



## Slovakian courts denied father procedural rights in case concerning international child abduction

In today's Chamber judgment in the case of [López Guió v. Slovakia](#) (application no. 10280/12), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned an incident of international child abduction and the father's complaint that the proceedings he had brought before the ordinary courts in Slovakia for the return of his child to Spain had been arbitrarily interfered with by a judgment of the Constitutional Court of Slovakia.

The Court observed that Mr López Guió had had no standing in the proceedings before the Constitutional Court which led to the quashing of a final and enforceable order previously issued by the ordinary courts for the return of his child to Spain. He had not been informed of the constitutional proceedings, let alone been able to participate in them, despite having a legitimate interest in the matter. In addition, the Court took into account: that the Constitutional Court's intervention in the case had come at a point when all other remedies had been exhausted; and, that there was an indication that there might be a systemic problem due to the fact that those remedies were available in child return proceedings in Slovakia.

### Principal facts

The applicant, José Juan López Guió, is a Spanish national who was born in 1967 and lives in Madrid.

In May 2009 Mr López Guió had a child with a Slovak national. They lived together in Spain until July 2010, when the mother took the child from Spain to Slovakia, without ever returning. Subsequent to her departure, Mr López Guió initiated proceedings in Slovakia against the mother for an order for the child's return to Spain under the Hague Convention (on the Civil Aspects of International Child Abduction). His application was examined by the Slovakian courts at two levels of jurisdiction and, having found that the mother had removed the child from Spain wrongfully, the courts allowed his claim and ordered the child's return to Spain. The order became final and binding in February 2011.

Following an appeal on points of law by the mother and a petition by her that an extraordinary appeal on points of law be lodged on her behalf, the order was nevertheless subsequently examined by the Supreme Court and the Public Prosecution Service; both authorities dismissed the mother's arguments. In addition, the mother also unsuccessfully sought that the proceedings before the ordinary courts be reopened and repeatedly asked that the enforcement of the return order be stayed.

Meanwhile, at the mother's request – lodged in her own name as well as in that of the child – the Constitutional Court intervened in December 2011 and quashed the Supreme Court's decision. This

<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)

led to the quashing of the return order and the remittal of the case with a new round of Hague Convention proceedings before ordinary courts, which ultimately ruled in August 2012 that the child was not to be returned to Spain. The reasoning behind this ruling was that removal to Spain would not be in the child's best interests as the child – then aged three - was attached to the mother and the extended family circle in Slovakia, where it attended a kindergarten and only spoke Slovak.

## Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), Mr López Guió complained that the Hague Convention proceedings he had brought had been arbitrarily interfered with by the Slovak Constitutional Court judgment of December 2011, which was handed down in proceedings in which he had not been allowed to participate and of which he had not even been informed, and that, as a result, he has been deprived of contact with his child for a protracted period of time.

The application was lodged with the European Court of Human Rights on 13 February 2012.

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

Josep **Casadevall** (Andorra), *President*,  
 Alvina **Gyulumyan** (Armenia),  
 Ján **Šikuta** (Slovakia),  
 Dragoljub **Popović** (Serbia),  
 Luis **López Guerra** (Spain),  
 Johannes **Silvis** (the Netherlands),  
 Valeriu **Grițco** (the Republic of Moldova),

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

## Decision of the Court

### Article 8

The Court observed that the main interference with Mr López Guió's right to respect for his family life was not attributable to an action or omission by the Slovak State but rather to the mother of his child, who – as the Slovak courts had concluded – had wrongfully retained the child in Slovakia. The Court therefore had to examine whether the Slovak State had been under an obligation to take action with a view to securing Mr López Guió's right to respect for his family life and, if so, whether any such obligation had been complied with.

Being both a Member State of the European Union and a Contracting State of the Hague Convention (on the Civil Aspects of International Child Abduction), Slovakia - as the country to which the child had been removed - had been obliged to carry out proceedings for the return of the child to its country of habitual residence, Spain, for the courts there to resolve all questions relating to the child's status. In that respect, the Court observed that the parties had pleaded the case exclusively in terms of the Hague Convention and that the domestic courts essentially dealt with the case within the framework of that instrument.

To determine whether, in performing its obligations under the Hague Convention, Slovakia had complied with its positive obligations under Article 8 of the Convention, it was decisive to ascertain that a fair balance had been struck between the competing interests at stake, the best interests of the child being the primary consideration.

The decision of the Slovak Constitutional Court to quash the earlier decision of the Supreme Court – which then led to the quashing of the order for the child's return to Spain and the remittal of the

matter to the first-instance court – was key in ultimately determining Mr López Guió's case. Although not a final decision, it led to a significant delay in the proceedings, which was of crucial importance in family-law cases.

The Court considered that the Constitutional Court's decision had been lawful and it had served the legitimate aim of protecting the rights of the child. As regards Mr López Guió's procedural standing, the Court observed, however, that he had been neither plaintiff nor defendant in the proceedings before the Constitutional Court. The relevant legislation governing those proceedings did not provide for a clear basis for third parties to intervene or for an official means by which they could learn about proceedings before that court which concerned them. Moreover, Mr López Guió had not been informed at the relevant time of the constitutional complaint brought by the child's mother. He had therefore not participated in the proceedings and had had no opportunity to influence their outcome, despite having a legitimate interest in the matter.

That complete lack of any procedural protection had been aggravated by the fact that, prior to the Constitutional Court's judgment, all ordinary and extraordinary remedies against the return order available to the child's mother had been exhausted. Furthermore there was an indication that there might be a systemic problem due to the fact that appeals and extraordinary appeals on points of law were available in the course of return proceedings in Slovakia.

As a result of the remittal of the case to the ordinary courts leading to further delays, the status of the child had not been determined by any court for a protracted period of time, the courts in Slovakia having no jurisdiction and the courts in Spain having no practical opportunity to do so. That state of affairs could not have been in the child's best interests.

In view of those considerations, the Court concluded that Slovakia had failed to secure Mr López Guió the right to respect for his family life by providing him with proceedings for the return of his child in compliance with the requirements of Article 8. There had accordingly been a violation of Article 8.

The Court also found that, in view of that finding, it was unnecessary to examine separately the remaining admissible complaint that, as a result of the Constitutional Court's intervention, the applicant had been deprived of contact with his child for a protracted period of time.

#### Just satisfaction (Article 41)

The court held that Slovakia was to pay Mr López Guió 19,500 euros (EUR) in respect of non-pecuniary damage and EUR 7,500 in respect of costs and expenses.

*The judgment is available only in English.*

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