the domestic courts had carried out a balanced and reasonable assessment of each party's interests, constantly having in mind the best solution for the abducted child. In that connection it noted as follows.

The child's best interest and in particular the exclusion of any "serious risk"

The Court found that the implications that a return to Thailand might have for M.B.N. had been comprehensively examined by the Swiss courts, with regard both to the child's safety and to the mother's financial situation.

It observed in particular that at no point in the domestic proceedings had it been envisaged by the competent authorities that the child would have to return alone. The mother had always said she would accompany her daughter in the event of her return. The Cantonal Court had taken the view that the mother's ties in Switzerland had not become so strong that she could not be expected to return to Thailand. Furthermore, the courts had found, without any arbitrariness on their part, that S.N.'s financial situation would allow her to take care of her child and that she need not fear

prosecution by the Thai authorities. The Cantonal Court had held three hearings of the parties, including the child, and of various professionals, addressing whether the child would be exposed to a serious risk in the event of her return. It had also appointed a guardian to defend the child's best interests and to represent her, in particular, before the Federal Court.

Lastly, Switzerland's central authority for international child abductions had forwarded to its Thai counterpart certain questions from the child's father with a view to a re-examination of the case. In May 2019 the International Department of the Thai Attorney General's Office had clarified that in the event of the child's return it would have the power and obligation to ensure the child's safety or the exercise of her rights by guaranteeing access to the Public Prosecutor's Office, a lawyer or legal advice. It had also stated that S.N. would be able to exercise her parental rights and that she would not face conviction in the event of her return, since under domestic law this was a civil case, not a criminal one, and that she would be able to look after M.B.N. The Court had no reason to doubt the veracity of this information or the good faith of the Thai authorities.

The Swiss authorities had also taken reasonable steps to ensure the safety of the child in Thailand with a view to enforcing the return order, including in determining the father's exercise of his contact rights.

The Court concluded that the decision-making process had pursued the best interests of the child and had ruled out any serious risk to the child within the meaning of Article 13 of the Hague Convention.

Consideration of the child's views

The Court reiterated that a child who was capable of forming his or her own views had the right to express them and to have due weight given to those views in any judicial and administrative proceedings affecting him or her. However, it also pointed out that, for the purposes of applying the Hague Convention, while the views of children had to be taken into account, any opposition on their part did not necessarily preclude their return.

In the present case the Federal Court had concluded that Article 13 of the Hague Convention had not been breached since the child, then aged seven, did not appear to have attained a sufficient degree of maturity to be able to distinguish between living in Thailand and living with or near her father. In any event the child had apparently refused any return whatsoever in an adamant manner.

The Court also noted that the child had been duly heard and observed by several professionals in hearings before the Cantonal Court. The child had not been able to understand that the proceedings did not concern the question of custody or parental authority, but only sought to restore the situation that had existed prior to her unlawful removal.

The Court therefore took the view that there was nothing arbitrary or unreasonable in the Federal Court's findings or the Government's observations.

The child's integration in Switzerland

Under Article 12 of the Hague Convention, the competent authority was obliged to order the return of the child even where the proceedings had been commenced more than one year after the date of the wrongful removal or retention, unless it was demonstrated that the child had become settled in his or her new environment. In the present case, S.N. had left Thailand at the end of April 2018 to settle in Switzerland with her child. The child's father had filed a complaint with the Cantonal Court four months later on 23 August 2018. Article 12 of the Hague Convention could not therefore serve as a basis for the applicants to argue in favour of M.B.N.'s retention on the basis of her integration in Switzerland.

General conclusions

In the Court's view, it could not be said that the domestic courts had ordered the child's return automatically or mechanically. On the contrary, in proceedings which had been adversarial, fair and included hearings, the Swiss courts had based their judgments on the relevant facts of the case and had taken due account of all the parties' arguments. They had also given detailed decisions which they regarded as serving the best interests of the child while ruling out any serious risk for her. Moreover, the competent authorities had taken the appropriate steps to ensure the child's safety in the event of her return to Thailand. The decision-making process had thus met the requirements of Article 8 of the Convention and the interference with the applicants' right to respect for their family life had been necessary in a democratic society. 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.