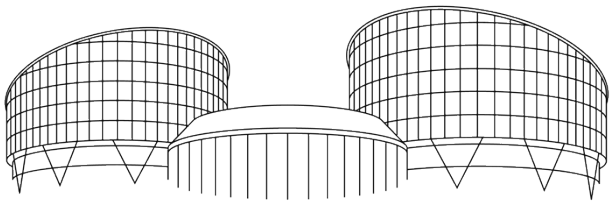

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

Application no. 67068/11
Laimutė STANKŪNAITĖ
against Lithuania
lodged on 2 September 2011

STATEMENT OF FACTS

THE FACTS

The applicant, Ms Laimutė Stankūnaitė, is a Lithuanian national who was born in 1986 and lives in Kaunas. She was represented before the Court by Mr I. Tumas, a lawyer practising in Panevėžys.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 19 February 2004 the applicant gave birth to a daughter, Deimantė Kedytė. The father of the daughter is D.K., whom the applicant was never married to.

On 19 December 2008 and on the basis of an application by D.K., prosecutors started a pre-trial investigation on suspicion that the girl had been sexually assaulted and molested (Articles 150 § 4 and 153 of the Criminal Code). It was suspected that the crime taken place in the applicant's rented apartment in Kaunas.

On 22 December 2008 D.K. lodged an application with the Kaunas City District Court, stating that the applicant had abetted the child molesters. D.K. requested that the applicant's parental rights be restricted and she be barred from seeing her daughter.

By a ruling of 23 December 2008, the court granted the request. The restriction was to be applied until the criminal case was not resolved. The applicant appealed.

On 27 April 2009, the Vilnius Regional Court amended the lower court's ruling. The applicant was permitted to see her daughter in the presence of the child care authorities.

On 8 July 2009 the Kaunas City District Court specified that the applicant could see her daughter two times a week, on Mondays and Thursdays, from 9 a.m. to 11 a.m., at the premises of the child care authorities.

On 5 October 2009 two persons were shot, one of them being a judge of the Kaunas Regional Court, the other person was the applicant's sister. D.K. was suspected of having committed the crime. He fled from law enforcement authorities and later on was found dead.

On 12 October 2009 the director of Kaunas city municipality appointed N.V., a judge at the Kaunas Regional Court and a sister of D.K., as the temporary guardian of the applicant's daughter. Subsequently, N.V. joined the civil proceedings concerning the applicant's parental rights, claiming that the girl should permanently stay with N.V.

On 26 January 2010 a prosecutor of Vilnius region discontinued the criminal investigation in respect of the applicant and in connection with child abuse charges. The prosecutor concluded that the applicant had not committed the crimes of sexual molestation and sexual assault.

N.V. challenged that decision, but on 23 February 2010 a higher prosecutor dismissed her appeal, upholding the lower prosecutor's conclusions.

By a final ruling of 3 November 2010 the Panevėžys Regional Court upheld the prosecutors' conclusion as well-founded.

In the meantime, the Kėdainiai City District Court received a number of reports by the child care authorities as to the girl's state of mind and her relationship with both her mother and N.V.

On 20 January 2011 N.V. asked the Kėdainiai City District Court to order forensic experts to perform a psychological examination of the applicant's daughter.

On 8 February 2011 the court granted the request. The experts were to determine whether the daughter preferred to live with her mother or with N.V.

Having examined the girl, in October 2011 the psychiatrists presented the report no. 103MS-143.

The psychiatrists found that because of her age, emotional development and state of mind the girl could not fully grasp her situation and could not form an independent opinion as to where she preferred to live. As a result, they recommended that the girl would not be questioned in court. Even though the girl stated that she wished to live with N.V., such a position was predetermined by the objective facts that the girl did not remember the time when she lived with her mother, as well as the fact that she currently resided in N.V.'s family, which had a negative attitude towards the applicant. Moreover, the girl could not explain her statements why she did not want to live with her mother. It was plain that the girl's negative attitude towards her mother was caused by the fact that the girl lived in N.V.'s home. Lastly, the experts pointed out that the girl had a strong emotional connection with her mother.

By a decision of 16 December 2011 the Kėdainiai District Court held that the applicant could exercise her parental rights unrestricted. The court also ruled that the girl should reside with her mother. The counterclaim by N.V. that the girl should stay with her was dismissed. The court ruled out any danger for the girl should she be returned to her mother. Relying on *Schaal v. Luxembourg* (no. 51773/99, § 48, 18 February 2003), the Lithuanian court emphasised that any criminal charges against the mother had been dropped as unfounded. It followed, that it was necessary to reunite the applicant and her daughter as soon as possible. The Kėdainiai court also relied on the Court's case-law in *Olsson v. Sweden (no. 1)* (24 March 1988, § 72, Series A no. 130; *Eriksson v. Sweden*, 22 June 1989, § 58, Series A no. 156) as well as to the case-law of the Lithuanian Supreme Court (ruling of 22 October 2003 in civil case no. 3K-3-995/2003; ruling of 19 October 2005 in civil case no. 3K-3-209/2008; ruling of 30 May 2008 in civil case no. 3K-3-236/2008) to the effect that taking a child into care meant a very serious interference with the right to respect for family life. Such a step had to be supported by sufficiently sound and weighty considerations in the interests of the child; it was not enough that the child would be better off if placed in care. For the Lithuanian court, no such circumstances existed as concerned the girl and her mother. On the contrary, the forensic experts had established that the girl's connection with her mother was strong, emotionally sufficient and the girl felt safe with her mother. That conclusion was corroborated by other data – the report no. 19-6-460 by the child care authorities of Kaunas municipality, whose employees had noted the existence of an emotional connection between the applicant and her daughter when observing their meetings. The emotional connection had also been confirmed by other reports by the child care authorities. Accordingly, there was no reason to believe that the change of the girl's place of residence would have a negative impact on her psychological state.

The Kėdainiai District Court further emphasised that the girl would suffer irreparable harm should she be left to reside with N.V.

> "The court considers that the girl's interests would be seriously harmed should she stay in the family of N.V., because that would mean that the girl's inherent rights to family ties, to be brought up and live in her biological family, would be restricted without a(ny) lawful ground. As it has been established by forensic experts, even without any particular influence the girl picks up the negative attitude of N.V. and her family towards her mother [the applicant]. Therefore, should the girl continue living with N.V., and taking into account N.V.'s particularly negative attitude towards the applicant, there is a big risk that the applicant's and her daughter's relationship will become weaker or will be completely disrupted. The court considers that the negative influence of N.V. would obstruct the applicant in preserving the relationship with the daughter, which would clearly and seriously breach the interests of the child".

Lastly, the Kėdainiai District Court recalled the Court's case-law on the issue of prolonged access restriction. It quoted *Dolhamre v. Sweden* (no. 67/04, § 120, 8 June 2010) to the effect that following any removal into care, stricter scrutiny was called for in respect of any further limitations by the authorities, for example on parental rights or access, as such further restrictions entailed the danger that the family relations between the parents and a young child be effectively curtailed. The Kėdainiai District Court pointed out that the applicant and her daughter had been separated for almost three years. During that time they could communicate only

minimally, which had undoubtedly negatively affected their relationship. It was unlikely that continuous separation of the mother from her child would make their relationship stronger. On this point the Kėdainiai court again referred to *Olsson v. Sweden (no. 1)* (cited above, § 81) to the effect that the ties between members of a family and the prospects of their successful reunification would perforce be weakened if impediments were placed in the way of their having easy and regular access to each other. The Kėdainiai court also noted the Court's judgment in *Amanalachioai v. Romania* (no. 4023/04, § 74, 26 May 2009), where the applicant had complained about the domestic authorities' inaction when returning his child from the grandparents' custody. For the Lithuanian court, it was also paramount that the decisions determining family relations should not be adopted merely because of lapse of time (*Amanalachioai*, cited above, § 89) or by simply upholding *de facto* situations. Accordingly, considering that the passage of time in the instant case was unacceptable because it could have irreparable consequences for the relationship between the child and her mother, with whom the former did not live, the court considered that its decision to return the girl to her mother had to be executed swiftly (Article 283 § 1 [5] of the Code of Civil Procedure, see Relevant domestic law part below). Given that the two had lived apart for a long time, the court set a term of fourteen days for the child to be returned to the applicant. During those fourteen days the applicant was to meet with her daughter daily, the duration of the meetings was to be increased by one hour until the meetings reached six hours. Should the child care authorities establish that the girl was ready to move in with her mother earlier, the girl was to be returned in advance of the set deadline.

Lastly, the Kėdainiai District Court noted that the merits of its decision to uphold the applicant's parental rights and to establish the girl's place of residence with her mother could be appealed against to the Panevėžys Regional Court.

N.V. lodged appeals with the Panevėžys Regional Court, challenging the part of the lower court's decision that the girl should be returned to her mother within fourteen days. She also challenged the merits of the 16 December 2011 decision.

By a ruling of 28 December 2011 the Panevėžys Regional Court refused to accept the appeal on the merits for examination, on the ground that N.V. had failed to follow the rules of civil procedure. The proceedings are still ongoing.

By rulings of and 28 December 2011 and 3 and 6 January 2012 the Panevėžys Regional Court refused, on procedural grounds, to accept N.V.'s appeals in respect of the interim measure that the applicant's daughter be returned to the applicant by 30 December 2011.

To this day the girl stays with N.V. The bailiff's efforts to execute the court decision of 16 December 2011 were unsuccessful.

B. Relevant domestic law

The Code of the Civil Procedure stipulates that a party may lodge an appeal against the lower court's decision within 30 days of the day it was taken (Article 307 § 1). The appeal must be submitted to the court which

took the decision at issue (Article 310). That court decides whether procedural requirements for the appeal were met (Article 315).

Article 283 § 1 (5) of the Code provides that the court may order that its decision be urgently executed in part or entirely, before deciding the appeal, if delay in executing the court decision could cause serious harm to the party which sought the decision or could make the decision overall impossible to execute.

COMPLAINTS

Under Articles 6 § 1 and 8 of the Convention the applicant complains that the civil proceedings concerning restriction of her parental rights and custody in respect of her daughter have already been pending for two years and ten months, although it is still the court of first instance which is examining her case. All that time she had only limited possibilities to communicate with her daughter. The applicant criticises the entire handling of her case and complains that the Lithuanian authorities do not return her daughter to her, even though the criminal charges against the applicant had been dismissed and the persons concerned [N.V.] have exhausted all legal remedies to appeal the decisions dismissing those charges. She also submits that given the fact that she had limited opportunities to communicate with her daughter during the civil proceedings, the Lithuanian State had to assure that the court proceedings would be as expedient as possible. However, that was not the case. Accordingly, even though the civil proceedings are still pending, the applicant already considers that her rights to a fair hearing and respect for her family life, as guaranteed by Articles 6 § 1 and 8 of the Convention, have been breached. Lastly, she mentions that she is not at fault that the civil proceedings have been prolonged – the cause of that was inaction and bureaucracy by the Lithuanian authorities.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for her family life, within the meaning of Article 8 § 1 of the Convention, in the light of the domestic authorities' decision to take her daughter into temporary care (see *Olsson v. Sweden (no. 1)* (24 March 1988, § 72, Series A no. 130)? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

2. Has there been a violation of Article 8 of the Convention on account of the fact that the applicant's daughter has not been returned to the applicant (see *Dolhamre v. Sweden*, no. 67/04, § 111 *in limine*, 8 June 2010; also see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 102, ECHR 2000-I; *Kopf and Liberda v. Austria*, no. 1598/06, § 39, 17 January 2012)?

3. Has there been a violation of Article 6 § 1 of the Convention on account of overall length of the proceedings affecting the applicant? In this connection the Court notes that despite the Kėdainiai District Court decision of 16 December 2011 the applicant's daughter has not been returned to her.