



Right to family life breached by authorities' lack of diligence in returning child to biological mother

In today's Chamber judgment in the case of [Saleck Bardi v. Spain](#) (application no. 66167/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for family life) of the European Convention on Human Rights.

The case concerned judicial proceedings that ended with the granting of guardianship of a child from the Sahrawi refugee camps in Tindouf to a Spanish host family, after a long period of uncertainty and despite her biological mother's request for her return.

Principal facts

The applicant, Knana Mohamed Saleck Bardi, a stateless person, lives in the refugee camps in Tindouf (Algeria). Her age is unknown.

In 2002 her nine-year-old daughter Saltana went to Spain for a holiday with a host family organised by a federation of associations of friends of the Sahrawi people. When the child was found to be suffering from health problems, proceedings were initiated to extend her stay in Spain. There was no official decision and the child continued to stay with the host family.

In March 2004 the Spanish authorities were informed that Mrs Saleck Bardi was seeking her child's return.

In May 2004 the minors' protection service declared the child abandoned and decided to place her in a reception centre for minors with a view to her transfer to the Tindouf camp. However, in a judgment of 19 September 2005 the family affairs judge of Murcia provisionally awarded custody of Saltana to the Spanish foster family, pending the necessary research to identify her biological family in order to return the child to them, and to determine whether she had been subjected to ill-treatment in her place of origin. That judgment was given without Mrs Saleck Bardi being informed about the proceedings in progress.

On 5 June 2006 Mrs Saleck Bardi went to Spain and appeared before the same family affairs judge to obtain her daughter's return. She was granted the right to intervene as a party to the proceedings.

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

In a decision of 30 April 2007 the judge decided to award guardianship of the girl to the foster family, on the ground that she, now aged 15, had expressed her wish to remain with the foster family and said that she had been treated as a slave in the refugee camps. Mrs Saleck Bardi appealed against that decision. On 30 April 2008 the *Audiencia provincial* of Murcia dismissed her appeal and confirmed the guardianship awarded to the host family, on the ground that the interest of the child, who had established emotional ties with that family and did not wish to see her mother again, prevailed over that of Mrs Saleck Bardi.

Complaints, procedure and composition of the Court

Relying mainly on Article 8, Mrs Saleck Bardi complained that she had been deprived of responsibility for her child in proceedings that she regarded as unfair. She said that she was aware that her daughter's return to Algeria was not desirable for her emotional stability, but requested the Court to recognise the shortcomings in the domestic proceedings, so that a situation like hers would not arise again for other Sahrawi mothers.

The application was lodged with the European Court of Human Rights on 11 December 2009.

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

Josep **Casadevall** (Andorra), *President*,
 Alvina **Gyulumyan** (Armenia),
 Egbert **Myjer** (the Netherlands),
 Ineta **Ziemele** (Latvia),
 Luis **López Guerra** (Spain),
 Mihai **Poalelungi** (Moldova),
 Kristina **Pardalos** (San Marino), *Judges*,

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

Decision of the Court

The Court found that the relationship between Mrs Saleck Bardi and her daughter was covered by the definition of family life under Article 8, even though there were separated in reality. It also observed that a parent's right to be reunited with his or her child created for States a "positive obligation" to take measures to fulfil that objective.

In such a case, where the various interests were difficult to reconcile, the child's interest had to be a primary consideration. The Court noted that the judicial decisions of 2007 and 2008 awarding guardianship to the host family had given sufficient reasoning, taking the child's interest into account.

The Court, while its role was not to substitute its own assessment for that of the domestic authorities as to the measures that should have been taken, nevertheless noted a lack of diligence on the part of the Spanish authorities. The responsibility for the duration of the girl's stay in Spain indeed lay with them, on account of the authorities' inactivity and a lack of coordination between the competent services. The passage of time had led to a weakening of the relations between the child and her mother, who she felt had abandoned her, and had contributed decisively to the child's integration into her foster family and her daily life in Murcia.

Ultimately, the Spanish authorities had not made appropriate and sufficient efforts to ensure respect for Mrs Saleck Bardi's right to her child's return and had lacked the requisite promptness for such a case.

Article 8 had thus been breached.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Spain was to pay the applicant 30,000 euros in respect of non-pecuniary damage.

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.