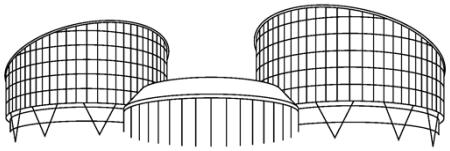

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF F.D. AND H.C. v. PORTUGAL

(Application no. 18737/18)

JUDGMENT

Art 8 • Positive obligations • Family life • Enforcement of Schengen seek and find order and child's automatic return to mother with exclusive custody • Authorities' failure to fulfil their obligations under the Hague Convention • Lack of any procedural safeguards • Lack of assessment of child's best interests and father's rights • Absence of judicial proceedings • Failure to protect minor kept at police station • Interference not necessary • Art 34 • Locus standi • Father's standing to act on his son's behalf in case circumstances as his parental responsibility was never withdrawn • Conflicting interests regarding the child

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 January 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of F.D. and H.C. v. Portugal,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Jolien Schukking,
Faris Vehabović,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 18737/18) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French and Portuguese national, Mr F.D., and a Portuguese national, H.C. ("the applicants"), on 16 April 2018;

the decision to give notice to the Portuguese Government ("the Government") of the complaints concerning Article 8 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicants' names disclosed;

the parties' observations;

the fact that the French Government did not express a wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

Having deliberated in private on 3 December 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the enforcement of a seek and find order issued by the French authorities for the second applicant, the son of the first applicant, and his subsequent return to his mother, O. The applicants complained that proceedings brought against them by the Matosinhos Public Prosecutor's Office had been unfair. They complained in particular about the lack of a hearing and the return of the second applicant to O. without an assessment of whether he was at grave risk of harm, in breach of their right to private and family life. They also claimed they had had no effective remedy in respect of those alleged wrongs. They relied on Articles 6 § 1, 8, and 13 of the Convention.

THE FACTS

2. The applicants are father and son, who were born in 1970 and 2010 and are living in Serpins, Portugal and in France respectively. They were represented by Mr J.J. Ferreira Alves, a lawyer practising in Matosinhos.

3. The Government were represented by their Agent, Ms M.F. da Graça Carvalho, Deputy Attorney General and, after 1 September 2022, M. Ricardo Bragança de Matos, Public Prosecutor.

4. The first applicant lodged the application on his own behalf and on behalf of his son, the second applicant, who is a minor.

5. The facts of the case may be summarised as follows.

I. PROCEEDINGS IN FRANCE

6. On 28 October 2013, following the separation of the first applicant from the second applicant's mother, O., the Family Court of Privas in France granted custody of the second applicant jointly to the first applicant and O. The child's primary residence was with O. and the first applicant had contact rights, including staying contact at weekends and for half the school holidays. On 15 April 2015, following an appeal by the first applicant, this decision was upheld by the Court of Appeal of Nîmes, in France.

7. On 10 February 2014 and 7 May 2015, the first applicant unsuccessfully applied to the Privas Family Court for custody of the second applicant, saying he was not being properly educated and accusing O. of being violent and claiming that the child was at risk.

8. On 6 August 2015, the first applicant lodged an application with the Privas Family Court asking for the child's primary residence to be transferred to him and for the mother to have contact "in a neutral place". He claimed that the living conditions in O.'s home were poor and that she was not supporting the child's school or ensuring that he had regular medical checkups.

9. On 7 December 2015, the Privas Family Court in France dismissed his application.

10. On 6 October 2017 the first applicant collected the child from school and noticed that he had an injury. The child was examined by a doctor, who found a ten centimetre abrasion on his right buttock which would have been caused by something coming into direct contact with the bare skin and which required the child to take ten days' sick leave from school. On the following day the first applicant filed a complaint against O. for alleged violence against their son. He claimed that while the child was visiting him he had alleged that O. had beaten him using a plastic stick and that she had also done it several times before, using a blue belt or a shoe. He called two witnesses in this regard, who were heard.

11. On 8 October 2017 the first applicant failed to return the child to O.

12. On 9 October 2017 O. reported the child's disappearance to the police authorities. After an investigation, the French police authorities found out that the first and second applicants were in Portugal.

13. On 13 October 2017 the first applicant again applied to the Privas Family Court for the child's primary residence to be with him, saying he suspected the mother of being violent to the child. In reply, O. made a similar allegation against the first applicant.

14. On 14 November 2017 O. made a request to the French authorities for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (hereinafter "the Hague Convention" – see paragraph 32 below). This request was sent to the Central Authority designated for the purpose in Portugal, the *Direcção-Geral de Reinserção e Serviços Prisionais* (hereinafter "DGRSP"*)*. It appears from the case file that the DGRSP did not communicate that request to any court.

15. On 27 November 2017 the Privas Family Court held an oral hearing of the first applicant's application of 13 October 2017 (see paragraph 13 above). O., her lawyer and the first applicant's representative were present. In the absence of the first applicant, his representative claimed that O. had been ill-treating the child for the last two years, saying the child had complained about it. In addition, the first applicant's representative claimed to have seen signs of aggression on the second applicant's body which had been confirmed by a doctor and two witnesses (see paragraph 10 above). O. denied these allegations, claiming that the first applicant had been making accusations against her ever since their separation and that on 8 October 2017, after spending the weekend with his father, the second applicant had not been returned to her (see paragraph 11 above). O. also asserted that the first applicant did not respect court orders or her rights as a mother. She referred to the child's disappearance and asked to be granted exclusive custody of the child and for the first applicant's contact rights to be suspended.

16. By a judgment of 11 December 2017 the Privas Family Court decided to grant exclusive custody to O. and to suspend the first applicant's contact rights. It held that the first applicant had been fighting for primary residence rights from the outset and was apparently ready to do anything it took to achieve that. The Privas Family Court examined photographs provided by the first applicant. It found that the injuries that the child presented were genuine but that it had not been established that they had been caused by O., nor had it been established that she had beaten the child, as the first applicant had claimed. Furthermore, the child had not been heard alone by the court and the two witnesses (see paragraph 10 above) were not credible, since their statements had been produced on the same day the applicant had filed the criminal complaint against O. The Privas Family Court put considerable weight on the first applicant's absence and the fact that he had breached

previous judgments, taking the law into his own hands by disappearing with the child, against the interests of the mother and the child.

17. This judgment became final on 15 February 2018 as the first applicant had not filed any appeal.

18. In the meantime, on 30 January 2018, the Privas District Court had issued an European Arrest Warrant against the first applicant to have him tried for child abduction under Articles 227 §§ 7 and 9 of the French Criminal Code.

19. Subsequently, the French authorities made a seek and find request through the Schengen Information System for the second applicant as a missing person, asking for all necessary measures to be taken to protect the minor including, if need be, taking into the care of the authorities, and contacting the SIRENE ("supplementary information request at national entry") National Office.

II. PROCEEDINGS IN PORTUGAL

20. On 15 December 2017 the first applicant lodged an application for parental responsibility with the Family Court of Matosinhos, seeking sole custody of the second applicant and an order that the child's official residence be with him. He stated that the child was living with him and attending school in Matosinhos. He also claimed that the boy's mother, O., was aggressive and had beaten the child several times, providing evidence. He supplied the addresses of both their residence and the child's school.

21. On 15 February 2018, at 9 a.m., the Portuguese police authorities took the second applicant out of school, executing the seek and find order issued by the French authorities (see paragraph 19 above). They kept him at the police station until 12.20 p.m., when they took him to the Public Prosecutor's Office at the Matosinhos Family Court, which initiated an administrative process to assess whether a child protection case needed to be brought in the Family Court in accordance with Article 3 of Law no. 147/99 of 1 September 1999 (see paragraph 31 below).

22. Simultaneously, the first applicant was detained in execution of the European Arrest Warrant that had been issued against him by the French authorities for child abduction (see paragraph 18 above). He called a lawyer, who joined him at the police station, and issued a letter of authority whereby he authorised the advocate to represent him in the proceedings regarding the return of the second applicant. The first applicant was kept at the police station during that day and night. The parties did not specify how those proceedings developed.

23. At 3.40 p.m. the same day, O. appeared at the Public Prosecutor's Office of the Matosinhos Family Court, in Portugal. At 5 p.m. the child was handed over to her following a decision of the Public Prosecutor in which she observed that:

- the DGRSP (see paragraph 14 above) had informed her that no action had been taken in respect of the second applicant following O.'s request under the Hague Convention;

- O. had been granted exclusive custody of the second applicant by a judgment of a French court (see paragraph 16 above);

- O. had appeared at the Public Prosecutor's Office at the Matosinhos Family Court in Portugal;

- the judgment of the French court (see paragraphs 16 and 17 above) had suspended the first applicant's contact rights with the child and that issue had been *res judicata* since that day (15 February 2018).

24. On 19 February 2018, the first applicant asked the Public Prosecutor's Office in the Matosinhos Family Court to give him access to the administrative file (see paragraph 21 above).

25. On 20 February 2018 the Public Prosecutor closed the administrative process (see paragraph 21 above) on the grounds that there was no risk to the child given that he had been returned to his mother, who had sole custody and residence rights. It further ordered a copy of these proceedings to be sent to the Matosinhos Family Court.

26. On 22 February 2018, the first applicant's request to have access to the administrative process (see paragraph 24 above) was granted.

27. By a decision of 8 March 2018, the Matosinhos Family Court rejected the first applicant's application for parental responsibility (see paragraph 20 above). It noted that the Privas Family Court was the court with international jurisdiction on the matter given that the child was resident in France, and that it had itself no jurisdiction, in accordance with Article 17 of Council Regulation (EC) no. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 (OJ 2003 L 338, p. 1) (known as "the Brussels II *bis* Regulation" – see paragraph 34 below), and it said that the unlawful removal of the child to Portugal by the first applicant had not altered that fact.

28. On 2 April 2018 the first applicant made a complaint to the Porto General Public Prosecutor's Office about the Public Prosecutor of the Matosinhos Family Court (see paragraph 23 above). He also filed a disciplinary complaint against her with the High Council for Public Prosecution and a criminal complaint against the officers of the Public Prosecutor's Office in the Matosinhos Family Court and the DGRSP (see paragraph 14 above). The applicant did not say, either in the application form or in his submissions, how those proceedings developed.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. The Constitution

29. The relevant provisions of the Constitution provide as follows:

Article 8
International law

"...

2. The rules contained in duly ratified or approved international conventions come into force in Portuguese domestic law once they have been officially published, and remain in force for as long as they are internationally binding on the Portuguese State.

3. The rules issued by the appropriate bodies of international organisations to which Portugal belongs come directly into force in Portuguese domestic law, where that is provided for in the international treaty.

4. The provisions of the treaties that govern the European Union and the rules issued by its institutions in the exercise of their powers and functions apply in Portuguese domestic law in accordance with Union law and in accordance with the fundamental principles of a democratic state based on the rule of law."

Article 26 § 1
Other personal rights

"Everyone has the right to a personal identity, to the development of his or her personality, to civil capacity, to citizenship, to his or her good name and reputation, to his or her own image, to freedom of speech, to the privacy of his or her personal and family life, and to legal protection against any form of discrimination."

Article 36
Family, marriage, and affiliation

"...

3. Spouses have equal rights and duties in relation to their civil and political capacity and to the maintenance and education of their children.

...

5. Parents have the right and the duty to educate and maintain their children.

6. Children may not be separated from their parents, save when the latter do not fulfil their fundamental duties towards them, and then always by judicial decision.

..."

Article 67 § 1
Family life

"As a fundamental element of society, the family has the right to protection by society and the state and to the effective implementation of all the conditions needed to enable family members to achieve personal fulfilment."

Article 68
Fatherhood and motherhood

"1. In performing their irreplaceable role in relation to their children, particularly as regards the children's education, fathers and mothers have the right to protection by society and the State, together with the guarantee of their own professional fulfilment and participation in civic life.

2. Motherhood and fatherhood constitute significant social values."

Article 69 § 1
Childhood

"In order to achieve their full development, children have the right to protection by society and the State, especially from all forms of abandonment, discrimination and oppression and from the improper exercise of authority in the family or any other institution."

B. The Civil Code

30. The relevant Civil Code provisions are the following:

Article 1878 § 1
Parental responsibility

"It is the responsibility of parents, in the interests of their children, to ensure their safety and health, to provide for their support, to direct their education, to represent them even if they are unborn, and to manage their assets."

Article 1881
Representation

"1. Representation includes the exercise of all the rights and the fulfilment of all the obligations of the child, except for purely personal acts that the minor has the right to perform personally and freely and dealings with assets which are not under the control of the parents.

2. If there is a conflict of interest which falls to be resolved by a public authority between either parent and a child subject to parental responsibility, or between children, even if one of them is older, the minors will be represented by one or more court-appointed special guardians."

C. Law no. 147/99 of 1 September 1999 on the protection of children and young persons in danger

31. Law no. 147/99 of September 1999, as amended by Law no. 31/2003 of 22 August 2003 and Law no. 142/2015 of 8 September 2015, in the relevant parts, reads as follows:

Article 1
Object

"The purpose of this law is to promote the rights and protection of children and young people at risk, in order to guarantee their well-being and full development."

Article 2
Scope

"This law applies to children and young people at risk who reside or are present in Portuguese national territory."

Article 3
Legitimate intervention

"1. Intervention to promote the rights and protection of children and young people at risk is appropriate when the parents, legal representative or whoever has *de facto* custody of them endangers their safety, health, training, education or development, or when that danger results from the acts or omissions of third parties or the child or young person themselves and they do not adequately seek to remedy those acts or omissions.

2. A child or young person is considered to be at risk if he or she is in one of the following situations:

a) Has been abandoned or lives alone;

b) Suffers physical or psychological abuse or is a victim of sexual abuse;

c) Does not receive the care or affection appropriate to their age and personal situation;

d) Is in the care of third parties, for a sufficient period of time to have established a strong bond with them and while the parents have not been exercising their parental functions;

e) Is forced to carry out activities or work that are excessive or inappropriate for their age, dignity and personal situation or are harmful to their training or development;

f) Is subjected, directly or indirectly, to treatment that seriously affects their safety or emotional balance;

g) Engages in behaviour or activities or consumption that seriously affect his or her health, safety, training, education or development without his or her parents, legal representative or whoever has *de facto* custody opposing the behaviour or activities in an appropriate manner to prevent harm to the child or young person;

h) Is a foreign national and is accommodated in a public, cooperative, social or private institution under an agreement with the State without holding a residence permit for Portuguese national territory."

Article 34
Aim

"Measures to promote the rights and protection of children and young people at risk, hereinafter referred to as promotion and protection measures, aim to:

a) Remove the children and young people from any danger in which they may find themselves;

b) Provide them with conditions that allow them to protect and promote their safety, health, training, education, well-being and integral development;

c) Guarantee the physical and psychological recovery of children and young people who are victims of any form of exploitation or abuse."

Article 72
Duties

"1. The Public Prosecutor's Office must intervene in the promotion and defence of the rights of children and young people at risk, in accordance with this law, and may require the necessary information from their parents, legal representative or whoever has their *de facto* custody.

2. The Public Prosecutor's Office monitors the activity of the protection commissions, with a view to assessing the legality and adequacy of their decisions, supervising their procedures and promoting appropriate judicial process.

3. It is also, in particular, the responsibility of the Public Prosecutor's Office to represent at-risk children and young people, bringing court actions, seeking civil protective measures and using any judicial means necessary to promote and defend their rights and their protection, including promoting naturalisation, under the terms of no. 3 of Article 6 of Law no. 37/81, of 3 October."

II. INTERNATIONAL MATERIALS

A. The Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980

32. The relevant Articles of the Hague Convention (ratified by Portugal on 29 September 1983) are set out in *X v. Latvia* ([GC], no. 27853/09, § 34, ECHR 2013). Furthermore, regarding Central Authorities, the relevant provisions of the Hague Convention state the following:

Article 6

"A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State."

Article 7

"Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application."

Article 10

"The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child."

Article 13

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

B. Council of Europe

33. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice were adopted by the Committee of Ministers on 17 November 2010. The relevant provisions read as follows:

> **B. Best interests of the child**
>
> "1. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.
>
> 2. In assessing the best interests of the involved or affected children:
>
> a. their views and opinions should be given due weight;
>
> b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;
>
> c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.
>
> 3. The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.
>
> 4. While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them."
>
> **C. Dignity**
>
> "1. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case.
>
> 2. Children shall not be subjected to torture or inhuman or degrading treatment or punishment."

III. EUROPEAN UNION LAW

A. Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 (OJ 2003 L 338, p. 1) ("the Brussels II *bis* Regulation")

34. At the material time, the relevant provisions of the Brussels II *bis* Regulation read as follows:

Article 8
General jurisdiction

"1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12."

Article 11
Return of the child

"1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "the 1980 Hague Convention"), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

..."

Article 23
Grounds of non-recognition for judgments relating to parental responsibility

"A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

(b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;

(d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

(e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

(f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

or

(g) if the procedure laid down in Article 56 has not been complied with."

Article 28
Enforceable judgments

"1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

..."

Article 29
Jurisdiction of local courts

"1. An application for a declaration of enforceability shall be submitted to the court appearing in the list notified by each Member State to the Commission pursuant to Article 68."

Article 31
Decision of the court

"1. The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application."

Article 32
Notice of the decision

"The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement."

Article 33
Appeal against the decision

"1. The decision on the application for a declaration of enforceability may be appealed against by either party."

B. Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

35. At the material time, the relevant provisions of Council Decision 2007/533/JHA of June 2007 on the establishment, operation and use of the second generation Schengen Information System ("SIS II") in so far as relevant read as follows:

Article 32
Objectives and conditions for issuing alerts

"1. Data on missing persons who need to be placed under protection and/or whose whereabouts need to be ascertained shall be entered in SIS II at the request of the competent authority of the Member State issuing the alert.

2. The following categories of missing persons may be entered:

(a) missing persons who need to be placed under protection

(i) for their own protection;

(ii) in order to prevent threats;

(b) missing persons who do not need to be placed under protection.

3. Paragraph 2(a) shall apply only to persons who must be interned following a decision by a competent authority.

4. Paragraphs 1, 2 and 3 shall apply in particular to minors.

5. Member States shall ensure that the data entered in SIS II indicate which of the categories mentioned in paragraph 2 the missing person falls into."

Article 33
Execution of action based on an alert

"1. Where a person as referred to in Article 32 is located, the competent authorities shall, subject to paragraph 2, communicate his whereabouts to the Member State issuing the alert. They may, in the cases referred to in Article 32(2)(a) move the person to a safe place in order to prevent him from continuing his journey, if so authorised by national law.

2. The communication, other than between the competent authorities, of data on a missing person who has been located and who is of age shall be subject to that person's consent. However, the competent authorities may communicate the fact that the alert has been erased because the person has been located to the person who reported the person missing."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. Relying on Article 6 § 1 of the Convention, and representing both himself and the second applicant, the first applicant complained that the proceedings brought by the Matosinhos Public Prosecutor's Office at the request of the French authorities (see paragraphs 21-23 above) had been unfair. Under Article 8 of the Convention, he also complained that the second applicant had been returned to O. without an assessment of whether the child was at grave risk of harm and in a manner that breached their right to respect for their private and family life. Under Article 13 of the Convention he complained of the absence of an effective remedy in respect of these claims.

37. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC],

nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), will examine the complaints raised by the applicants solely from the standpoint of Article 8 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

38. The Government, referring to the Court's case-law, in particular *Raw and Others v. France* (no. 10131/11, § 51, 7 March 2013), and *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, § 157, 10 September 2019), submitted that the first applicant did not have standing to represent the second applicant in the present case before the Court, since it is the parent entitled to custody who is the guardian of a child's interests and the first applicant did not have custody of the second applicant. In addition, the Government said that although the Court might be concerned that a parent's lack of standing could prevent certain of a child's interests being brought to its attention, that concern would be unjustified in the context of proceedings to return a child following a case of international abduction by a father whose behaviour raised serious doubts about his capacity to pursue his child's best interests.

39. The applicant opposed the Government's objection, citing the same case-law as the Government (see paragraph 38 above).

2. The Court's assessment

(a) The first applicant's legal standing to act on behalf of the second applicant

40. The Court observes at the outset that a restrictive or purely technical approach should be avoided with regard to the representation of children before the Convention bodies (see *Moretti and Benedetti v. Italy*, no. 16318/07, § 32, 27 April 2010).

41. In this connection, the Court recalls that the key issue in relation to questions of standing is the risk that children's interests might not be brought to the Court's attention and that children could be denied effective protection of their Convention rights (see *Strand Lobben and Others*, cited above, § 157). Furthermore, the Court considers that aspects such as the ties between children and their representatives, which was central to the issue in the present case, the object of the complaint and the possibility of a conflict of interest must be taken into account (see *Moretti and Benedetti*, cited above, § 32).

42. The Court has previously used the criterion of the custodial parent in cases arising out of disputes between parents. In this type of cases, the Court has stated that it is in principle the parent entitled to custody who is the guardian of the child's interests (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 119, 11 December 2014, with further references, and *Y.Y. and Y.Y. v. Russia*, no. 43229/18, § 43, 8 March 2022).

43. However, the Court has accepted in the context of Article 8 of the Convention that minors can apply to the Court even, or indeed especially, if they are represented by a parent who is in conflict with the authorities and who has criticised the decisions and conduct of those authorities as not being consistent with the rights guaranteed by the Convention. In such cases, being a natural parent gives him or her the necessary standing to apply to the Court on the child's behalf too, in order to protect the child's interests (see *Iosub Caras v. Romania*, no. 7198/04, § 21, 27 July 2006, and *Roengkasettakorn Eriksson v. Sweden*, no. 21574/16, § 61, 19 May 2022, with further references).

44. Even where parents have not had parental rights, the Court has applied the key criterion of ensuring that children's Convention interests can be brought before the Court (see the case-law cited in paragraph 41 above) and has previously accepted that they can apply to it on behalf of their minor children (see *Scozzari et Giunta c. Italie* [GC], nos. 39221/98 and 41963/98, § 138, 13 July 2000; *Raw and Others v. France*, no. 10131/11, § 51, 7 March 2013; and *Strand Lobben*, cited above, § 157).

45. Turning to the present case, the Court observes that by the time the application was lodged (16 April 2018), O. had been granted exclusive custody of the child, while the applicant had had his contact rights suspended (see paragraph 16 above). However, in view of the complaints brought before the Court, particularly concerning the return of the child to O., it appears that there is a conflict of interest regarding the child. Relying on the criterion of custody could jeopardise the child's interests by not allowing this complaint to be brought to the Court's attention (see the case-law cited in paragraph 41 above).

46. Given the object and nature of the complaints brought by the first applicant on behalf of his son, the second applicant (see paragraph 36 above), the Court further observes that the first applicant is in conflict with the authorities regarding the return of the child to O. and that he criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention.

47. Furthermore, the Court observes that the first applicant's parental responsibility for the second applicant was never withdrawn (see, *a fortiori, Scozzari et Giunta*, cited above, § 138, where the Court accepted that a natural mother who had been deprived of parental rights had the necessary power to apply to the Court on the children's behalf in order to protect their interests).

48. Consequently, having in mind the circumstances of the case and the object of the complaints, the Court sees no reason to depart from the understanding that, given that the first applicant had parental responsibility for the second applicant, he had standing to act on behalf of him. Accordingly, the Government's objection must be dismissed.

49. The Court further notes that it is accepted that the tie between the applicant and his son, the second applicant, comes within the scope of family life within the meaning of Article 8 of the Convention. That Article is therefore applicable to the situation of which the applicant complained (see *Maire v. Portugal*, no. 48206/99, § 68, ECHR 2003 VII).

(b) Conclusion as to the admissibility

50. The Court notes that the applicants' complaints under Article 8 are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

51. The first applicant complained about the return of his son to O. in proceedings conducted by the Public Prosecutor which in his view lacked fairness (see paragraphs 21-23 above). In particular he contested the manner in which the return was dealt with by the Portuguese authorities. He submitted that he had not been heard prior to the return of his son to O. and that, while that return was being carried out, he had been detained and then remanded in custody at a police station under a European Arrest Warrant issued on 30 January 2018 (see paragraphs 18 and 22 above). Furthermore, he argued that the return of the child to his mother was not ordered by a Judge. Lastly, he argued that there was a risk to the child in case of return to his mother and that the Portuguese authorities did not assess it.

52. The first applicant also complained about the fact that the child had been located by the police and kept in the police station until he was transferred to the Public Prosecutor's Office (see paragraph 21 above).

(b) The Government

53. The Government submitted that the Portuguese Central Authority designated for the purposes of Article 6 of the Hague Convention did not take any steps under Article 10 of that treaty (see paragraph 32 above) because it was unaware of the child's whereabouts. They explained that, instead, the seek and find request (see paragraph 19 above) was entered into the SIS II under Article 32 of Council Decision 2007/533/JHA of 12 June 2007 (see paragraph 35 above). They gave this as the explanation why, when the child

was located, he was taken to the Public Prosecutor's Office of the Matosinhos Family Court to assess whether there were grounds for initiating child protection proceedings (see paragraph 21 above). The Government observed that the Privas Court's judgment in conjunction with the fact that the mother was already in Portugal meant that the Public Prosecutor had no standing to initiate child protection proceedings given that the mother had an exclusive custody order (see paragraphs 16 and 23 above). Referring to *Nuutinen v. Finland* (no. 32842/96, § 129, ECHR 2000-VIII) and *M.R. and L.R. v. Estonia* ((dec.), no. 13420/12, § 43, 15 May 2012), the Government contended that in cases of child abduction, there is a presumption in favour of the prompt return of the child to the "left behind" parent and therefore the Portuguese authorities were unable to act as the first applicant wished.

54. The Government asserted that the enforcement of the French judgment and the return of the child were fair and that the interests protected by Article 8 of the Convention had been respected. In particular, they contended that the Public Prosecutor's Office of the Matosinhos Family Court had acted swiftly to hand over the child to his mother on the very same day, in order to minimise the potentially traumatic effects of police intervention or of placing the child in foster care. In their view, the child was therefore never at risk within the meaning of Law no. 147/99 of September 1999 (see paragraph 31 above). They further observed that none of the applicants had been heard because no judicial proceedings had been initiated and because, as far as the first applicant was concerned, he lacked standing to act on behalf of his son.

55. The Government also claimed that parental responsibility proceedings had been dealt with by the Privas Family Court, which was the appropriate court, and that there was no indication that the first applicant had felt his rights had not been protected in those proceedings. Furthermore, they argued that the return of the child had been based on the provisions of the Brussels II *bis* Regulation (see paragraph 34 above). Consequently, there was no serious or substantiated complaint to the effect that a Convention right had been breached. The presumption first established in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* ([GC], no. 45036/98, ECHR 2005-VI) and confirmed in, *inter alia*, *Avotiņš v. Latvia* ([GC], no. 17502/07, § 105, 23 May 2016), under which States parties would not be liable under the Convention for breaches which arise as a consequence of the necessity of complying with other international legal obligations had not been rebutted. They asserted that the interference with the first applicant's right to family life was in accordance with the law and necessary in a democratic society for the protection of the rights of the second applicant and to prevent disorder and crime.

2. The Court's assessment

(a) General principles

56. The relevant principles regarding the interference with the right to respect for family life, as well as the State's positive obligations under Article 8 of the Convention in cases concerning international child abduction have been summarised in *X. v. Latvia* ([GC], no. 27853/09, §§ 92-108, ECHR 2013), and *Neulinger and Shuruk v. Switzerland* ([GC], no. 41615/07, §§ 131-40, ECHR 2010).

57. The Court reiterates that the Convention must be applied in accordance with the principles of international law (see *Maire*, cited above, § 72, and *Maumousseau and Washington v. France*, no. 39388/05, § 60, 6 December 2007, and the cases cited therein). As regards the obligations that Article 8 of the Convention imposes on the Contracting States with respect to reuniting parents with their children, they should be interpreted in the light of the requirements of the Hague Convention (see paragraph 32 above; see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 95, 25 January 2000; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 51, 29 April 2003; and *Maumousseau and Washington*, cited above, § 60).

58. Furthermore, there is a broad consensus in support of the idea that in all decisions concerning children, their best interests must be paramount. The same philosophy is inherent in the Hague Convention (see *Vladimir Ushakov v. Russia*, no. 15122/17, § 79, 18 June 2019).

59. In relations between EU member States the rules on child abduction contained in the Brussels II *bis* Regulation (see paragraph 34 above) supplement those already laid down in the Hague Convention (see paragraph 32 above). Both instruments associate the best interests of the child with restoration of the *status quo* by means of a decision ordering the child's immediate return to his or her country of habitual residence in the event of unlawful abduction, while taking account of the fact that non-return may sometimes prove justified for objective reasons that correspond to the child's best interests. This explains the existence of exceptions, specifically in the event of a grave risk that the child's return would expose him or her to physical or psychological harm or otherwise place him or her in an intolerable situation within the meaning of Article 13 (b) of the Hague Convention (see *Sévère v. Austria*, no. 53661/15, § 100, 21 September 2017, and the cases cited therein).

60. The Court reiterates that it does not propose to substitute its own assessment for that of the domestic courts. That said, notwithstanding the State's margin of appreciation, the Court must satisfy itself that the decision-making process leading to the taking of the disputed decisions by the domestic authorities was fair and allowed those concerned to present their case fully, and that the best interests of the child were defended (see *X v. Latvia,* cited above*,* § 102, and the references therein).

61. In particular, the Court reiterates that Article 8 of the Convention imposes on the domestic authorities a particular procedural obligation in this respect: when assessing an application for a child's return, the courts must not only consider arguable allegations of a "grave risk" for the child in the event of return, but must also make a ruling giving specific reasons in the light of the circumstances of the case. This will enable the Court, whose task is not to take the place of the national courts, to carry out the European supervision entrusted to it (see *X v. Latvia*, cited above, § 107, and *Michnea v. Romania*, no. 10395/19, § 39, 7 July 2020).

(b) The application of those principles to the facts of the present case

62. The Court notes at the outset that the return of the child to his mother, O., by the Portuguese authorities constituted an "interference" with the family life of both applicants, within the meaning of Article 8 of the Convention (see, *mutatis mutandis*, *Maumousseau and Washington*, cited above, § 59; *Neulinger and Shuruk*, cited above, §§ 90-91; and *Rouiller v. Switzerland*, no. 3592/08, § 53, 22 July 2014).

63. It then remains to be determined whether the interference was "in accordance with the law", pursued one or more legitimate aims and was "necessary in a democratic society" (see, amongst many other authorities, *Andersena v. Latvia*, no. 79441/17, § 113, 19 September 2019).

64. In the present case, the Court observes that the situation was not dealt with by the Portuguese authorities in accordance with the Hague Convention (see paragraph 32 above), which was in force in Portugal at the material time. In this regard, the Government submitted that the Portuguese authorities did not act on the request from the French authorities because they were unaware of the child's whereabouts (see paragraphs 14 and 53 above).

65. However, the Court observes that under Articles 2 and 7 of the Hague Convention (see paragraph 32 above), the Portuguese authorities were obliged to take all appropriate measures to secure the implementation of the Hague Convention and in particular to find out the child's whereabouts (see, notably, Article 7 a) of the Hague Convention).

66. Moreover, on 15 December 2017, when the first applicant applied to the Family Court of Matosinhos in Portugal for parental responsibility, he declared that the second applicant was living with him and attending primary school in Matosinhos, providing both addresses (see paragraph 20 above).

67. There therefore appears to have been at least a lack of action, communication and coordination on the part of the Portuguese authorities that failed to fulfil their obligations under the Hague Convention in response to the request from the French authorities.

68. The Court further notes that on 15 February 2018 the Portuguese authorities located the second applicant at the primary school for the purposes of the Schengen Information System request (see paragraphs 19 and 21 above). Therefore at least from that date onwards the Portuguese authorities

faced no obstacle to implementing the Hague Convention (see paragraph 32 above).

69. Nevertheless, the DGRSP decided not to take any steps in this regard and the Public Prosecutor of the Family Court of Matosinhos, of her own motion, ordered the child be returned to his mother without any proceedings being commenced in that court (see paragraphs 21 and 23 above).

70. The Government explained that the return of the child was based on the provisions of the Brussels II *bis* Regulation (see paragraphs 34 and 55 above).

71. However, the Court observes that the Public Prosecutor did not give any legal basis for her decision ordering the child be returned to his mother, O. (see paragraph 23 above).

72. Furthermore, nothing in the case-file suggests that any application was made to any court for the return of the child under the Brussels II *bis* Regulation of 27 November 2003.

73. It is therefore arguable whether the return of the second applicant to his mother O. was in accordance with the law, as prescribed in paragraph 2 of Article 8 of the Convention. However, in the circumstances of the present case, and having regard to its findings below, the Court considers that it is not required to reach a final conclusion on the "lawfulness" issue.

74. The Court is satisfied that the interference in question pursued a "legitimate aim", that is "the protection of the rights of others", in particular of O. and the second applicant. It remains to be determined in the present case whether the interference was "necessary in a democratic society" and whether the authorities complied with their positive obligations under Article 8 of the Convention.

75. Turning to the procedural requirements under Article 8 (see the case-law cited in paragraphs 60-61 above), the Court finds that the manner in which the case was dealt, without recourse to the Hague Convention, deprived the applicants of their procedural rights. The first applicant was not heard, even though he was detained under a European Arrest Warrant and so was in a known location and in the custody of the Portuguese authorities (see paragraphs 21-23 above). He was therefore unable to say that from his point of view there was a risk in returning his son to his mother, the claim he subsequently made before the Court (see paragraph 51 above). Consequently, the first applicant did not benefit from any procedural safeguard, because he could not raise the objection provided for in Article 13 (b) of the Hague Convention (see paragraph 32 above). Furthermore, the Court notes that the child was found and returned to O. on the same day, while the first applicant remained in detention and therefore in a vulnerable situation (see paragraphs 21-23 above).

76. As regards the second applicant, who was seven years old at the material time (see paragraph 2 above), it does not appear that he was heard either. Whether the domestic courts need to hear a child, depends on the

specific circumstances of each case having due regard to the age and maturity of the child concerned (see *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII; *R.M. v. Latvia*, no. 53487/13, § 116, 9 December 2021; and, as regards a child of comparable age, *Zelikha Magomadova v. Russia*, no. 58724/14, § 116, 8 October 2019).

77. In this connection, the Court reiterates that in any judicial proceedings affecting children's rights under Article 8 of the Convention, it cannot be said that children capable of forming their own views were sufficiently involved in the decision-making process if they were not provided with the opportunity to be heard and thus express their views (see *M. and M. v. Croatia*, no. 10161/13, § 181, 3 September 2015, and *C v. Croatia*, no. 80117/17, § 78, 8 October 2020).

78. In sum, neither of the applicants was able to express their views within the framework of the proceedings at issue.

79. Moreover, the Court finds that the complete lack of any procedural protection of the applicants in this case was aggravated by an additional factor: it appears that the first applicant did not have any knowledge of the administrative process conducted by the Public Prosecutor, despite the fact that his whereabouts were known, since he was detained and in the custody of the Portuguese authorities, and despite the fact that he was represented by a lawyer whom he mandated that day (see paragraphs 21-23 above).

80. In addition, it appears that neither the first applicant nor his representative was informed that the court had ordered the return of the child to O., thus preventing him from objecting to the Public Prosecutor's decision. Only days later did the first applicant have access to administrative process and the Public Prosecutor's order to return the child, following the first applicant's own request to have access to the proceedings (see paragraphs 24 and 26 above).

81. The Government referred to the principle of equivalent protection in order to justify the automatic return of the child to the mother (see paragraph 55 above). However, the Court notes that even in the context of the Brussels II *bis* Regulation of 27 November 2003 a declaration that the judgment of the Privas Court was enforceable in Portugal should have been made by a court and the first applicant could then have appealed against it (see Articles 29, 31 and 33 of the Brussels II *bis* Regulation of 27 November 2003, quoted in paragraph 34 above).

82. Given the above, it appears that the Portuguese authorities did not deal with the application for the child's return under the Hague Convention effectively and expeditiously, but instead enforced the Schengen seek and find order and returned the child to his mother automatically, placing the greatest weight on the mutual recognition of judicial decisions and the mother's interests while disregarding other factors, in particular and primarily, any assessment of the child's best interests and, secondly, the second applicant's rights as a father. In this respect, the Court reiterates that

Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of parents and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 of the Convention to have measures taken as would harm the child's health and development (see *C. v. Finland*, no. 18249/02, § 54, 9 May 2006, with further references).

83. Consequently, the lack of any kind of risk assessment by the Portuguese authorities and the absence of judicial proceedings (see, *mutatis mutandis*, *Maumousseau and Washington*, cited above, § 72) prevents the Court from accessing whether the second applicant's best interests were taken into account and whether the decision to return the child was based on relevant and sufficient grounds for the purposes of paragraph 2 of Article 8 of the Convention.

84. The above considerations are sufficient for the Court to conclude that the respondent State has failed to secure the applicants' right to respect for their family life by hearing them in proceedings for the return of the child, contrary to the procedural requirements inherent in Article 8 of the Convention.

85. Lastly, as to the applicants' complaints concerning the carrying out of the seek and find order by the Portuguese authorities (see paragraph 52 above), the Government did not provide the Court with any relevant information.

86. The Court has repeatedly held that coercive measures against children are not desirable in this sensitive area or may even be ruled out by the best interests of the child (see *Sévère*, cited above, § 98; *Maire*, cited above, § 76; and *Giorgioni v. Italy*, nº 43299/12, § 64, 15 September 2016).

87. In the present case, the mere fact that the Portuguese police authorities took the child, who was seven years of age, out of school at 9 a.m. (see paragraph 21 above) and simultaneously detained his father, the first applicant, under a European Arrest Warrant (see paragraph 22 above), holding them both at a police station for more than three hours, until 12.20 p.m., when the child was taken to the Public Prosecutor's Office before being handed over to O. at 5 p.m. (see paragraphs 21 and 23 above), appears to be enough to affirm that the child was not treated with care and sensitivity or with special attention for his personal situation and well-being and with full respect for his psychological integrity (see the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, quoted in paragraph 33 above).

88. In the Court's view, relevant domestic legal provisions designed to protect children (see paragraphs 29 and 31 above) did exist, but there is nothing to suggest that they were applied in the present case. In particular, the Government have not demonstrated that, at the time of the arrest of the

first applicant and when the second applicant was taken from school, the police were accompanied by or requested the collaboration of professionals specialised in child protection such as psychologists or social workers. The authorities had a responsibility to provide the child with assistance, support and services as needed, either at school, where he originally was, or even at a specialised institution, instead of keeping him at the police station with his arrested father. The Government have not submitted that any of this was done by the relevant authorities.

89. The Court therefore finds that, as regards the events of the morning of 15 February 2018 (see paragraphs 21 and 23 above), the authorities failed to comply with their positive obligations under Article 8 of the Convention to ensure that the second applicant, who was a minor, was protected and provided for when his father was arrested and he was also taken and kept at the police station (compare *Hadzhieva v. Bulgaria*, no. 45285/12, §§ 58-61, 1 February 2018; see also, *a contrario*, *Maumousseau and Washington*, cited above, § 85). Accordingly, the interference was not necessary in a democratic society.

90. Having regard to all the considerations set out above, the Court finds that there has been a violation of Article 8 of the Convention in respect of both applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

92. The applicants claimed compensation for pecuniary damage. In this regard the first applicant claims that his willingness to work vanished and therefore he lost his company and started going to psychology and psychiatry appointments. Under the head of pecuniary damage the applicants also jointly claimed 3,306.98 euros (EUR) in respect of legal costs and expenses incurred in domestic proceedings. In addition, the applicants claimed no less than EUR 60,000 each in respect of non-pecuniary damage. They argued that they experienced deception, frustration and sadness and felt powerless. They also claimed that they had not seen each other since the enforcement of the return order and that they were depressed.

93. The Government contested the claims, saying that absolutely no damage was caused by the Portuguese authorities to the second applicant, who had instead been protected by a decision of the appropriate court.

94. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim, except with regard to the amounts claimed under this head for costs and expenses for the proceedings at domestic level (see paragraph 92 above), which it finds more appropriate to analyse under the head of costs and expenses. As regards the applicants' claim for non-pecuniary damage, the Court considers it undeniable that they have sustained non-pecuniary damage on account of the violation of Article 8 of the Convention. Making its assessment on an equitable basis as required by Article 41 of the Convention, it awards each of the applicants EUR 10,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

95. Besides the claim for costs and expenses incurred in the domestic courts (see paragraphs 92 above), the applicants jointly claimed EUR 15,000 for costs incurred before the Court.

96. The Government contended that the applicants made their claim without producing any justification or proving that the sums claimed were ever paid or will even be due, except for the amount of EUR 306.98 in respect of court fees paid in the domestic courts. Furthermore, they referred to the declaration by the applicants' lawyer that the fees and expenses would only have to be paid after the Court's judgment.

97. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, 19 October 2000, and *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-71, 28 November 2017, with further references).

98. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects part of the claim for court fees and lawyer's fees in the domestic proceedings (see paragraph 92 above) in view of the fact that they correspond to a different set of proceedings, refer to a period prior to the return order and they appear exaggerated. It therefore considers it reasonable to award the jointly sum of EUR 1,000 for costs and expenses in the domestic proceedings.

99. As to the amount of EUR 15,000 claimed jointly in respect of the costs of the proceedings before the Court (see paragraph 95 above), regard being had to the documents submitted by the first applicant describing the tasks performed by his lawyer and the amount of time spent and the information

about the hourly rate, the Court finds the amount claimed excessive, also seeing that the number of hours claimed for certain tasks appears to be inflated in view of the recurrent use of verbatim copies of passages from the case file and from the Court's case-law (see, *mutatis mutandis*, *Karácsony and Others v. Hungary*, nos. 42461/13 and 44357/13, § 190, ECHR 2016 (extracts), and *Marcinkevičius v. Lithuania*, no. 24919/20, § 103, 15 November 2022). It thus considers reasonable to award the applicants jointly EUR 5,000 for the costs and expenses incurred before it.

100. Accordingly, the Court awards the applicants jointly the total sum of EUR 6,000 covering costs and expenses under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 6,000 (six thousand euros) to the applicants jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President