



## The removal of a child from his parents and his ultimate adoption breached their right to respect for their family life

In today's Chamber judgment in the case **Pontes v. Portugal** (application no. 19554/09), which is not final<sup>1</sup>, the European Court of Human Rights held unanimously, that there had been:

**a violation of Article 8** of the European Convention on Human Rights (right to respect for private and family life) on account of restrictions imposed on the applicants' contact with their child;

and by a majority, that there had been:

**a violation of Article 8** on account of a decision to place their child with a view to adoption.

The case concerns parents who alleged a breach of their right to respect for their family life on account of decisions that led to one of their children being removed from them and ultimately adopted, their parental authority having been withdrawn.

The Court, finding that the authorities had not taken measures enabling the applicants to have regular contact with their son and that the decision to place him for adoption was not based on relevant and sufficient reasons, held that there had been two violations of Article 8.

### Principal facts

The applicants, Mr and Mrs Pontes, are Portuguese nationals who were born in 1974 and 1976 respectively and live in S. Domingos de Rana (Portugal). They have five children, F. (a son, born on 23 January 1993), V. (a daughter, born on 20 March 1995), L. (a daughter, born on 25 October 1998), P. (a son, born on 14 March 2002) and G. (a boy, born on 13 October 2008).

From 1998 onwards F., V. and L. were monitored by the Child Protection Board of Cascais on the grounds that they lived in a high-risk family environment and their parents took drugs.

On 31 December 2003, when the children had already been placed, from January 2002 to March 2003, in temporary children's homes on the grounds that their parents were drug-addicts, the child protection team from Cascais social services informed the Cascais Family Court that the parents were once again displaying inactive and negligent conduct *vis-à-vis* their children, reporting that the mother was a sex worker and that the children had been seen begging.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

On 23 March 2004 the Cascais Family Court ordered the children's temporary placement in an institution. F., V. and L. were placed in a home in Tercena (about 13 km from the family home) and P. in children's home C., at Alverca do Ribatejo (about 40 km from the family home).

On 28 March 2006 the Vila Franca de Xira Family Court withdrew the applicants' parental authority in respect of their son and entrusted it to a children's home with a view to his adoption. In its decision the court noted that the parents had difficulties returning to a normal life and took into account the age of child P. and the fact that he had spent over 3 years in an institutional environment. On 18 July 2006 that judgment was annulled on appeal by the Lisbon Court of Appeal. On 14 September 2006 the Vila Franca de Xira Family Court again ordered the placement of child P. in an institution with a view to his adoption and the withdrawal of the applicants' parental authority. On 14 September 2006 this judgment was again annulled on appeal and referred back to the court below.

In parallel to the above, the Cascais Child Protection Board gave a decision of 26 October 2006 closing the protection procedure in respect of F. (then aged 14), V. (12) and L. (8), taking into account the fact that the parents, after undergoing treatment for their drug-addiction, had resumed their life as a couple in 2005 and had found employment. The Board found, unanimously, that the improvement in the parents' living conditions allowed the children's return to the family household. The children thus returned in November 2006.

As regards child P., the social workers emphasised, by contrast, that he had been living in a children's home for over three years and that he had had no contact with his parents since the judgment of the Vila Franca de Xira court in March 2006. The social workers added that P. had developed a close relationship with a foster family and thus took the view that P. had not maintained any ties with his siblings or biological parents. The Board recommended P.'s permanent placement with a view to his adoption. Mr and Mrs Pontes challenged the report, arguing that they had been prevented from building a relationship with their son, as he had never been authorised to leave the home to spend time with his family, not even at weekends. They further claimed that they had been barred from visiting the children's home since the court's decision of 28 March 2006.

On 26 September 2007 the court of Vila Franca de Xira ordered P.'s institutional placement and opened the procedure for his adoption, withdrawing parental authority from the applicants. The applicants' ordinary appeal and appeal on points of law were dismissed on 14 February and 9 October 2008 respectively.

On 25 November 2008 the adoptions department of the Lisbon social services entrusted child P. to the couple X. In a judgment of 4 March 2009 the Family Court of Loures approved P.'s adoption by the couple X. The applicants were informed of the judgment on 18 March 2009.

## Complaints, procedure and composition of the Court

Relying on Article 8 the applicants complained that their right to respect for their private and family life had been breached, firstly because their son had never been allowed to spend holidays or weekends with his family and their visits to him had been stopped after the judgment of 28 March 2006, and secondly because of the decisions withdrawing their parental authority and approving P.'s adoption.

The application was lodged with the European Court of Human Rights on 3 April 2009.

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

Françoise **Tulkens** (Belgium), *President*,  
Danutė **Jočienė** (Lithuania),  
Isabelle **Berro-Lefèvre** (Monaco),  
András **Sajó** (Hungary),  
Işıl **Karakaş** (Turkey),  
Paulo **Pinto de Albuquerque** (Portugal),  
Helen **Keller** (Switzerland), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court reiterated that for a parent and a child, being together represented a fundamental element of family life and that any measures preventing this would be in breach of Article 8, unless they were in accordance with the law, pursued one or more legitimate aims and were necessary in a democratic society. Thus, where a family tie was established, the State must in principle act in such a way as to allow the relationship to develop and take any measures that might be appropriate to reunite the parent and child concerned. The State must therefore strike a fair balance between the competing interests, bearing in mind, however, that the child's best interest must be the primary consideration.

Accordingly, the child's interest was that a break in the family tie could be justified only in very exceptional circumstances, that all efforts had to be made to maintain personal relationships, and that in due course the family should be "reconstituted".

In the present case, and as regards firstly the question whether the competent authorities could be held responsible for the gradual distancing of child P. from his parents, the Court observed that, contrary to his brother and sisters, child P. had never been authorised to spend holidays or weekends with his parents and that the parents' visits had been stopped from the judgment of 28 March 2006 until the Supreme Court's decision of 9 October 2008.

The Court noted that the applicants had complained on several occasions about the withdrawal of their visiting rights but none of the courts had ruled on the matter, leading to the breakdown in the family relationship. The Court thus concluded that the withdrawal of the visiting rights, as a result of the deprivation of parental authority annulled by the successive decisions of the Court of Appeal on 18 July 2006 and 13 February 2007, was no longer based on sufficient and relevant reasons thereafter.

Consequently, considering that the competent authorities were responsible for the breakdown in contacts between P. and the applicants and had failed to fulfil their positive obligation to take measures in order to allow the applicants to enjoy regular contact with their son, the Court found that there had been a violation of Article 8.

Secondly, and concerning the adoption procedure initiated in respect of P., the Court pointed out that whilst it was not its task to substitute its own assessment for that of the domestic authorities, it nevertheless had to review that assessment and the fact that a child could be cared for in an environment that was more conducive to its education could not in itself justify the child's withdrawal by force from its biological parents.

In the present case, the Court found that there had been a contradiction in the assessment of the applicants' family situation, since it had led to two opposite decisions concerning child P. on the one hand and his siblings on the other. In addition, the Court noted that despite the improvement in the parents' situation the domestic courts had never envisaged measures that would have been less radical than the adoption procedure in respect of P. in order to avoid the final and irreversible removal of the child, not only from his biological parents but also from his brother and sisters, thus triggering a break-up of the family and siblings that could not have been in the child's best interest.

The Court thus found that the decision to place child P. for adoption had not been based on relevant and sufficient reasons capable of justifying it as proportionate to the legitimate aim pursued and held, consequently, that there had been a second violation of Article 8 of the Convention.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Portugal was to pay the applicants 32,500 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 for costs and expenses.

### Separate opinions

Judges Sajó and Pinto de Albuquerque expressed a joint partly concurring and partly dissenting opinion, which is annexed to the judgment.

*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.