



## Order to return a child to her home in Italy not arbitrary

In its decision in the case of [M.R. and L.R. v. Estonia](#) (application no. 13420/12) the European Court of Human Rights has, by a majority, declared the application inadmissible. This decision is final.

The case concerned a mother and her two-year-old daughter whose father sought to be returned to Italy under the Hague Convention. Due to the urgency of the situation, the Court dealt with this case within less than three months.

### Principal facts

The applicants are Ms M.R., an Estonian national born in 1981, and her daughter, Ms L.R., an Estonian and Italian national born in 2009. They live in Kõrveküla, Tartu County (Estonia).

M.R. met L.R.'s father, R., an Italian national, during her studies in the Netherlands. She then stayed with him in Arluno near Milan. After their daughter's birth, their relation deteriorated. According to R., he wished to bring the child up in accordance with Italian traditions with his parents' assistance. M.R. alleged on the other hand that she suffered mental abuse from him. In March 2011, the applicants did not return to Italy after a trip to Estonia.

The Tartu County Court dealt with both the mother's claim for sole custody of their daughter and the father's request for the child's return to Italy under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"). After a hearing on 27 May 2011, with the participation of both parents, the County Court conducted the subsequent proceedings in writing. Observations were submitted by M.R., as well as a report from a psychology expert who concluded that the return of the child to Italy would not be in her best interests.

However, the child's return to Italy was ordered by the County Court on 7 October 2011 pursuant to the Hague Convention. The court considered in particular that it would not cause her more suffering than it would an average two-year-old. The County Court further ruled that it had no jurisdiction over the mother's claim for sole custody as the child was to be returned to Italy. It also dismissed her requests for an additional hearing, the examination of witnesses and a psychiatric expert examination of R.

The County Court's decision was upheld on 12 December 2011 by the Court of Appeal. It agreed that no opposition could be made under the Hague Convention to the child's return to Italy – article 13 of this Convention excluded the return of a child if it would result in extremely serious damage to the child's well-being. Indeed, the Court of Appeal observed that L.R.'s return to Italy would not necessarily lead to her separation from her mother and, referring to several items of evidence and expert reports, concluded that the child would not be placed in an intolerable situation upon her return to Italy and that the alleged abuse of the child by her father was not credible.

In February 2012, the Supreme Court declined to examine the applicants' appeals and refused to reopen the proceedings. M.R. received a bailiff's notice according to which the child had to be returned to Italy within ten days.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 March 2012.

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 6 § 1 (right to a fair trial), 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicants complained about the proceedings before the Estonian courts and their decisions ordering the return of the child to Italy.

In March 2012, the Court, under Rule 39 of the Rules of Court (interim measures), indicated to the Estonian government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to return the child to Italy until further notice.

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

Nina **Vajić** (Croatia), *President*,  
Anatoly **Kovler** (Russia),  
Peer **Lorenzen** (Denmark),  
Khanlar **Hajiyev** (Azerbaijan),  
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court considered that the applicants' complaints were to be examined under Article 8. It observed that the decision to return the child to Italy had been based on the Hague Convention, which had been incorporated into Estonian law, and that that decision pursued the legitimate aim of protecting the rights and freedoms of the child and father. What the Court had to examine was whether the interference with the right to family life of the mother and daughter was "necessary in a democratic society" within the meaning of Article 8.

The applicants' case had been dealt with at three levels of jurisdiction in Estonia. A hearing had been held by the County Court and the parties had had the opportunity to submit observations. Dismissing M.R.'s request for an additional hearing, the examination of witnesses and a psychiatric expert examination of the father had not therefore made the proceedings unfair. Indeed, the Estonian courts' decisions had been based on ample evidence and on the authorities' presumption that, according to the Hague Convention, the immediate return of the child to her habitual place of residence was in her best interests.

Furthermore, expert assessments – considered by the Estonian courts – of the effects of the child's return to Italy and of the relationship between the parents and the child had been contradictory. Moreover, none of the experts had been able to confirm the alleged sexual abuse of the child by her father.

With regards to M.R.'s argument that R. would not personally take care of their daughter on her return to Italy, the Court reiterated in particular that the proceedings in Estonia had not involved any determination of the parents' custody rights, which were subject to separate proceedings in Italy. Concerning the alleged risk of M.R.'s arrest in connection with child abduction charges in Italy and her doubts that R. would actually support her

and their daughter in the event of their return, the Court noted that Italian authorities, in both the criminal proceedings and the civil proceedings concerning the custody of the child, were bound by the European Convention and the safeguards it provides.

The Court concluded that the dismissal by the Estonian courts of M.R.'s arguments concerning her impossibility to return to Italy had not overstepped their margin of appreciation. Nor had there been any indication that their decision ordering the return of the child to Italy had been arbitrary or that the authorities had failed to strike a fair balance between the competing interests at stake. The Court therefore rejected the applicants' complaints as manifestly ill founded. The application of Rule 39 of the Rules of Court was consequently lifted.

*The decision is available only in English.*

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