

Press release issued by the Registrar

CHAMBER JUDGMENT
MAUMOUSSEAU AND WASHINGTON v. FRANCE

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Maumousseau and Washington v. France* (application no. 39388/05).

The Court held:

- by five votes to two that there had been **no violation of Article 8** of the European Convention on Human Rights (right to respect for private and family life) as regards the reasons for the French courts' order that the applicant's daughter was to be returned to the United States, and the conditions in which the police intervened to enforce that decision;
- unanimously that there had been **no violation of Article 6 § 1** of the Convention (right to a fair trial).

(The judgment is available only in French.)

1. Principal facts

The applicants are Sophie Maumousseau, a French national who was born in 1967 and lives in Les Adrets de l'Estérel (France), and her daughter Charlotte Washington, a French and US national who was born on 14 August 2000 in the United States of America and lives with her father in Wappingers Falls (New York, USA).

The case concerned the return to the USA of Charlotte, then aged four, further to an order by the French courts in December 2004 on the basis of a decision by a US court granting custody of the girl to her father. The child, whose habitual residence had been in the USA, had arrived in France in March 2003 for a holiday with her mother, who had then decided not to return to the USA but to remain with her daughter in France.

In May 2000 Ms Maumousseau married David Washington, a US national, and their daughter Charlotte was born in August 2000. The couple's marriage subsequently went through a very troubled period.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In March 2003, with her husband's consent, Ms Maumousseau took Charlotte on holiday to France, to stay with her parents. However, she later refused to return with her daughter to the USA, despite repeated requests from her husband.

In September 2003 a New York State Family Court ordered that interim custody of Charlotte should be granted to her father, that she should principally live with him and that Ms Maumousseau should return the child immediately. Charlotte's father then applied to the US Central Authority, which submitted a request to the French authorities, under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, to secure Charlotte's return to the United States.

As Ms Maumousseau refused to return her child, the French prosecution service brought proceedings against her. At first instance the French courts took the view that it was not appropriate to order Charlotte's return to the United States on account of a serious risk that she would be placed in an intolerable situation, within the meaning of the Hague Convention of 1980. However, on 13 May 2004 the Aix-en-Provence Court of Appeal ordered that Charlotte be returned immediately to the United States on the ground that it had not been shown that there was a serious risk that Charlotte's return would expose her to physical or psychological danger and would place her in an intolerable situation. The Court of Cassation, reversing its previous case-law, upheld that judgment in June 2005.

In July 2004 Ms Maumousseau was informed that she would be guilty of a criminal offence if she kept her daughter in the current situation, but she reiterated her refusal to comply with the judgment ordering Charlotte's return to the United States.

On 23 September 2004 the Draguignan public prosecutor, assisted by four police officers, entered Charlotte's nursery school seeking to enforce the judgment ordering the girl's return to the United States. Ms Maumousseau, the child's grandparents and staff from the school are said to have physically resisted the police intervention by forming a protective barrier around the child, with the help of some villagers. Faced with this resistance, in the course of which blows and insults were apparently exchanged, the public prosecutor provisionally discontinued enforcement of the decision. The incident received wide media coverage in France.

Ms Maumousseau applied to the Draguignan children's judge, who ordered Charlotte's placement in care, with rights of contact for both parents. On 3 December 2004 the Aix-en-Provence Court of Appeal ordered that Charlotte be returned to her father. The next day the girl left France for the United States.

In February 2006 the New York State Family Court allowed Charlotte's father's application for a restriction on Ms Maumousseau's access rights (under supervision at the local courthouse and after the deposit of a security of 25,000 US dollars).

In April 2007 the Draguignan *tribunal de grande instance* granted a divorce and ordered that Charlotte was to live with her mother, her father being allowed access.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 October 2005. The Court held a public hearing on the admissibility and merits of the case on 28 June 2007.

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

Boštjan M. **Zupančič** (Slovenian), *President*,
Corneliu **Bîrsan** (Romanian),
Jean-Paul **Costa** (French),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),
Egbert **Myjer** (Dutch),
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Ms Maumousseau submitted that Charlotte's return to the United States had been contrary to her daughter's interests and had placed her in an intolerable situation in view of her very young age. She further alleged that the police intervention at Charlotte's nursery school in September 2004 would leave her daughter with significant psychological after-effects. In addition, she argued that she had been deprived of her right of access to a court. She relied in particular on Articles 8 and 6 § 1 of the Convention.

Decision of the Court

Article 8

Reasons for the decision ordering Charlotte's return to the United States

The main issue for the Court to determine was whether, in ordering Charlotte's return to the United States, the French courts had maintained a fair balance between the conflicting interests in the case.

The Court considered that the French courts had taken into account Charlotte's "best interests", understood as her immediate reintegration into the environment she was familiar with. It noted in particular that they had carefully examined the family situation as a whole, studied a number of different factors, conducted a balanced and reasonable assessment of the respective interests and constantly endeavoured to ascertain what was the best solution for Charlotte.

The Court further noted that there was no cause to consider that the decision-making process that led the French courts to order Charlotte's return to the United States had been unfair or had not permitted the applicants to assert their rights effectively.

Conditions of enforcement of the return order

The Court noted that since the judgment ordering Charlotte's return the child had become untraceable, as her mother had hidden her whereabouts from the authorities to evade execution of the decision. That showed Ms Maumousseau's total lack of cooperation with the

¹ This summary by the Registry does not bind the Court.

French authorities. The circumstances of the police intervention at Charlotte's nursery school were therefore the result of her mother's constant refusal to hand the child over to her father voluntarily, despite a court order which had been enforceable for more than six months.

Although intervention by the police was not the most appropriate way of dealing with situations like the one in the applicant's case, and might have traumatic effects, the Court noted that it had taken place under the authority and in the presence of the public prosecutor, a professional State legal officer invested with a high level of decision-making responsibility to under whose orders the accompanying officers were placed. It further noted that, faced with the resistance of the people who had taken the applicants' side in the dispute, the authorities did not persist in trying to take the child away.

Consequently, the Court held that there had been no violation of Article 8.

Article 6 § 1

The Court considered that the French authorities were required to give their assistance to ensure Charlotte's return to the United States in view of the object and purpose of the Hague Convention, unless there were objective reasons to believe that the child, and possibly her mother, might be the victims of a flagrant denial of justice there.

The Court noted that the risk mentioned by Ms Maumousseau of being unable to enter United States territory to present her case was purely hypothetical and that although she could apply to the competent American judge she had not done so. In that connection, the Court noted that the French Central Authority had made an unsuccessful attempt to mediate with the child's father, but was prepared to try again by putting Ms Maumousseau's case to its American counterpart.

Consequently, the Court held that there had been no violation of Article 6 § 1.

Judge Zupančič, joined by Judge Gyulumyan, expressed a dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.