



Court finds political interference and long delays in Lithuania's return of daughter to her German father

In today's **Chamber** judgment¹ in the case of **Rinau v. Lithuania** (application no. 10926/09) 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 a German father's efforts to return his daughter from his former Lithuanian wife after court orders in his favour.

The Court found in particular that it was clear that the legislature and executive had attempted to influence the decision-making process in favour of the mother, despite the court orders in favour of the father, which should have been rapidly enforced in Lithuania.

Among other factors, actions by the Supreme Court and the Supreme Court's President had led to "procedural vagaries" which had contradicted the aims of international and European Union rules on child custody.

Principal facts

The applicants, Michael Rinau, a German national, and his daughter Luisa, a Lithuanian and German national, were born in 1969 and 2005 respectively and live in Bergfelde (Germany).

The case concerns their complaint about the Lithuanian authorities' handling of Mr Rinau's case for the return of his daughter to his care in Germany.

In 2006 Mr Rinau's former wife, I.R., a Lithuanian national, took their daughter to her homeland for a holiday, but did not return after two weeks as promised. Mr Rinau applied for and obtained German court orders to give him provisional sole responsibility and to return the child to him. In 2007 the German courts also granted the couple a divorce and gave Mr Rinau permanent custody.

In October 2006 he applied to the Lithuanian courts to have the child returned, relying on the Hague Convention on the Civil Aspects of International Child Abduction and the European Union's Brussels II *bis* Regulation on the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. After being refused at first instance, he won such an order on appeal in March 2007 in a decision which was not amenable to further appeal.

The case attracted much comment by the Lithuanian media and politicians, who were critical of the idea of returning the child to Germany and who alleged that the authorities were failing to protect the rights of a Lithuanian citizen, the mother.

The case involved several sets of proceedings in Lithuania whereby the mother and the Prosecutor General aimed in particular to reopen the proceedings on the order to return the child.

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 October 2007 the President of the Supreme Court adopted a ruling suspending the execution of the Court of Appeal decision of March 2007.

In April 2008 the Supreme Court also made a request for a preliminary ruling to the Court of Justice of the European Union (ECJ) on various aspects of the Brussels II *bis* Regulation. That Court essentially subsequently found that if the German courts had issued a valid certificate for the child's return, as they had done in 2007, then under the Regulation the Lithuanian courts had to fulfil it.

In August 2008 the Supreme Court rejected requests by the Prosecutor General and I.R. for a reopening of the civil proceedings and dismissed an appeal on points of law by I.R., referring to the ECJ preliminary ruling in both decisions.

Amid further delays in a handover, Mr Rinau in October 2008 took his daughter from a child-care centre in Lithuania and travelled to Latvia, being briefly detained at Riga airport before being allowed to proceed back to Germany. He initially faced criminal prosecution for abduction in Lithuania but prosecutors terminated the case in November 2009.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for family life), the applicants complained about the Lithuanian authorities' handling of the proceedings for the second applicant's return to Germany. Referring to Article 6 § 1 (right to a fair trial), they also complained that the case had been politicised.

The application was lodged with the European Court of Human Rights on 24 February 2009.

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

Robert **Spano** (Iceland), *President*,
 Marko **Bošnjak** (Slovenia),
 Valeriu **Grițco** (the Republic of Moldova),
 Egidijus **Kūris** (Lithuania),
 Ivana **Jelić** (Montenegro),
 Arnfinn **Bårdsen** (Norway),
 Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

The Court decided to deal with the applicants' complaints under Article 8 alone.

It observed that the key court of appeal decision in Lithuania, upholding Mr Rinau's right to the return of his daughter after German courts had already ruled in his favour, had been delivered in March 2007, five months after he had made his request.

While that length of time had exceeded the six-week limit set under the Hague Convention, the Court accepted that the courts had faced difficult, competing demands: they had had to act quickly as the child was being held unlawfully by the mother in Lithuania and they had also had to examine her allegations of harm to the child if returned to Mr Rinau.

The Court found that up to June 2007 the courts' decision-making, although lengthy compared with the provisions of the Hague Convention, had met the requirements of Article 8.

The Court then examined subsequent developments, including the applicants' allegations that politicians, both in the legislature and executive, had tried to influence the decision-making process.

It observed that there had been an upsurge of public, political and institutional pressure after the bailiff had begun to enforce the return order. That had involved a public petition, verbal assaults on Mr Rinau as a “German pig” or “Nazi” and threats to him, his lawyer and the bailiff.

The Court was disquieted by what it saw as concerted official efforts to keep the child in Lithuania, with members of Parliament openly questioning the lawfulness of court judgments and the Minister of Justice keeping the mother’s hopes of reopening the case alive. There had in addition been pressure on the bailiff, an independent official, over the enforcement, and on the child-care services to change their opinion that it was in the child’s best interests to return to Germany.

Furthermore, Lithuanian law had been changed in order to allow the couple’s daughter to obtain citizenship despite Mr Rinau’s argument that under the German court orders he alone had the authority to take decisions on his daughter’s nationality. The Lithuanian Government had also made a financial contribution to assist the mother in the ECJ case.

The Court concluded that it was beyond doubt that the Lithuanian authorities had not ensured a fair decision-making process in the enforcement of the judgment for the child’s return.

The Court also took note of the personal intervention of the President of the Supreme Court in the case and then the subsequent Supreme Court proceedings, which had in turn been suspended pending a preliminary ruling by the ECJ. That was despite the fact that it was not possible under Lithuanian law to reopen proceedings for the return of a child under the Hague Convention.

Those and other “procedural vagaries” had completely disregarded the fundamental aims of the Hague Convention, the EU Regulation and Article 8 of the Convention. While Mr Rinau had taken his daughter back to Germany in “extemporaneous” fashion, he had already been faced with a long wait and had feared more delays owing to the mother’s opposition.

The Court concluded that the time taken by the Lithuanian authorities to reach a final decision in the applicants’ case had failed to respond to the urgency of the situation.

Overall, such conduct by the Lithuanian authorities had fallen short of what was required of the State under Article 8 and there had been a violation of that provision in respect of both applicants.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicants 30,000 euros (EUR) jointly in respect of non-pecuniary damage and EUR 93,230 in respect of costs and expenses.

The judgment is available only in English.

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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.