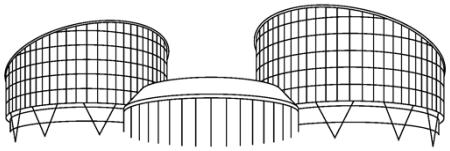

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF RINAU v. LITHUANIA

(Application no. 10926/09)

JUDGMENT

Art 8 • Respect for family life • International child abduction • Authorities' failure to act with required fairness and promptitude • Political pressure on courts and child-care authorities • Respondent State providing legal and financial support to abducting parent

STRASBOURG

14 January 2020

FINAL

14/05/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rinau v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Saadet Yüksel, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 3 December 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10926/09) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Michael Rinau ("the first applicant") and a Lithuanian and German national, Ms Luisa Rinau ("the second applicant"), on 24 February 2009.

2. The applicants were represented by Ms N. Bümlein, a lawyer practising in Berlin. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicants alleged mainly that the Lithuanian authorities' failure to act in a timely fashion and in application of Council Regulation (EC) No. 2201/2003 and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction constituted a violation of their right for respect for their family life and a breach of Article 8 of the European Convention on Human Rights. The applicants also complained that the decision-making in their case had been politicised and that this was in breach of Article 6 § 1 of the latter Convention.

4. On 9 June 2016 the application was communicated to the Government. At the same time, the German Government were invited to intervene as a third party (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), but they did not express their intention to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1969. The second applicant is his daughter; she was born in 2005 (also see paragraph 8 below). They live in Bergfelde, Germany.

6. In July 2003 the first applicant married a Lithuanian citizen, I.R. They lived in Bergfelde, Germany, where their marriage was registered. The spouses also chose German law to be applicable to their marriage.

7. From a previous marriage I.R. had an older son, E.M., who was born in 1992.

8. On 11 January 2005 a daughter, Luisa (the second applicant), was born to the couple in Germany. Parental responsibility was exercised jointly by both parents. In the course of March 2005 the spouses began living separately. The child remained with her mother but maintained frequent contact with her father. At a later stage, divorce proceedings were initiated by the first applicant before the Oranienburg District Court (*Amtsgericht Oranienburg*) in Germany.

9. In May 2005 the second applicant was issued with a German passport.

A. Proceedings under the Hague Convention on the Civil Aspects of International Child Abduction

10. On 21 July 2006, the first applicant agreed that his wife should take their daughter to Lithuania for two weeks' holiday, on condition that she return to Germany by 6 August 2006.

11. When the child and mother did not return to Germany, the first applicant started court proceedings in Germany. An arrest warrant in respect of I.R. was issued by the German authorities.

12. On 14 August 2006 the Oranienburg District Court terminated the mother's joint custody of their daughter and awarded provisional custody to the applicant until divorce proceedings were completed. The German court also granted the first applicant the exclusive right to decide questions relating to his daughter's passport.

13. That decision was upheld by the Brandenburg Regional Court (*Oberlandesgericht*) on 11 October 2006, which dismissed an appeal by I.R.

14. On 30 October 2006 the first applicant asked the Klaipėda Regional Court in Lithuania for a permit allowing him to take his daughter back to Germany. He relied on the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (see paragraph 145 below), and also on Council Regulation (EC) No. 2201/2003 (also known as "the Brussels II *bis* Regulation", hereafter "Regulation (EC) No. 2201/2003"; for the text see paragraph 150 below).

15. On 15 November 2006 the State Child Rights and Adoption Service under the Ministry of Social Security and Labour (*Valstybės vaiko teisių apsaugos ir įvaikinimo tarnyba prie Socialinės apsaugos ir darbo ministerijos*; hereafter "the State Child Rights and Adoption Service"), which is also the "Central Authority" within the meaning of Article 53 of Regulation (EC) No. 2201/2003 (see paragraphs 134 and 150 below), announced its conclusion regarding the second applicant's return. The child care authority noted that the girl had lived in Germany until being taken to Lithuania and that I.R. had kept the child in Lithuania unlawfully. The child care specialists had talked to I.R., but could not persuade her to return the child to Germany and had concluded that the child had not yet reached an age at which it would be reasonable to hear her opinion. The child care specialists noted, on the one hand, that the child had been examined, on I.R.'s initiative, by child development specialists at Vilnius University Hospital, and those specialists had considered that separation of the child from her mother and brother at that moment would negatively affect the girl's emotional health and potentially cause problems for her development. On the other hand, there was no proof that the first applicant would not be capable of taking care of his daughter or that any other kind of harm might be caused to her upon her return to Germany. The child care specialists also pointed out that, pursuant to Article 11 § 4 of Regulation (EC) No. 2201/2003, "a court cannot refuse to return a child on the basis of Article 13 (b) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return" (see paragraph 150 below). Accordingly, even if the court were to establish that there was a substantial risk that the girl would sustain psychological harm if returned to Germany, it should in addition verify whether German institutions would take appropriate measures to protect the girl's interests after her return. It also transpires from the documents in the case that the representatives of the State Child Rights and Adoption Service reiterated that view during the court hearing.

16. I.R., who was represented by a lawyer, V.Š., admitted before the Klaipėda Regional Court that it was definitely not her intention to return to Germany. Neither did she agree that the second applicant should be returned there but argued that her daughter should stay with her in Lithuania because a mother's care was very important for a child. The first applicant was also present at that hearing, together with a lawyer.

17. By a ruling of 22 December 2006, the Klaipėda Regional Court refused the first applicant's request. It held that because of the girl's bond with her mother I.R. and brother E.M., her return to Germany – where her mother might be arrested, even if only temporarily – could cause the child serious psychological harm. As to E.M., he had a psychological ailment and refused to return to Germany, and I.R. could not leave him alone in Lithuania. For the first-instance court, this constituted grounds not to return

the second applicant under Article 13 (b) of the Hague Convention. The Klaipėda Regional Court considered that the second applicant's habitual place of residence, and thus her familiar and safe environment – which was Lithuania – could be changed only if there was a court decision regarding her custody.

18. It transpires from the documents before the court that in January 2007 the second applicant was issued with a permit granting her permanent residence in Lithuania. That same month I.R. declared her daughter's place of residence to be Klaipėda, Lithuania.

19. On 15 March 2007 the Court of Appeal granted an appeal lodged by the first applicant and quashed the Klaipėda Regional Court's decision. The Court of Appeal noted that although I.R., who at that stage was represented by a lawyer K.L., had taken her daughter to Lithuania lawfully − because she had the father's agreement − her choice not to return the child to Germany and instead to keep her in Lithuania was unlawful both under Article 3 of the Hague Convention and under Article 2 § 11 of Regulation (EC) No. 2201/2003. Such unlawful retention of the child in a place which was not her habitual place of residence breached the custody rights of the first applicant, who had taken care of the second applicant before she was taken to Lithuania and who intended to continue taking care of her in future. The first applicant noted that on 2 January 2007 the criminal proceedings against I.R. had been discontinued in Germany and that, since those proceedings had been brought on the basis of a private prosecution, they could not be repeatedly reopened.

The Court of Appeal pointed out that since the criminal proceedings instituted against I.R. for unlawful retention of the child had been discontinued in Germany, there was no reason to believe that, if returned to Germany, the child would be separated from her mother. The Court of Appeal also noted that the proceedings in the Lithuanian courts were concerned only with the return of the child, who was being retained unlawfully in Lithuania, and not with questions relating to the child's custody, such as the possibility of her living with her brother or her mother. This was a principle that likewise had its origins in Article 19 of the Hague Convention (see paragraph 145 below). In fact, as noted in the preamble to the Hague Convention, its aim was to protect children internationally from the harmful effects of their wrongful removal or retention (ibid.).

Moreover, there was no reason to doubt that a competent court in Germany would be capable of properly evaluating factual circumstances relating to matters of custody. The Court of Appeal observed that a consequence of unlawful removal was that the person with custody rights lost the possibility of exercising those rights in the child's place of residence. The child, for her part, was deprived of that person's care in a place that used to be her habitual place of residence. Accordingly, harm was

caused to both the person with custody rights and the child and would continue until a lawful state of affairs was restored.

20. The Court of Appeal also noted that the burden of proof in demonstrating a grave risk that the child's return would expose her to harm lay with the person who was objecting to the return. In the instant case, although − as noted in the report of the Klaipėda University Pedagogical Faculty social science (psychology) specialists − the return of the second applicant might cause her psychological hardship (*psichologiniai sunkumai*), there was no reason to believe that such hardship would amount to an intolerable situation or exceed the normal distress which the return of a small child to his or her country of origin would cause. Accordingly, there was no reason to apply Article 13 (b) of the Hague Convention.

21. The Court of Appeal ordered I.R. to return her daughter to Germany by 15 April 2007. In the event of her failure to do that, it would be for a Lithuanian bailiff to transfer the girl to her father in Klaipėda and in the presence of the Klaipėda child care authority.

22. Under Article 2 § 6 of the Law on the Implementation of EC Regulation No. 2201/2003 (see paragraph 134 below, which also contains the full title of this law), the decision of the Court of Appeal was final, that is to say, not amenable to an appeal on points of law. Under Article 339 of the Code of Civil Procedure (hereinafter "the CCP"), it also became enforceable from the day of its adoption (see paragraph 136 below).

23. On 23 April 2007 the Klaipėda Regional Court, accepting a plea by I.R. that she and her son E.M. needed more time to prepare themselves psychologically for the girl's return to her father, issued an order suspending enforcement of the Court of Appeal decision. The Klaipėda Regional Court disregarded the first applicant's pleading that as early as 22 March 2007 he had contacted the child care authorities in Klaipėda and the State Child Rights and Adoption Service with an offer in good faith to help I.R. to execute the Court of Appeal ruling of 15 March 2007, including helping her financially to travel to and stay in Germany during the transfer of the child, but I.R. had rejected those proposals, seeking to delay the execution proceedings and abusing her procedural rights.

24. By a ruling of 4 June 2007 the Court of Appeal quashed the Klaipėda Regional Court's decision of 23 April 2007. The appellate court noted, on the one hand, that the situation referred to by I.R. – that the second applicant's return would be harmful for I.R. and for her son E.M. – could last indefinitely. On the other hand, there was no evidence that returning the child to her father within the time-limit set earlier would cause her any harm or not be in her interests, nor had this been the conclusion of the first-instance court. The paramount concern was to protect the interests of the child, who was being held in Lithuania unlawfully, and any delay in executing the court decision for her return ran counter to the Court's ample case-law concerning States' positive obligations in this field.

25. According to the documents submitted by the Government, on 18 May 2007 I.R. signed an agreement with the law office of K.Č. and R.B., whereby I.R. agreed to pay 300 Lithuanian litai (LTL) (approximately 87 euros (EUR)) per hour for representation in the case concerning the second applicant's return to Germany. The lawyers in question took on the obligation to represent I.R. in the Lithuanian courts up to the level of the Supreme Court.

B. The bailiff's attempts to execute the Court of Appeal decision of 15 March 2007 for the second applicant's return in 2007

26. Given that I.R. had not returned the second applicant within the prescribed time-limit, on 13 June 2007 at the first applicant's request the Klaipėda Regional Court issued a writ of execution (*vykdomasis raštas*) which stated that "I.R. [was] obliged to return the second applicant to Germany before 15 April 2007 [see paragraph 21 above]. Should the court order for the transfer not be executed before that date, it is for the bailiff to take measures, in accordance with the rules set out in the Code of Civil Procedure, by taking the second applicant from I.R. and transferring the girl in Klaipėda city on a date agreed with the first applicant, and in the presence of the Klaipėda city child care authorities".

27. In addition, on 9 July 2007 the first applicant presented the bailiff with a letter in which he stated that, in order to protect his daughter's interests and to protect her from any harm during the transfer process − and also wishing to help I.R. to voluntarily execute the court decision for the girl's return − he proposed to cover all costs for I.R. and the child related to their travel to Germany. He also proposed that he would provide I.R. with financial support and somewhere to live in Germany until she could find herself a place to live, and would also help her with other organisational matters. The first applicant also presented the bailiff with a document from a private company in Germany which agreed to employ I.R.

28. On 9 July 2007 the bailiff drew up an order (*patvarkymas*), asking I.R. to explain how she envisaged that the court decision could be executed in a friendly way.

29. The first applicant then wrote to the bailiff stating that he would arrive in Lithuania for the transfer, and asked the bailiff to make arrangements for that transfer to take place on 30 July 2007. On that date the bailiff issued the decision that the transfer would take place on 3 August 2007, with the participation of the Klaipėda city child care authorities. However, the bailiff could not subsequently serve that decision on I.R. because she could not be found at either her home address in Klaipėda or her place of work at Klaipėda University nor could she be reached on her telephone. On 3 August 2007 the bailiff announced that a search would be launched for I.R. and the second applicant, and informed the police of this

fact. I.R. contacted the bailiff on 5 September 2007, stating that in August she had been on holiday and claiming that she had not been avoiding the bailiff. The bailiff therefore called off the search. On 5 September 2007 he again ordered I.R. to bring the second applicant to Klaipėda city child care authorities' premises on 12 September for her transfer to the first applicant.

30. As confirmed by the bailiff and also by the signatures of the first applicant, of I.R., and of the representative of the Klaipėda child care authority, I.R. arrived at the meeting on 12 September 2007, but refused to execute the court decision for the second applicant's transfer, or to disclose her daughter's whereabouts. The bailiff also noted that the first applicant had asked I.R. to give him the opportunity to communicate with their daughter, but I.R. had refused that request. On the same day, the bailiff announced a police search for the second applicant, and asked the Klaipėda City District Court to decide whether I.R. should be issued with a fine for having ignored the court decision.

31. The court decisions on file also show that on 11 September 2007 the bailiff refused I.R's request to suspend the execution proceedings, despite I.R.'s submission that separation would be traumatic because of the second applicant's close family ties to her and to her brother.

32. The Klaipėda Regional Court on 4 December 2007 upheld the Klaipėda City District Court's decision of 23 October 2007, and underlined that the merits of the question of the second applicant's return had already been decided by the Court of Appeal ruling of 15 March 2007 (see paragraphs 19-21 above). After the latter decision, I.R.'s attempts to have the merits of the question re-examined − at the stage when the bailiff was executing the court decision − by invoking Article 13 § 1 (b) of the Hague Convention, had no basis in law. The Klaipėda Regional Court also pointed out that on 4 June 2007 the Court of Appeal had already examined the question of whether execution of the decision to return the second applicant could be suspended on the grounds of I.R.'s son's state of health and his separation from the second applicant, but had dismissed the request as unfounded (see paragraph 24 above). Accordingly, such arguments could not be examined again.

33. I.R. appealed against the bailiff's decision, but her complaint was dismissed by the Klaipėda City District Court on 23 October 2007. I.R. then lodged a further appeal, to which the first applicant responded that by such actions I.R. was abusing her procedural rights and being dishonest.

34. Afterwards, having received the 22 October 2007 ruling of the Supreme Court's President ordering suspension of the execution of the Court of Appeal ruling of 15 March 2007 (see paragraph 73 below), on 29 October 2007 the bailiff issued a decision (*patvarkymas*) suspending execution of the second applicant's return to the first applicant and also halting the search for the second applicant.

C. The public interest in the case in Lithuania and State authorities' and politicians' comments and other involvement in the matter, as submitted essentially by the applicants

35. The applicants submitted numerous pieces of evidence showing the public interest in their case and the Lithuanian State authorities' and politicians' involvement in it, including statements of various officials, official documents of Lithuanian and European Union institutions, and publications in various Lithuanian Government Internet sites and the media. The facts constituting the evidence submitted by the applicants were not challenged by the Government and are also corroborated by the information available from the public sources (see also paragraph 210 below).

36. As noted by the applicants, as early as 6 December 2006 and in a television documentary entitled "*SOS Pagalba*" (translated as "SOS Help"), G.A., who was the director of the Klaipėda child care authority, made the following comments regarding the applicants' situation (regarding her subsequent position see also paragraph 60 below):

> "How can a mother be accused of kidnapping her own child? Father and mother must both take care of the child. And if there is a conflict situation in the family, then that can only be resolved in court."
>
> "As a mother I say that this is not a good step to take. I believe that the child has to grow up with his or her mother and stay in contact with the father. This is my opinion."
>
> "This mother is right – it is her child, and we should all make an effort to help her."
>
> "I am asking myself – what abduction? The mother has taken her child along with her. I would do the same, no one could take my child away from me."

37. According to information published on 5 April 2007 on the Internet site of the Seimas (the Parliament of the Republic of Lithuania), A.L., who was the Chairman of the Seimas Committee on Human Rights, commented that "Lithuania was not ready to defend the rights of Lithuanian citizens who had married foreigners or the rights of their children". After the investigation which the Committee conducted on the basis of I.R.'s request, the Chairman considered that in the applicants' case the child care specialists had acted only formally, having failed to evaluate the impact which the return to Germany could have on the second applicant. He also "rhetorically asked": "the Hague Convention of 1980 and the Council Regulation (EC) No. 2201/2003 formally oblige to return [the second applicant] to her country of origin in order to avoid consequences negative for the child. However, if one would disregard the formal law, what harm could being with a loving mother cause to a two year old child?" According to the information on the Seimas Internet site, the Committee also discussed such questions as the "problem of Lithuania's international engagements", the European Union law which led to the situation where "the mothers from

eastern Europe countries, after marriage in the West and having given birth there, lose the right to a child, when a man from western Europe turns them out of the family". The Chairman also considered that there was no institution in Lithuania that would be effective in defending a child's interests on an international scale.

38. On 7 September 2007 the press also quoted a public statement by V.A.A., a member of the Seimas who belonged to the Homeland Union (*Tėvynės Sąjunga*) political party and who, according to her CV on the Seimas website, had an educational background in music and whose interests included "family politics, children's rights and human rights (*angažuojasi šeimos politikos, vaiko teisių ir žmogaus teisių srityse*)". She was also a member of the Seimas Committee on Legal Affairs (*Teisės ir teisetvarkos komitetas*) and the Seimas Committee on European Affairs (*Europos reikalų komitetas*). V.A.A. claimed to be "very much concerned" with the conclusions that had been provided by the State Child Rights and Adoption Service as well as its position during the court proceedings regarding the second applicant's return to Germany (see paragraph 15 above). V.A.A. pointed out that the State Child Rights and Adoption Service was the "Central Authority" under the Hague Convention and under Regulation (EC) No. 2201/2003 and that, pursuant to Article 2 § 3 of the Law on the Implementation of EC Regulation No. 2201/2003, its role was to provide a conclusion for submission to the court hearing the case for a child's return (see paragraph 134 below). However, her impression was that the State Child Rights and Adoption Service had only formally defended the rights and interests of the second applicant and had essentially supported the arguments of the first applicant, who had asked the courts to order that his daughter be returned to Germany. V.A.A. underlined that the conclusions provided by the State Child Rights and Adoption Service "had influence on (*įtakoja*)" court decisions. It was therefore of paramount importance that those conclusions should be "just (*teisingos*)": the State Child Rights and Adoption Service should not only formally rely on the norms of international conventions. In V.A.A.'s view, analysing the factual situation, one could not comprehend how the State Child Rights and Adoption Service could have agreed to the second applicant's return to Germany, given that before leaving for Lithuania she had lived most of her life with her mother, and had now lived most of her life in Lithuania.

The parliamentarian also opined that, since the second applicant had been only one and a half years old when she left Germany, her connection with the environment there had been minimal. In Lithuania, however, she had already established close connections with other members of her (Lithuanian) family and had become used to that environment. The member of the Seimas considered that the second applicant's return to Germany would thus put the child in an intolerable situation, and would possibly cause irreparable damage to her mental and other development. V.A.A.

stated that she had read the conclusion of the State Child Rights and Adoption Service which it had submitted to the court but considered that the Service had not taken the relevant circumstances properly into account and therefore "had not performed its main function and task", and "in this particular case" had failed "to protect the rights and lawful interests" of the second applicant. V.A.A. thus urged the State Child Rights and Adoption Service to properly carry out its functions when protecting the second applicant's interests, also pointing out that that institution was overseen by the Ministry of Social Security and Labour.

39. By means of a written request dated 7 September 2007, six members of the Seimas elected in the constituencies of the Klaipėda region or those who stood for parliamentary elections in those constituencies and/or lived there (V.Č., V.G., V.S., A.S., I.Š. and I.Ro.) submitted a written request to the bailiff in charge of executing the Lithuanian court's order for the transfer of the girl into her father's custody, asking him to refrain from carrying out that duty. The parliamentarians stated that they intended to petition the President of the Republic and the Minister of Justice, requesting that the girl not be returned to her father.

40. On 9 September 2007 the President of the Republic wrote to the first applicant, stating that he was very much aware of the case, which had attracted wide media attention. However, the President highlighted that he could not exert any influence over the courts or provide any kind of recommendation as to how cases should be decided, for to do so would be unconstitutional. The President also pointed out that, whilst understanding how important a court decision was in the first applicant's case, he had never expressed his view publicly in order not to breach the principle of the independence of the courts. The President expected that the case would be examined objectively, taking into account the interests and needs of the second applicant.

41. On 21 September 2007, a group of forty-one members of the Seimas, on the initiative of the Seimas Committee on Human Rights, asked the Constitutional Court to examine the question of whether Article 2 § 6 of the Law on the Implementation of EC Regulation No. 2201/2003 – pursuant to which no appeal on points of law was possible in cases concerning a child's return effected under that Regulation (see paragraph 134 below) – contradicted the constitutional principle of the rule of law.

42. In that context, the press also quoted another member of the Seimas Committee on Human Rights, A.Sa., who also signed a petition seeking referral of the question to the Constitutional Court and stated that he did "not understand how such a situation was possible. Maybe the German courts adopt (*priima*) reasonable decisions, but this is a precedent which the Constitutional Court should examine. Lithuania is a member of the European Union, and there are plenty of such marriages. Does that mean

that we shall always give in and our children will always be taken away to foreign countries?"

43. The Constitutional Court initially accepted the request for examination but, two years later, in December 2009, it discontinued the proceedings because on 13 November 2008 the Seimas had adopted a new Law on the Implementation of EC Regulation No. 2201/2003, and the former law ceased to be applicable (see paragraph 134 *in fine* below).

44. According to the Lithuanian news agency ELTA, in September 2007 members of the Liberals' Movement (*Liberalų Sąjūdis*) political faction in the Seimas asked the President of the Republic to examine the possibility of granting Luisa Rinau Lithuanian citizenship urgently and by way of exception (see paragraph 132 below).

45. According to the report of the Seimas Committee on Human Rights activity for the period 10 September 2007 to 1 February 2008 − approved at the Committee's meeting of 13 March 2008 − on 10 October 2007, exercising parliamentary oversight as regards the protection of children's rights in the context of Lithuania's international agreements, the Committee discussed, *inter alia*, the question "Regarding the quality of the actions of the child care authorities' employees and the possibility of providing legal aid for Lithuanian citizens in the German courts". The Committee considered that the conclusions which the State Child Rights and Adoption Service had presented to the Lithuanian courts regarding the second applicant's return to her place of origin – Germany – had not reflected accurately the social situation of the second applicant, had not evaluated her connection with her mother and brother, and various other aspects. The Committee considered that such "an inappropriate conclusion" had done "irreparable harm to the interests of the child, and could also influence court decisions in Germany". The Committee, having taken into account the harm which had been caused by the child care authorities' formal attitude (*formalus požiūris*) towards the interests of the child, demanded that the Minister of Social Security and Labour (who supervised that child care authority), declare that those employees had not performed their duties correctly and also order the child care authority to submit another conclusion which would fully reflect the social situation of the second applicant, and also evaluate the expert conclusions regarding possible damage to the girl's mental state should she be returned to Germany.

46. In that context, on 20 September 2007 members of the Liberals' Movement in the Seimas had met the employees of the State Child Rights and Adoption Service "who had personally taken part in deciding Luisa's fate". According to the press article on the internet portal AINA (*Aukštaitijos naujienų ir žinių portalas*) on the same day under the heading "Luisa's story – an example of Lithuanian institutions' failure to act (*Luisos istorija – Lietuvos institucijų neveiklumo pavyzdys*)", the members of the Liberals' Movement political faction had been inquiring what steps the

responsible authorities would take so that the second applicant's story would have a happy ending, and "what they would do to truly help the children of Lithuania in protecting their interests (*ką darys kad realiai padėti Lietuvos vaikams*)".

The article quoted G.Š., a member of the Seimas Committee on Human Rights who belonged to the Liberals' Movement, as having greeted the State Child Rights and Adoption Service employees at that meeting with the statement "My dears, you are wishing to wash off your tainted tunic (*Mielosios, jūs norite nusiplauti savo suteptą mundurą*)" and having accused them of lacking patriotism. He was quoted as having said that "the ambivalence, lack of action and lack of simple humanity (*abejingumas, neveiklumas ir paprasčiausio žmogiškumo stygius*) of the State child care and adoption institution makes one angry – whereas that institution should be defending the rights and interests of the child, defending a Lithuanian citizen. We must ascertain whether such employees are fit for their job".

The same article quoted another member of the Liberals' Movement, D.T., who urged the State Child Rights and Adoption Service employees to put all their efforts into protecting the interests of the girl and asked "how come we are so stubborn as to not comprehend that the link between the mother and the child, responsibility for the well-being of the child, the child's safety, link to the family and the homeland – as a great virtue – has not changed and never will change?...". The article also stated that "the Liberals' Movement faction has asked the President of the Republic to consider whether he could grant Lithuanian citizenship to the daughter of Lithuanian citizen I.R., who was born in Germany, by way of exception and as a matter of particular urgency (*išimties ir ypatingos skubos tvarka*)" (also see paragraph 44 above).

47. The Seimas Committee on Human Rights also asked the Ministry of Justice to provide quality legal help to I.R. and to request that the case be moved for examination from the German courts to the Lithuanian courts, "protecting the mother's right to raise her daughter in Lithuania".

48. The Committee's initiative was reported in the media. On 10 October 2007 Internet news portal (www.delfi.lt) quoted the Chairman of the Seimas Committee on Human Rights A.L., who elaborated that "I think the employees of the [Ministry of Social Security and Labour and Ministry of Justice] will obey the ministers' proposals (*šių ministerijų darbuotojai paklus ministrų siūlymams*), and that the courts will also have the decency (*teismai turės garbingumo*) to reopen this case if the Prosecutor General's Office asks for the case to be reopened on the grounds that new circumstances have appeared". The Chairman was also reported as having stated that since March 2007 the Seimas Committee on Human Rights had tried to exert influence that every institution would perform its job properly. He also stated that if within a year the bailiff had not executed the court

decision ordering the girl's transfer, the German courts should transfer the case to the Lithuanian courts to be examined in Lithuania.

49. The same article of 10 October 2007 also quoted the Ombudsman for Children's Rights, R.Š., who stated: "From the very beginning the position of the Ombudsman's Office was that the child should be with the mother. Everywhere we talk about a family – three persons, that the mother cannot choose one child. In this situation the children would be separated. Even our laws on child adoption state that if we have brothers or sisters, one should search for adoptive parents so that siblings would not be separated. And here we have a situation when we ourselves in some way are assisting to separate the children. The children should live together – we should search for ways and possibilities for allowing them to remain in Lithuania". The Ombudsman also pointed out that if I.R. had gone to Germany to be present at the court hearings where the question of custody was being decided [which I.R. had not done], the process would perhaps not be so "painful" now.

50. In both instances – in spring and autumn 2007 (see paragraphs 37, 45, 47 and 48 above) − the Seimas Committee on Human Rights was presided over by A.L., who belonged to the Liberals' and Centre Union (*Liberalų ir Centro Sąjunga*). In August 2008 I.R. became candidate no. 30 on the list of the Liberals' and Centre Union in the Seimas election which was to take place in October 2008.

51. On 13 September 2007 V.M., the Chairman of one of political factions in the Seimas, sent a letter to P.B., the Minister of Justice, asking him to pay attention to "the court decisions that had shaken the whole of Lithuania (*sukrėtė visą Lietuvą*) and that had been widely reported in the press", pursuant to which a minor child was to be taken away from I.R. and against her mother's will to be sent to a father who lived in Germany. V.M. wrote to the Minister of Justice asking him "to properly ascertain (*visapusiškai išsiaiškinti*) whether the court decisions have been just and lawful, even though it was plain that they contradicted elementary logic and were not humane. If the laws of our country treat such actions [namely court decisions ordering transfer of the second applicant to the first applicant] as lawful, I would ask you to initiate legislative amendments so that similar situations can be avoided in future". V.M. also stated that "although laws were written by people, and those laws had to serve people, the State could not remain a bystander when because of dramatic circumstances human fates were being broken (*laužomi žmonių likimai*), and children have been suffering".

52. According to the press statement on 21 September 2007 released by the Ministry of Justice, the Minister of Justice P.B. had asked the State Guaranteed Legal Aid Service in Klaipėda to provide I.R. with free legal aid in so far as this was possible (*pagal galimybes*).

53. The applicants' story was widely reported in the media, including newspapers printing readers' opinions. For example, on 21 September 2007, *Lietuvos rytas*, one of the biggest daily newspapers in Lithuania, published an article "The story of a Klaipėda resident [I.R.] – warning to other Lithuanian women". Under that headline the daily printed letters containing statements such as "A mother had a moral right to defend herself by any means, even to murder the bailiff, should he attempt to take the child by force. Moral right is above legal right", "It is unbelievable that Lithuania cannot defend its citizen. What kind of laws, what kind of lawyers? What is the Ministry of Justice doing?", "A heart-breaking story. Isn't there anyone who could defend the woman and the child? Lithuanians, wake up, do not remain unmoved, do not be blind followers of the law".

54. On 26 September 2007 the first applicant wrote to the Ombudsman for Children's Rights, R.Š. He stated that he wished to settle the question of the second applicant's return peacefully, and that he did not wish to bring the details of his case into the public domain, in order to protect both the second applicant and her brother, who was ill, and whom the first applicant had taken care of in Germany. The first applicant was therefore particularly disturbed by what had been happening in Lithuanian politics and society regarding his case. He noted, in particular, that members of the Seimas had been exerting pressure on the Lithuanian bailiff not to execute the court decision (see paragraph 39 above). The first applicant wondered whether the Seimas had assumed the powers of the courts, since its politicians − who had not seen the evidentiary material in his case file − had been ignoring court decisions which, all the more so, complied with international law. The first applicant also stated that the politicians had been supporting the exertion of psychological pressure on him and that the Lithuanian newspapers had been printing readers' letters where he had been demonised and called "a German pig", "Nazi", "fascist" and "a criminal"; there had also been public calls for violent action (*susidoroti*) towards him, the court bailiff and the first applicant's lawyer. He was asking, rhetorically, which of the politicians would take responsibility should something happen?

55. In that letter the first applicant also noted that he had not been able to see his daughter in Lithuania since December 2006, because I.R. had been hiding her. He had still been able to talk to his daughter *via* the Internet in January and February 2007, but afterwards I.R. had banned that contact as well. He also pointed out that the Lithuanian media had failed to depict his case objectively, since they had not mentioned the international courts' practice regarding the Hague Convention, which applied equally to fathers and mothers. The first applicant also submitted that most of the expert reports on which I.R. had relied had been prepared by experts from Klaipėda University, where I.R. had worked for a long time (also see paragraph 29 above). He expressed sadness at what had become of the Lithuanian legal system: that international treaties had been signed but not

adhered to because to follow them was "inconvenient"; that a father had very few rights in Lithuania; that the politicians had been publicly supporting smear campaigns or being ambivalent towards him. He noted that, if Lithuania had not signed the Hague Convention, his only option would have been to observe helplessly as his daughter became distant from him, but that now he had a right to fight for his daughter. The first applicant expressed hope that the decisions of the Court of Appeal would be respected and executed and that Lithuania would fulfil its obligations under international law.

56. On 15 October 2007 I.R. met P.B., the Minister of Justice of Lithuania. The Minister promised her free legal aid in the proceedings concerning her daughter's return to Germany. I.R. also stated to the press that "there is a legal possibility that court proceedings regarding the second applicant's custody might be transferred from Germany to Lithuania. I asked the Minister of Justice to act as intermediary in this matter (*prašiau tarpininkavimo*), but the Minister stated that he could not help. He implied that I myself should do that with the help of a lawyer (*esą tai galiu padaryti aš pati su advokato pagalba*)."

57. By October 2007, almost 35,000 Lithuanian citizens had signed a petition entitled "For Luisa" demanding that the girl not be returned to her father in Germany. The petition referred both to Lithuanian legislation and to the United Nations Convention on the Rights of the Child and argued that it was in the girl's best interests for her to stay with her mother in a familiar environment in Lithuania. The petition was addressed to the President of the Republic, the Prime Minister, the Speaker of Parliament, the Ombudsman for Children's Rights and Germany's ambassador to Lithuania.

58. In that context, in October 2007 I.R. professed in the Lithuanian press that "[I]n our country mother and child are sacred and inseparable. It is unfortunate that this principle is not being followed by the courts (*mūsų šalyje mama ir vaikas yra šventa, nedaloma. Gaila, kad šia nuostata nesivadovauja teismai*)".

59. In October 2007 the press also reported that I.R. had visited the prosecutor's office in Klaipėda that month, where she had been invited for a conversation. The prosecutor D.P. noted that lawyer G.B. (see paragraph 101 below) had been defending I.R.'s interests at that time. The prosecutor also noted that the prosecutors' office's support for I.R. so far "had only been of a moral nature (*kol kas tiktai moralinė*)", but that the complicated matter could possibly be resolved if the laws on dual citizenship were amended. The prosecutor stated that "if the second applicant were to become a Lithuanian citizen, maybe it would be possible to help her somehow. We must explore all possibilities."

60. In October 2007 the press also quoted G.A., the director of the Klaipėda child care authority, as saying that she had attempted to persuade the first applicant to renounce custody rights in respect of the second

applicant but had been unsuccessful. The director stated that the first applicant had been categorical, but that it also appeared that he "genuinely loved his daughter".

61. On 19 September 2007 the press reported that I.R. would have to hide her daughter not only from her father, but also from Lithuanian police, since the bailiff had undertaken to announce a police search for her (see paragraph 29 above). The press also wrote that "from unofficial sources it is known that in these days I.R. intends to travel to Vilnius, to approach the highest civil servants and politicians, and in this manner fight for the right to bring up her daughter herself".

62. On 3 June 2008 the Minister of Justice P.B. met I.R. According to the Ministry of Justice press release, that week "the Lithuanian Government approved Lithuania's position with regard to examining the case under the urgent preliminary ruling procedure of the European Court of Justice" (see paragraph 95 below). The Minister of Justice also stated that it was important to support the doubt raised by the Supreme Court of Lithuania, namely whether Germany in fact had jurisdiction in such a child return case. It was therefore indispensable to clearly establish the intention behind the European Union's legal norms.

63. On 2 September 2008 − that is to say already after the ruling of the European Court of Justice (hereafter "ECJ") and the follow-up ruling by the Supreme Court (see, respectively, paragraphs 98-103 and 106 below) − A.L., who was the chairman of the Seimas Committee on Human Rights, replied to the first applicant in writing that the Committee had examined the child care specialists' conclusions about the relationship between I.R. and her children. According to the Chairman, I.R. was "a mother beyond reproach (*nepriekaištinga motina*)", and the first applicant's fear about her negative influence on the children had no basis. The Chairman stated that, in the Committee's view (*mūsų žiniomis*), I.R. could not move to Germany because of her son's ailment. The Chairman thus suggested that the first applicant should "seriously consider the possibility of moving to Lithuania", so that the second applicant would not be separated from her mother and brother.

D. Endeavours by I.R. and the Lithuanian Prosecutor General to have the Lithuanian court proceedings reopened

64. On 17 May 2007 the Prosecutor General's Office in Lithuania received I.R.'s written plea requesting – on the basis of Article 366 § 1 (9) of the Code of Civil Procedure (see paragraph 136 below; hereafter "CCP") – that the court proceedings concerning the second applicant's return be reopened.

65. On 4 June 2007 and 13 June 2007, respectively, I.R. and the Prosecutor General of Lithuania, who sought to defend the public interest,

attempted to have the Lithuanian court proceedings for the child's return reopened. They relied on Article 366 § 1 (2 and 9) of the CCP and argued that in the ruling on 15 March 2007 (see paragraphs 19-21 above) the Court of Appeal had failed to take into account the fact that there would be a grave risk to the girl's well-being if she were to return to Germany. By that time she had lived in Lithuania for a considerable period and was integrated into the Lithuanian environment. If she were removed from Lithuania, she would lose her solid connection with her mother and be placed in an unfamiliar linguistic environment. I.R. also referred to the state of health of her son, E.M., claiming that he was afraid of losing his mother should she decide to go to Germany with the second applicant.

66. On 19 June 2007, the Klaipėda Regional Court refused to accept both applications for examination. The court also reiterated that all questions relating to the parents' divorce and the custody of their daughter fell within the jurisdiction of the Oranienburg District Court.

67. Both I.R and the Prosecutor General appealed against the Klaipėda Regional Court's decision. The first applicant, in turn, asked that their appeals be dismissed. He submitted, among other things, that the Prosecutor General had ignored the aims of the Hague Convention and of Regulation (EC) No. 2201/2003 and had also disregarded Article 8 of the Convention.

68. The Court of Appeal upheld the Klaipėda Regional Court's decision on 27 August 2007. The Court of Appeal also underlined that the 15 March 2007 ruling of the Court of Appeal (see paragraphs 18-20 above) was not amenable to reopening under Article 365 § 1 of the Code of Civil Procedure.

69. The Prosecutor General and I.R. lodged an appeal with the Supreme Court against the rulings of the Klaipėda Regional Court and the Court of Appeal of 19 June 2007 and 27 August 2007, respectively, regarding the reopening of civil proceedings.

The first applicant responded by arguing that the reopening of civil proceedings for the child's return would contradict the very essence of the goal set by Regulation (EC) No. 2201/2003, namely that such cases should be decided without undue delay and within six weeks of the lodging of the application for the child's return. The first applicant pointed out that on 27 August 2007 the Court of Appeal had correctly stated that the 15 March 2007 Court of Appeal ruling could not be amenable to reopening as the principles of concentration of civil proceedings and fairness would otherwise be contradicted and the child's return would be delayed indefinitely. The first applicant also submitted that, in the light of the aim of Regulation (EC) No. 2201/2003 and of the Law on the Implementation of EC Regulation No. 2201/2003, neither cassation nor reopening of proceedings would be permissible procedural measures. He relied on the Hague Convention and on Article 8 of the Convention, maintaining that an

unjustified application for the reopening of civil proceedings would breach his right to respect for family life.

70. On 16 October 2007, the Supreme Court's chamber for the selection of cases to be examined in appeals on points of law (*teisėjų atrankos kolegija*) accepted for examination the appeal on points of law for reopening of proceedings lodged by the Prosecutor General, who was acting to protect the public interest.

In that context, on 19 October 2007 the Supreme Court's chamber also accepted for examination the appeal on points of law lodged by I.R., who had also asked the Supreme Court to suspend execution of the 15 March 2007 Court of Appeal ruling for the second applicant's return (see paragraphs 19-21 above). The Supreme Court's chamber pointed out, however, that pursuant to Article 2 § 6 of the Law on the Implementation of EC Regulation No. 2201/2003, no appeal on points of law was possible in proceedings involving the return of a child which have been instituted under Regulation (EC) No. 2201/2003. It followed that there was no legal basis on which to grant I.R.'s request for suspension of the execution of the Court of Appeal ruling of 15 March 2007 ordering her daughter's return to Germany. The chamber also indicated that its ruling was "final and not amenable to appeal".

71. On 22 October 2007 the Prosecutor General submitted to the Supreme Court a fresh request for suspension of execution of the Court of Appeal's ruling of 15 March 2007, pointing out that at that time execution of that court decision had already begun, the police and the bailiff having taken measures to establish the child's whereabouts and to return her to Germany. The Prosecutor General pleaded that there was a theoretical possibility that the proceedings in the civil case which had been concluded by the final decision of the Court of Appeal of 15 March 2007 might be reopened. Afterwards, the courts could theoretically decide not to return the child to Germany, on the basis of the exceptions provided for in the Hague Convention. If that was the situation, this new court decision would remain impossible to execute, because by that time the child would be in Germany.

72. It was also the Prosecutor General's view that in order to give priority to the best interests of the child, especially to a young child's need to live in a familiar and stable environment, it was necessary to suspend the execution of the Court of Appeal ruling of 15 March 2007 "so that the child's *status quo* would be maintained whilst the court proceedings were ongoing, and that possible damage to the child's mental state and development could be avoided". The Prosecutor General thus asked that temporary protective measures be applied.

73. The same day, 22 October 2007, the President of the Supreme Court, V.G., unilaterally adopted a ruling suspending the execution of the Court of Appeal judgment of 15 March 2007 until the Prosecutor General's appeal on points of law regarding the possibility of reopening the court proceedings

in Lithuania had been examined. The President of the Supreme Court considered that the criterion determining when an appeal on points of law was not possible (namely the child's return under Article 2 § 6 of the Law on the Implementation of EC Regulation No. 2201/2003) did not automatically preclude an appeal on points of law in respect of the reopening of proceedings. Moreover, in his view, Article 372 of the Code of Civil Procedure allowed the suspension of execution of a court's decision at any stage of the court proceedings (that is to say, also at the stage of an appeal on points of law) (see paragraph 136 below).

The President of the Supreme Court noted that the subject matter of the Prosecutor General's appeal on points of law in that case was not the return of the child, but the question of reopening the court proceedings ("*kasacinio nagrinėjimo dalykas šioje byloje yra proceso atnaujinimo klausimai, o ne vaiko grąžinimo klausimas – prašoma priimti procesinį sprendimą būtent dėl proceso atnaujinimo ir sustabdyti sprendimo vykdymą ryšium su galimu proceso atnaujinimu konkrečioje byloje*"). The President of the Supreme Court also held that in the instant case relating to the reopening of the civil case concerning the child's return, it was necessary to suspend execution of the Court of Appeal's decision because "the child is a minor, she does not speak German, she is attached to her mother and her brother, and she has spent the majority of her life in Lithuania". The President of the Supreme Court considered that, if the child were to return to Germany before the question of reopening was decided, it would cause her great psychological harm.

74. On 26 October 2007 the first applicant attempted to appeal against the Supreme Court President's ruling. He pleaded, in writing, that when suspending execution of the 15 March 2007 Court of Appeal decision, the President had acted outside the law and had exceeded the powers assigned to him under the Code of Civil Procedure. The first applicant also argued that by suspending execution of the Court of Appeal ruling on the second applicant's return, the child would be prevented from seeing her father. Given the second applicant's young age, that would be detrimental to their connection with each other and would place the child in an intolerable situation.

The first applicant also pointed out that the President of the Supreme Court had exceeded the boundaries of the Prosecutor General's request, because when suspending the execution of the return decision the President had relied on circumstances such as the second applicant's attachment to her mother and brother, the fact that she was at a young age, and that for most of her life she had lived in Lithuania, which had not been relied on by the Prosecutor General in his request. Moreover, no proof supporting psychological harm to the second applicant had been provided to the President of the Supreme Court. Lastly, the first applicant relied on Article 8 of the Convention and the Court's case-law on the issue (he

referred to *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 60, 24 April 2003; *Maire v. Portugal*, no. 48206/99, § 74, ECHR 2003-VII; and *Iosub Caras v. Romania*, no. 7198/04, § 38, 27 July 2006), pointing out that, under the Hague Convention, undue delay in returning a child to the State in which he or she was habitually resident was in breach of Article 8 of the Convention. He also pointed out that under Regulation (EC) No. 2201/2003 the authorities had six weeks to decide the issue of return, but this had not been the case in his situation.

75. On 30 October 2007 the President replied that the ruling adopted by him was "final and not amenable to appeal". The first applicant then made a further attempt to appeal against the Supreme Court President's ruling. He argued that the President had acted outside the law and in breach of the rules of the Code of Civil Procedure, the Law on the Implementation of EC Regulation No. 2201/2003, the Hague Convention, and Regulation (EC) No. 2201/2003 itself. By a ruling of 29 November 2007 the Supreme Court's Chamber dismissed the appeal, noting that it did not have the competence to review a ruling by the President.

76. By a ruling of 7 January 2008 the Supreme Court held that both the Klaipėda Regional Court and the Court of Appeal had erred in applying civil procedure rules concerning the reopening of proceedings (see paragraphs 66 and 68 above). The Supreme Court remitted to the Klaipėda Regional Court the case concerning the reopening of the civil proceedings concerning the girl's return.

77. On 21 March 2008 the Klaipėda Regional Court again rejected as unfounded the request for reopening of proceedings, and the Court of Appeal did likewise on 30 April 2008. On the basis of information received from Germany – a letter from the Prosecutor General of the German Supreme Court of 20 November 2006 and the German courts' decisions regarding the second applicant's custody and return – the Court of Appeal considered that measures had been taken in Germany to protect the second applicant's interests upon her return. That being the case, a Lithuanian court could not refuse to return the child on the basis of Article 13 (b) of the Hague Convention, because to do otherwise would be in contradiction to Article 11 § 4 of Regulation (EC) No. 2201/2003. The Court of Appeal also relied on the findings of the Brandenburg Regional Court of 20 February 2008 (see paragraph 92 below) to the effect that any psychological problems which the second applicant might face because of her separation from the mother upon her return to Germany were less harmful than being taken care of by a mother "whose manner of raising [the second applicant] had obvious flaws (*ženklūs auklėjimo trūkumai*)".

78. In the meantime, between 5 February and 20 March 2008, at the first applicant's request, the bailiff reopened the execution file since after the Supreme Court's ruling of 7 January 2008 (see paragraph 76 above), the Supreme Court's President's decision to suspend the execution of transfer

(see paragraph 73 above) had become invalid. The bailiff ordered I.R. to provide information about the second applicant's whereabouts and to present herself at the Klaipėda child care authority to discuss the details of the girl's transfer. As noted by the bailiff, I.R. did not cooperate.

Instead, on 20 February 2008 she asked the Supreme Court to suspend execution of the 15 March 2007 Court of Appeal decision for the child's return. This request for suspension was submitted to the Supreme Court by I.R. when she challenged the Klaipėda Regional Court's decision of 4 December 2007 (see paragraph 32 above) to uphold the bailiff's actions of September 2007 to continue with the execution of the court decision for the girls' return.

79. On 15 March 2008 the Supreme Court again decided to suspend the execution proceedings until there had been a ruling on I.R.'s appeal on points of law concerning the Klaipėda Regional Court's decision of 4 December 2007 upholding the bailiff's actions.

E. The first applicant's complaints to the European Commission, the European Commission's inquiry and the response by the Ministry of Justice

80. On 13 October 2007 the first applicant wrote to F.F., who at that time was the European Commissioner for Justice, Freedom and Security and the Vice President of the European Commission. The first applicant stated that he had been prevented from seeing his daughter since 14 December 2006, despite the fact that he had been awarded temporary sole custody by the German courts, and likewise notwithstanding the Lithuanian Court of Appeal decision of 15 March 2007 (see paragraphs 19-21 above). He highlighted that I.R. had been hiding his daughter from him, that the bailiff had been threatened with murder, and that the first applicant had been publicly called names such as "German pig", "Nazi" and "fascist" (see paragraph 53 above). This behaviour had been widely supported and encouraged by Lithuanian politicians, including members of the Seimas and the Chairman of its Committee on Human Rights, by the prosecutor in Klaipėda and the Minister of Justice, as well as by the mass media and the child care authorities. The applicant referred to certain of the facts as described above in this judgment in particular.

81. On 30 June 2008 the Lithuanian Government received an inquiry from the European Commission in connection with the Rinau case regarding the fact that, even though more than fourteen months had elapsed since the Court of Appeal decision of 15 March 2007 (see paragraphs 19-21 above), the second applicant had still not been returned to Germany. The European Commission pointed out that the first applicant had attempted to ensure that the aforementioned court ruling was executed, but that all his efforts had been in vain. The Commission stated that it was seeking to

evaluate whether the actions of the Lithuanian State institutions had been in accordance with European Union law, including Regulation (EC) No. 2201/2003.

The Lithuanian authorities were therefore asked to explain the reasons for the non-return of the second applicant. The European Commission also wished to know what was the length of time that it usually took in Lithuania to execute court decisions for a child's return from one parent to another who had exclusive custody rights. The European Commission also asked to be provided with information about the special circumstances of the applicants' case, if there were any. Lastly, the European Commission pointed to the fact that the Supreme Court had suspended execution of the 15 March 2007 Court of Appeal ruling on the grounds that questions of European Union law had been referred to the ECJ for interpretation (see paragraph 94 below). The European Commission asked the Lithuanian authorities to provide an explanation as to the basis ("*kuo remdamasis*") on which the Supreme Court had taken such a decision to suspend the Court of Appeal ruling.

82. In July 2008 the news agency Baltic News Service quoted the Lithuanian Ambassador to the European Commission as saying that "the European Commission was interested in the Lithuanian institutions' attitude towards the Rinau case". For their part, the Lithuanian officials believed that there was no danger that the European Commission would start infringement proceedings, which could lead to Lithuania being obliged to pay a fine. They noted that the proceedings before the European Court of Justice were already pending at that time (see paragraphs 98-103 below).

83. On 18 July 2008 the Ministry of Justice sent its reply to the European Commission. The Ministry firstly noted that, under Articles 109 and 114 of the Constitution, in Lithuania justice was administered solely by the courts and that "the Ministry had not taken part in the processes concerning the [second applicant's] return to Germany". Responding to the Commission's question why fourteen months after the Lithuanian Court of Appeal ruling (see paragraph 19 above) the first applicant's child had still not been returned to Germany, the Ministry recounted the chronology of the respective court proceedings that had taken place in Lithuania. The Ministry pointed out that, in order to guarantee the swiftest possible proceedings so as to hear the cases for a child's return quickly, and also to protect the interests of a child so that one who had been taken away or had not been returned would be returned as quickly as possible, the Law on the Implementation of EC Regulation No. 2201/2003 (see paragraph 134 below) did not allow appeals on points of law (*neleidžia kasacijos*) in child return cases. However, if there was a reopening of civil proceedings (*taikant proceso atnaujinimo institutą*), under the Code of Civil Procedure both appeals and appeals on points of law were possible (*galima ir apeliacija, ir kasacija*).

84. The Ministry of Justice considered that, in theory, the reopening of civil proceedings was an exceptional way to monitor the lawfulness and reasonableness of court decisions which were already in force. Reopening of proceedings provided an opportunity to rectify mistakes of law in court decisions that were already final, thus protecting not only private but also public interests. The grounds for reopening civil proceedings were laid down in Article 366 of the Code of Civil Procedure – namely circumstances that could not have been verified when the case was examined (for example, circumstances that came to light later). The Ministry of Justice suggested that this was the reason ("*tai lemia*") why court proceedings in Lithuania were still on-going after the 15 March 2007 Court of Appeal ruling which had ordered the child's return to Germany.

85. As to the Commission's question about the time usually taken to execute a court decision by which one of the parents is obliged to return the child to another parent who has sole custody rights, the Ministry of Justice wrote that the information of this kind was not entered into record (*tokie duomenys nėra renkami*) and that the time depended upon the factual circumstances of each particular case.

86. Lastly, the Ministry of Justice wrote that on 26 May 2008 the Supreme Court had suspended execution of the Court of Appeal ruling of 15 March 2007 on the basis of Article 363 of the CCP (see paragraph 136 below). The Ministry pointed out that the letter of the aforementioned provision of the Code of the Civil Procedure allowed execution of a court decision or a ruling which had been subject to cassation appeal to be suspended. However, relying on the Commentary to the CCP (*Lietuvos Respublikos civilinio proceso kodekso komentaras. II dalis. Vilnius: Justitia, 2005, p. 450*), the Ministry also stated that in exceptional cases it was possible to suspend execution of a court decision which was not the subject of cassation proceedings. It was within the Supreme Court's discretion to evaluate the factual circumstances of the case and their possible impact on human rights or lawful interests and to suspend execution of a particular court decision or ruling.

F. Proceedings in Lithuania for recognition of the second applicant's Lithuanian citizenship

87. In May 2008 I.R. asked the Migration Department in Vilnius to recognise (*pripažinti*) the second applicant's Lithuanian citizenship. The Migration Department replied, however, that pursuant to Article 23 § 1 of the Law on Citizenship (see paragraph 132 below), I.R. should have provided documents showing that both parents had agreed in writing to the child taking up the Lithuanian citizenship, as well as a document confirming that she had renounced any other (namely German) citizenship.

88. On 24 July 2008, that is to say, two days after the amendments to the Law on Citizenship had come into force (also see paragraphs 91 and 133 below), I.R. asked the Lithuanian authorities to recognise her daughter's Lithuanian citizenship. The migration authorities in Klaipėda granted I.R.'s request on 11 August 2008, and issued the second applicant with a Lithuanian passport. The authorities cited Article 9 § 1 and Article 22 of the Law on Citizenship as in force at that time as the legal basis for such a decision (see paragraphs 132 and 133 below).

89. The first applicant appealed, arguing that the Lithuanian passport had been issued in breach of the law. He alleged I.R. should not have submitted such a request because on 20 June 2007 the Oranienburg court had ruled that questions of the second applicant's citizenship were to be decided by the first applicant (see paragraph 92 below). He conceded that his daughter had the right to Lithuanian citizenship, but that right should have been properly exercised.

90. By a decision of 6 January 2009 the Migration Department rejected the first applicant's request to rescind his daughter's Lithuanian citizenship. It noted that the Government Commission for Questions of Citizenship had examined the first applicant's complaint and the girl's situation and on 11 December 2008 had ruled that the second applicant had been lawfully recognised as a Lithuanian citizen on the basis of Article 9 § 1 of the Law on Citizenship, which stated that a child with parents of different citizenships, but one of whom was a Lithuanian citizen, could be a Lithuanian citizen irrespective of where he or she was born (see paragraph 133 below). Citizenship had been recognised on the basis of a request by I.R., who, according to the Migration Department, was her daughter's lawful legal representative because the Lithuanian migration authorities had no knowledge that I.R. had been recognised as not having legal capacity (*pripažinta neveiksnia*), as noted in Article 3.157 of the Civil Code (see paragraph 142 below). The Migration Department also stated that an appeal against its decision could be lodged before the Commission for Administrative Disputes or an administrative court.

It appears that after the second applicant's return to Germany (see paragraph 112 below) the first applicant did not pursue these proceedings any further.

91. According to a press release issued by the Chairman of the Seimas Committee on Human Rights, A.L., "the doubts as to whether [the second applicant] has been recognised as a Lithuanian citizen – and whose mother I.R. is using all possible means (*visomis priemonėmis siekia*) to ensure that the girl remains in Lithuania – are speculative and not well-founded". A.L., who presided over the working group which prepared the amendments to Article 9 § 1 of the Law on Citizenship, "considered that [the amendments] which came into force in July 2008 created the possibility (*suteikė galimybę*) for [the second applicant] to be not only a citizen of Germany but

also a Lithuanian citizen." According to the press release, A.L. was "confident that attempts to question the lawfulness of [the second applicant's] [Lithuanian] citizenship represented merely the wish of malefactors (*piktavaliai*) to harm the little girl, who spoke only Lithuanian, because in Germany she would be forced to communicate with people who did not know her language. This was against the interests of the child and was also in breach of the Hague Convention, which declares that the child's interest must prevail when taking decisions relating to him or her".

G. The first applicant's and I.R.'s divorce in Germany, the German courts' decisions regarding the second applicant's custody

92. By a judgment of 20 June 2007 the Oranienburg District Court granted a divorce to the first applicant and his spouse. It awarded permanent custody of their daughter to her father. The court also ordered that questions regarding the second applicant's citizenship should be decided by the first applicant. The German court examined the Klaipėda Regional Court's decision of 22 December 2006 refusing the return of the child (see paragraph 17 above), but ordered I.R. to return the child to Germany and to leave her in the custody of her father. I.R. was not present at that court hearing, but was represented and made submissions. On the same day, the Oranienburg District Court annexed to its decision a certificate issued pursuant to Article 42 § 1 of Regulation (EC) No. 2201/2003 (see paragraph 150 below).

On 20 February 2008, the Brandenburg Regional Court dismissed an appeal lodged by I.R. and held that she was bound to return the child to Germany. I.R. was present at the hearing and made submissions.

It appears from the German court's judgments in the case file that I.R. was represented and able to submit observations, even though not physically present, in the proceedings giving rise to the Oranienburg court's judgments of 14 August 2006 and 20 June 2007. That information was confirmed at the hearing before the Court of Justice, when she was again present (see paragraph 101 below).

On 14 May 2008 the Oranienburg District Court issued the certificate ordering the second applicant's return to the first applicant, on the basis of that court's decision of 20 June 2007 and pursuant to Articles 28 and 42 of Regulation (EC) No. 2201/2003.

93. Meanwhile, I.R. asked the Lithuanian Court of Appeal not to recognise the Oranienburg District Court's decision of 20 June 2007 regarding the child's custody and return and to apply temporary protective measures, namely to suspend execution of its earlier decision of 15 March 2007 for the second applicant's transfer to Germany (see paragraphs 19-21 above).

On 14 September 2007 the Court of Appeal refused to accept I.R.'s request for examination. It pointed out that, pursuant to its earlier decision of 15 March 2007, I.R. had been obliged to return the child to Germany on the basis of Article 13 of the Hague Convention. The Court of Appeal also noted that the certificate issued by the Oranienburg District Court pursuant to Article 42 of Regulation (EC) No. 2201/2003 stated that all the conditions necessary for the issue of such a certificate, as set out in Article 42(2), had been satisfied. The Court of Appeal noted that the German court's judgment, in so far as it ordered the return of the child to Germany, ought to have been directly enforced pursuant to the provisions of [Article 42 of] Regulation (EC) No. 2201/2003, without the need for special exequatur proceedings for the recognition and enforcement of judicial decisions (see paragraph 150 below). Lastly, in the light of the foregoing, the Court of Appeal also rejected I.R.'s request for the application of temporary protective measures.

H. Suspension of the court proceedings concerning the second applicant's return in Lithuania and the referral to the European Court of Justice for a preliminary ruling

94. In response to an appeal by I.R. against the Court of Appeal decision of 14 September 2007 (see paragraph 93 above), on 30 April 2008 the Supreme Court decided to suspend civil proceedings and to put to the ECJ six questions regarding the interpretation of Regulation (EC) No. 2201/2003, including that of Article 42 thereof.

The questions were:

> "(1) 'Can an interested party within the meaning of Article 21 of Council Regulation (EC) No 2201/2003 apply for non-recognition of a judicial decision if no application has been submitted for recognition of that decision?'
>
> (2) 'If the answer to Question 1 is in the affirmative: how is a national court, when examining an application for non-recognition of a decision brought by a person against whom that decision is to be enforced, to apply Article 31(1) of Regulation No 2201/2003, which states that '... Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application'?'
>
> (3) 'Is the national court which has received an application by the holder of parental responsibility for non-recognition of that part of the decision of the court of the Member State of origin requiring that that holder return to the State of origin the child staying with that holder, and in respect of which the certificate provided for in Article 42 of Regulation No 2201/2003 has been issued, required to examine that application on the basis of the provisions contained in Sections 1 and 2 of Chapter III of Regulation No 2201/2003, as provided for in Article 40(2) of that regulation?'
>
> (4) 'What meaning is to be attached to the condition laid down in Article 21(3) of Regulation No 2201/2003 ('Without prejudice to Section 4 of this Chapter')?'

(5) 'Do the adoption of a decision that the child be returned and the issue of a certificate under Article 42 of Regulation No 2201/2003 in the court of the Member State of origin, after a court of the Member State in which the child is being unlawfully kept has taken a decision that the child be returned to his or her State of origin, comply with the objectives of and procedures under Regulation No 2201/2003?'

(6) 'Does the prohibition in Article 24 of Regulation No 2201/2003 of review of the jurisdiction of the court of the Member State of origin mean that, if it has received an application for recognition or non-recognition of a decision of a foreign court and is unable to establish the jurisdiction of the court of the Member State of origin and unable to identify any other grounds set out in Article 23 of Regulation No 2201/2003 as a basis for non-recognition of decisions, the national court is obliged to recognise the decision of the court of the Member State of origin ordering the child's return in the case where the court of the Member State of origin failed to observe the procedures laid down in the regulation when deciding on the issue of the child's return?'"

Pending the ECJ's examination of the questions referred to it, in a ruling of 26 May 2008 the Supreme Court also suspended execution of the Court of Appeal decision of 15 March 2007 requiring the return of the girl to Germany.

95. On 21 May 2008 the Supreme Court also requested that the referral to the ECJ for a preliminary ruling be dealt with under the urgent procedure provided for in Article 104b of the ECJ Rules of Procedure. To substantiate this request the Supreme Court this time referred to the necessity to act urgently on the grounds that any delay would have a very unfavourable impact on the relationship between the child and the parent with whom she was not living.

96. In June 2008 the Lithuanian press quoted I.R. as saying that the European Court of Justice was her last hope in having the case regarding the second applicant's custody decided by the Lithuanian courts. She stated that she did not dare to think about how she would manage to execute the German courts' decisions should the European Court of Justice findings be unfavourable to her.

97. On 22 October 2008 the Lithuanian Government passed resolution no. 1062 "On the allocation of means (*Dėl lėšų skyrimo*)", by which it allocated a sum of LTL 5,300 (approximately EUR 1,530) "to the citizen of the Republic of Lithuania I.R. so that she could cover the fees of the lawyer G.K. who had represented her on 26 and 27 June 2008 at the European Court of Justice" (also see paragraph 101 below).

I. The response from the European Court of Justice

1. The View of Advocate General

98. On 1 July 2008 the Advocate General (AG) observed in her View that since one factor characteristic of the situations under consideration

consisted in the fact that the abductor claimed that his or her actions had been rendered lawful by the competent authorities of the State of refuge [in this case – Lithuania], one effective way of deterring him or her would be to deprive his or her actions of any practical or juridical consequences. In order to bring this about, the Hague Convention placed at the head of its objectives the restoration of the *status quo*, by means of "the prompt return of children wrongfully removed to or retained in any Contracting State" (paragraph 15 of the View). A principle which underpinned Regulation (EC) No. 2201/2003 as a whole was that of cooperation and mutual confidence between the courts and authorities of the Member States, which implied that decisions of the courts of the Member State of the child's habitual residence should in principle be recognised and enforced automatically (paragraph 18 of the View). The Advocate General also noted that "the fundamental significance of this principle was brought into focus at the hearing when counsel for [I.R.] suggested that the Lithuanian courts might consider that the objectivity of the German courts was not guaranteed in a dispute between a German father and a Lithuanian mother". For the Advocate General, "it was clear that to allow recognition to be refused on the basis of such doubts (whether they were or were not in fact felt by the Lithuanian courts) would negate the whole system which the Regulation seeks to establish" (paragraph 19 of the View).

99. Whilst reiterating that the superior interests of the child must be paramount in all circumstances, the Advocate General observed the following:

> "22. However, I should like to qualify that statement in the context of the child's return to the Member State of habitual residence. It is clear that the Convention and the Regulation are based on the principle that, in the event of a child's wrongful removal or retention, his or her superior interests do indeed always require that return, except only in certain clearly-defined situations set out in Articles 13 and 20 of the Convention (read, in so far as Article 13(b) is concerned, in conjunction with Article 11(4) of the Regulation). That, it seems to me, is perfectly coherent, and even necessary. A child can have no interest in being dragged from one Member State to another by a parent in quest of the court which he or she supposes will be the most sympathetic to his or her cause. I would add that a return to the Member State of habitual residence does not necessarily imply the child's return to the home of the parent left behind, or separation from the abducting parent. Those are separate questions, to be decided by the competent court, which must take account of all the emotional, psychological and material aspects of the situation and which must, in deciding, accord paramount importance to the child's superior interests."

100. As to the applicants' case, the Advocate General considered that "one cannot but observe that, in the present case, the fundamental aim of depriving the actions of the abducting parent of any practical or juridical consequences by ensuring the child's prompt return is far from having been achieved" (paragraph 24 of the View). It was neither denied nor deniable that the German courts had jurisdiction to hear the divorce proceedings under Article 3(1)(a) of Regulation (EC) No. 2201/2003, as all the residence

requirements listed there had been fulfilled at the time when the proceedings were initiated. Next, it appeared to be common ground that the child had indeed been wrongfully retained for the purposes of the Hague Convention (Article 3) and Regulation (EC) No 2201/2003 (Article 2(11)). At the time when the mother had announced her intention not to return to Germany with the child, custody rights had actually been exercised by both parents jointly, by virtue of German law, and the father had consented only to a two-week trip to Lithuania (paragraphs 27 and 28 of the View). In the Advocate General's view, once seised, the Lithuanian court had in principle been required to order the child's return. It should also have issued its judgment no later than six weeks after the application was lodged. The only grounds on which it could have refused to order the child's return were those set out in Article 13 of the Hague Convention (paragraph 33 of the View). The Advocate General thus stated:

> "39. However, as a result of the mother's application for the proceedings to be reopened and the procedural vagaries that have followed upon it, the decision was not enforced, nor has it been enforced to this day. On the contrary, enforcement of the Court of Appeal's decision has been suspended on several occasions, even by the Supreme Court itself – despite the fact that the same Supreme Court held, in its judgment allowing the reopening, that such suspension was not possible.
>
> 40. Even if enforcement of a judgment of a court of a Member State within its own territory is a matter for domestic law, it can only be concluded, at this point, that the outcome of these successive suspensions – the fact that, nearly two years after she was first supposed to return and more than 15 months after the decision ordering her return was issued, the child has still not been brought back to Germany – is totally incompatible with the fundamental aims of the Convention and the Regulation."

2. The preliminary ruling

101. The European Court of Justice held hearings on 26 and 27 June 2008. I.R. was represented by two lawyers, G.B. (see paragraph 59 above) and G.K., who submitted observations on her behalf. The lawyer G.K. told the Lithuanian press that "it is obvious that the German court's certificate for the return of the child was invalid ... However, only [the European Court of Justice] may decide whether law can be born out of unlawfulness".

The Lithuanian Government were represented by two lawyers from the European Law Department under the Ministry of Justice.

The first applicant also had a lawyer – the one who had represented him in the court proceedings in Lithuania.

102. On 11 July 2008 the European Court of Justice delivered its preliminary ruling (ECLI:EU:C:2008:406) on interpretation of the Regulation, having examined the referral for a preliminary ruling under an urgent procedure pursuant to Article 104b of its Rules of Procedure. The ECJ noted that the Regulation complements the provisions of the 1980 Hague Convention, which nevertheless remains applicable (paragraph 53 of the ECJ's judgment). It then held, *inter alia*, that procedural steps which had

been taken in the Member State of enforcement after a non-return decision had been given were not decisive and could be regarded as irrelevant for the purposes of implementing the Community regulation in question (paragraph 80 of the ECJ's judgment). If the position were otherwise, there would be a risk that the Regulation would be deprived of its useful effect, since the objective of the child's immediate return would remain subject to the condition that the redress procedures allowed under the domestic law of the Member State in which the child was being wrongfully retained had been exhausted. That risk should be particularly balanced because, where young children were concerned, biological time could not be measured according to general criteria, given the intellectual and psychological structure of such children and the speed with which that structure develops (paragraph 81 of the ECJ's judgment). Since no doubt had been expressed as regards the authenticity of the certificate issued by the German court and since it had been drawn up in accordance with the provisions of the Regulation, opposition to the recognition of the decision ordering return was not permitted and it was for the Lithuanian court merely to declare the enforceability of the certified decision and to allow the immediate return of the child (paragraphs 89 and 109 of the ECJ's judgment).

103. The European Court of Justice also held:

> "87. First, the sequence of the decisions taken by the Lithuanian courts, as regards both the application for return and that for non‑recognition of the decision certified pursuant to Article 42 of the Regulation, does not appear to have observed the autonomy of the procedure provided for in that provision. Second, the number of decisions and their diverse nature (to set aside, overturn, reopen, suspend) are evidence that, even if the most expeditious domestic procedures may have been adopted, the periods of time elapsed were already, on the date on which the certificate was issued, in manifest contradiction to the requirements of the Regulation."

J. The Supreme Court's reaction to the ECJ's preliminary ruling

104. In a ruling of 9 July 2008, that is to say, after the ECJ had delivered its preliminary ruling, the Supreme Court asked the State Child Rights and Adoption Service for a fresh conclusion regarding the possibility of returning the second applicant to Germany. The Supreme Court reasoned that such a conclusion had to be produced under Article 2 § 3 of the Law on EU Regulation implementation (see paragraph 134 below) and that it was necessary given that "a certain time had passed since the case had been examined".

105. On 24 July 2008 the first applicant wrote to the Supreme Court that under Article 2 § 6 of the Law on the Implementation of EC Regulation No. 2201/2003, an appeal on points of law was not possible in cases concerning a child's return. The first applicant also underlined that the conclusion which the Supreme Court had ordered the State Child Rights and Adoption Service to produce was related to the factual circumstances of the

case and their evaluation. The first applicant pointed out that, under Article 353 §1 of the Code of Civil Procedure, the Supreme Court was bound by the facts as they had been established by the first-instance and appellate courts (see paragraph 136 below). Accordingly, it was not the Supreme Court's function to examine the factual circumstances of the case even if they were mentioned in an appeal on points of law or a response to it. Above all, it was not the Supreme Court's function to gather evidence *ex proprio motu*. To interpret the Code of Civil Procedure in any other way would negate the entire purpose and meaning of proceedings on points of law, the main aim of which was to ensure the uniform interpretation and application of law, as set out in Article 346 § 2 of the Code of Civil Procedure (see paragraph 136 below). The first applicant also emphasised that none of the parties to the civil proceedings (namely himself, the Prosecutor General, and I.R.) had asked the Supreme Court to order such a fresh conclusion by the State Child Rights and Adoption Service. Lastly, he pointed out that the proceedings regarding the merits of the request to return the girl to Germany had already been terminated by the final and enforceable Court of Appeal decision of 15 March 2007 (see paragraphs 19-21 above). In those proceedings such a conclusion had already been produced on 22 November 2006 (see paragraph 15 above). These proceedings, however, had been initiated to look into the legal question of the possibility of a reopening (see paragraph 73 above).

106. By final ruling no. 3K-3-403/2008 of 25 August 2008, the Supreme Court rejected the Prosecutor General's and I.R.'s requests for a reopening of the civil proceedings for the second applicant's return, leaving the Court of Appeal's decision of 30 April 2008 unchanged (see paragraph 77 above). The State Child Rights and Adoption Service was party concerned in those proceedings. Relying on the ECJ's preliminary ruling, the Supreme Court pointed out that once a court of the child's country of origin had taken a decision for that child's return and issued a certificate as set out in Article 42 of Regulation (EC) No. 2201/2003, a court in the State in which execution of that decision had been requested could only pronounce (*tik paskelbti*) that other court's decision and grant the request to return the child without delay. In the light of the ECJ's preliminary ruling, the Supreme Court also held that the Lithuanian courts did not have jurisdiction to review the German courts' decisions on the basis of which a certificate for the child's return had been issued. Moreover, as explained by the ECJ, once a certificate under Article 42 of Regulation (EC) No. 2201/2003 had been issued in the child's state of origin [Germany], [any] court decisions taken in the State where the child was residing [Lithuania], would have no effect on its validity or its enforcement. The Supreme Court thus concluded that "any measure aimed at the reopening or further continuation of the court proceedings was prohibited (*tai užkerta kelią proceso atnaujinimui ar jo tolimesniam vyksmui*)".

107. Although I.R. had relied on a report (*raštas*) of 31 October 2007 from the Ministry of Social Security and Labour stating that the State Child Rights and Adoption Service had not executed its duties properly when providing a conclusion in the instant case and that the director of that Service had been issued with a disciplinary sanction in that regard, the Supreme Court considered that this had not been of any relevance as regards the lawfulness of the decision of 15 March 2007 by the Court of Appeal concerning the second applicant's return. In that context the Supreme Court also pointed out that in their request to reopen the civil proceedings in the case which had been terminated by the 15 March 2007 Court of Appeal ruling, I.R. and the Prosecutor General had relied on Article 366 § 1 (2 and 9) of the Code of Civil Procedure, that is, that new circumstances had come to light which could not have been known when the case was heard initially and that there had been a clear error when applying the law. Regarding the first ground, the Supreme Court held that the fact that the child would be in unfamiliar linguistic environment if she were to be returned to Germany did not correspond to any of the cases mentioned in Article 13 (b) of the Hague Convention. Because of her young age she would have the capacity to learn another language, and mere immersion in another linguistic environment could not be seen as causing the child physical or mental harm within the meaning of Article 13 (b) of the Hague Convention. As to I.R.'s argument that her son's health would deteriorate upon the second applicant's return to Germany, that contention was not related to any potential harm to the child who was to be returned – the second applicant. Moreover, the circumstances regarding I.R.'s son's ailment had been known from the very beginning of the court proceedings for the second applicant's return. That circumstance could therefore not be considered as new. Lastly, the Supreme Court pointed out that the rule that siblings should not be separated applied in relation to their adoption [which was not the situation in the case at hand] (Article 3.209 § 6 of the Civil Code).

108. The Supreme Court then turned to the Prosecutor General's submission that when sanctioning the child's return, the Court of Appeal had committed a clear mistake of law in interpreting Article 13 (b) of the Hague Convention and Article 3 of the Convention on the Rights of the Child, and that this would, in turn, constitute a basis for reopening the civil court proceedings under Article 366 § 1 (9) of the CCP. The Supreme Court however pointed out that the Klaipėda Regional Court and the Court of Appeal − both during the proceedings for the second applicant's return (see paragraphs 17 and 19-21 above), and when adopting decisions refusing the reopening of court proceedings in the already terminated case (see paragraphs 66, 68 and 77 above) − had not established any exceptions which would permit the non-return of the child on the basis of those two international Conventions. For the Supreme Court, this showed that both the

Klaipėda Regional Court and the Court of Appeal had acted within their competence. It followed that no clear mistake of law had been committed.

109. On the same day, 25 August 2008, the Supreme Court adopted another ruling, no. 3K-3-126/2008, dismissing I.R.'s appeal on points of law against the Court of Appeal decision of 14 September 2007 by which that court had rejected I.R.'s request for the application of temporary protective measures (see paragraph 93 above). The Supreme Court also relied on the ECJ's preliminary ruling.

110. Also on the same day, 25 August 2008, I.R. gave an interview to an Internet news portal 15min.lt. The article reported that, after two years of dramatic activity surrounding I.R.'s family, which had been marked by a marathon of court hearings and demonstrations of support (*paramos piketai*), and had attracted attention not only in Lithuania but all over Europe, the Supreme Court had adopted two rulings which were unfavourable to I.R. She stated regarding those decisions: "Clearly, these are unjust decisions, in particular the one refusing to reopen court proceedings. One must conclude that our State does not protect its citizens. As if it is kow-towing (*nuolaidžiaujama*) to a stronger country. This is inhuman, but I cannot lay down my weapons. The execution proceedings remain. I will use all legal avenues to allow my daughter to stay with me and her brother." I.R. also expressed her happiness that during the two years that she had been fighting for her child she had been supported by her family, and also by Lithuanian society and the State institutions: "My family has been behind me from the very first unfavourable German court decisions. Afterwards Lithuanian institutions joined in. As the saying goes – there cannot be an army of one in the field. The system would have crushed me. I received immense support (*be galo palaikė*) from Lithuanian society, non-governmental organisations, the child care service [*Vaiko teisių tarnyba*], the Seimas, the Government, and the Prosecutor General. Without such support I would have been eaten alive by now."

111. In reply to an inquiry from the first applicant's relatives, the President of the Republic later wrote, on 22 September 2008, that he was aware of the case, in which over the previous two years Lithuanian and German courts had adopted more than thirty decisions "which had often been contradictory and invalidated one another". The President also referred to the ECJ's preliminary ruling and to the Supreme Court's subsequent ruling, pursuant to which I.R. had been obliged to return the second applicant to the first applicant. Lastly, the President referred to the principle of the separation of powers, under Article 109 of the Constitution, and stated that, in a democratic State, refusal to execute a court decision was a breach of the principle of the rule of law. The President expressed his confidence (*esame įsitikinę*) that the Lithuanian authorities would ensure that the court decision was executed.

K. The events of 20 October 2008 and criminal proceedings against the first applicant on charges of child abduction and wilful conduct

112. On 20 October 2008 the first applicant, I.R. and their daughter attended a meeting at the premises of the Klaipėda child care authority. The first applicant had earlier asked a Lithuanian bailiff for the meeting so that their daughter could be transferred into his custody on the basis of the writ of execution (*vykdomasis raštas*) issued by the Klaipėda Regional Court on 13 June 2007 (see paragraph 26 above). During the meeting – before the bailiff reached the premises and whilst I.R. was in another room talking to a psychologist – the first applicant took their daughter out of the building and drove her away (*išsivežė*).

113. The applicants travelled together to Riga, where they attempted to board a plane to Berlin. According to the Latvian authorities, on the night of 20 October 2008 the two applicants were arrested at Riga airport by the Latvian authorities (also see paragraph 115 below).

114. The following day the two applicants were released by the Latvian authorities, who had established that the first applicant had sole custody rights over the child, as confirmed by the court decision. On the same day, I.R. arrived at Riga airport, accompanied by Lithuanian police officers but returned to Lithuania without the child because the two applicants had boarded a plane to Berlin earlier that day. The Lithuanian press quoted the first applicant as blaming the Lithuanian authorities for their failure to act, and said that he would have had to wait ten years to be reunited with his daughter if he had not acted as he did, taking her away with him. The press also quoted the Ombudsman for Children's Rights as suggesting that the first applicant's actions in taking his daughter away with him raised doubts as to whether he could "be good for the child" (*gali būti geras vaikui*) and "properly guarantee the child's safety" (*tinkamai užtikrinti vaiko saugumą*).

115. On 20 October 2008 a Lithuanian prosecutor opened criminal proceedings against the first applicant on charges of child abduction and wilful conduct (*savavaldžiavimas*) (Article 156 § 2 and Article 294 § 1 of the Criminal Code, see paragraph 143 below). The criminal charges were initiated by a complaint from the Klaipėda child care authority. I.R. was granted victim status in that criminal case.

116. That same day, in response to a request from the prosecutor, the Klaipėda City District Court ordered the first applicant's detention on remand, holding that he might have violated the rights and interests of I.R. The Lithuanian prosecutors subsequently issued a European Arrest Warrant in respect of the first applicant but cancelled that warrant on 20 November 2008.

117. On 18 November 2008 the Klaipėda Regional Court quashed the order for the detention of the first applicant. The court noted that the

German courts' decisions of 14 August 2006 and 20 June 2007 (see paragraphs 12 and 92 above) had never been invalidated, and should therefore have been executed. The fact that the second applicant should have been transferred into the first applicant's custody followed both from the ECJ's preliminary ruling and from the Supreme Court's rulings of 25 August 2008. There was no basis on which it could be held that the first applicant's actions had breached the rights of I.R., who had in any case been deprived of her custody rights in respect of her daughter by court decisions that were still valid.

118. The Lithuanian prosecutors however pursued the criminal investigation against the first applicant. On 3 February 2009 he was officially informed that he was a suspect in a criminal case under Articles 156 § 2 and 294 § 2 of the Criminal Code, on the grounds that on 20 October 2008 he had seized the second applicant and driven her away. The prosecutor considered that by such actions the first applicant had caused serious damage to the second applicant's interests.

119. Subsequently, the prosecutor questioned all the relevant persons in the case: the first applicant, I.R., the representatives of the child care authorities, the bailiff, and others who had taken part in the proceedings concerning the second applicant's transfer to the first applicant and had witnessed the events of 20 October 2008. The prosecutors also obtained documents from Germany regarding the second applicant's psychological state after she had been returned to the first applicant.

120. In particular, the director of the Klaipėda Pedagogical Psychological Service (*Klaipėdos pedagoginė psichologinė tarnyba*) testified as a witness that the first applicant's lawyer had contacted that service between 15 and 20 September 2008, asking that a psychologist be involved when the child was transferred to the first applicant. The Service had agreed to be involved in the transfer proceedings. At the beginning of October 2008 the first applicant had called the Service asking for a consultation. When the director had met the first applicant, they had discussed how to communicate with the child so that the closest possible contact could be established with her so that she would be traumatised as little as possible. She had given him much advice. The first applicant had also complained to the Service that I.R. had not allowed him to communicate with his daughter.

The director also testified that the first applicant had asked her to attend a meeting at 2.15 p.m. on 20 October 2008 so that she could see how he communicated with the child and whether everything was in order. The director also testified that when she had arrived at that meeting she had tried to talk to I.R., but it had been obvious that I.R. did not wish to reach any compromise; she was ready only "to fight (*kovoti*)" and "to go until the end (*eiti iki galo*)". No constructive solution could be reached, even though psychological assistance was offered to I.R. The director also stated that she

had heard comments that I.R. was about "to harm herself and [the second applicant] (*pakenkti sau ir vaikui*)", and had therefore suggested to the child care authorities that they talk to I.R. about those intentions. The director stated that the bailiff had arrived at the child care authority premises at 2.15 p.m., as scheduled.

121. When questioned by the prosecutor as a suspect, the first applicant testified that he had arrived in Lithuania on 24 September 2008. Initially he had been able to see his daughter on a daily basis, but after ten days I.R. had forbidden him to see her, and for two weeks he had had no contact with his daughter. Afterwards, with the help of the child care authority and at its premises, the first applicant had succeeded in seeing his daughter for two hours a day for three days, but I.R. had always been present in the room during those meetings. He pointed out that he was the person who had sole custody rights over their daughter, but that he was unable to reach a friendly agreement with I.R., who submitted complaints against the bailiff. The first applicant also stated that he had taken seriously I.R.'s threat that she could do something to herself or the second applicant and that he therefore felt he had to act.

122. The first applicant also stated that he had liaised with the bailiff over how the second applicant's transfer should take place on 20 October 2008. However, after seeing I.R., he had thought that things might escalate out of control. He had therefore decided to leave the child care authorities' premises with his daughter when the opportunity arose, and without waiting for the bailiff. He had thus taken her to his car, where he had clothes for her. The applicant stated that his goal had been to leave Lithuania and to return to his home in Germany, which he reached on 21 October 2008. According to him, throughout that time the second applicant had felt all right (*sekėsi gerai*). Lastly, he stated that after their return to Germany I.R. had asked the German prosecutors and the child care authorities to arrest the first applicant and to return their daughter to her, but in April 2009 the Oranienburg first-instance court had held that the first applicant had sole custody rights and that it would not be in the best interests of the second applicant if she were to return to her mother.

123. When questioned as a witness, I.R. testified that when the first applicant was seeing their daughter during the arranged meetings in autumn 2008, she had not told the girl that she would have to go to Germany to live with her father. She also admitted that she had not visited the psychologists so that she could prepare the child for life with her father. I.R. also stated that she had been shocked by the developments on 20 October 2008 when the first applicant had taken their daughter away. She had suffered a lot due to the fact that the girl had been torn away from her. I.R. acknowledged that the child had not been prepared for the transfer to her father. It would have been easier for her if she had known that the girl had been psychologically prepared.

124. The representative of the Klaipėda child care authority testified that she had taken part in the meeting of 20 October 2008. Both parents and the girl had been in one room. She had witnessed how the girl communicated with her father, noting that they "communicated nicely, chatted and somehow understood each other (*vaikas su tėvu gražiai bendravo, čiauskėjo, kažkaip suprato vienas kitą*)". At some point the representative of the child care authority asked I.R. to leave the room where the two applicants were and to come into her office, because the psychologist had arrived. She and the psychologist had then tried to find out from I.R. what she had in mind when she said that she would "go until the end". I.R. replied that she wanted to do everything by lawful means, and that her lawyers were "preparing new papers" (*ruošia naujus raštus*). The representative and the psychologist understood that I.R. had some kind of unused means at her disposal. I.R. had talked very briefly and had been tense. The representative also noted that the psychologist had not observed the child during the meeting of 20 October 2008, because there had been no time for that. Everything had happened very fast. The representative considered that the action of taking away a child and putting her into a car, with the mother then running after her, was tantamount to kidnapping.

125. By a decision of 24 November 2009 the Klaipėda City District Prosecutor discontinued the criminal proceedings against the first applicant. The prosecutor firstly noted the Oranienburg District Court's decisions of 14 August 2006 and 20 June 2007 granting the first applicant custody of the second applicant and ordering I.R. to return the girl, and secondly the Lithuanian Court of Appeal ruling of 15 March 2007 (see paragraph 19-21 above) ordering I.R. to return the second applicant to her father. It followed that the second applicant had been living at her mother's home unlawfully. Lastly, the prosecutor also noted the Supreme Court's ruling of 25 August 2008, rejecting the Prosecutor General's and I.R.'s requests to reopen civil proceedings (see paragraphs 106 and 107 above).

The prosecutor also relied on the psychological expert report (*psichologinė ekspertizė*) of unspecified date which she had received from Germany, which she then recited in the decision:

> "The sudden separation of the second applicant from her mother as well as the sudden change of her place of residence had led to a reaction of sadness (*liūdesio reakcija*), which was normal for her age as she had been separated from persons close to her. However, Luisa had survived the move and the changes well; she had also received assistance. Therefore there was no long-term or traumatic impact resulting from that separation. Luisa had also borne the changes in her move to her father well. Her acclimatisation had been further eased by her capacity to learn and the presence of persons whom she had known from childhood, especially her father and her nanny, as well as her regular contact with her mother. She had learned the German language quickly and fully. Although she had been stressed during her trip to Germany, an interpreter and her father, who had always been next to her, had helped her. There were no residual consequences of that stressful event. Luisa's physical and mental state was very good. She was a self-confident, happy and smart girl with the

capabilities, knowledge and interests which were characteristic for her age. There were no indications that she had any emotional or behavioural issues or other psychological problems. Luisa's social development, including her behaviour when interacting with others, in all areas corresponded to that of other children of her age. Luisa had fully integrated into her living environment."

126. The prosecutor also found that the first applicant's actions of 20 October 2008 had not constituted a crime under Articles 156 § 2 or 294 § 2 of the Criminal Code. On the basis of the case file materials, including video recordings by journalists which showed how the first applicant had taken the girl from the premises of the Klaipėda child care authority and put her into the car, and also witness testimony, the prosecutor found that the first applicant had carried the girl in his arms. However, there was no proof that physical coercion had been used against her. In fact, given that the first applicant had custody rights over the girl, he in fact had the right to take her in his arms and carry her. The prosecutor pointed out that the first applicant had communicated with the child previously and had therefore not been a stranger or an unfamiliar person to her. When being carried out of the building in the first applicant's arms, the girl had not cried or screamed or otherwise indicated that she was being taken by force. One of the witnesses testified that she had started screaming when she saw her mother running after her and the first applicant, but that had been a normal response to her mother's reaction. The other witnesses testified, and the video recordings also showed, that the first applicant had calmed the child down after putting her in the car.

127. In setting out the reasons for discontinuing the criminal proceedings against the first applicant, the prosecutor also noted that, according to the bailiff, it had been planned to execute the court decision ordering the girl's transfer on 20 October 2008 at 2.15 p.m. Moreover, it was apparent from both the bailiff's and the first applicant's testimonies, as well as from the execution file that from the outset the first applicant had sought to have the court decisions executed lawfully and peacefully. In order to avoid forcible execution of the court decision, he had made the offer to I.R. that he would voluntarily execute the court decision and alleviate all issues ensuing from that execution.

The first applicant had also offered, on his own initiative, to cover I.R.'s travel costs to Germany, and to provide her with a place to live and financial support; she had also been provided with a job offer in Germany. However, I.R. had not accepted the first applicant's offer. Furthermore, the first applicant had also sought to communicate with the child, so that the connection between the father and child would be restored, but I.R. had put obstructions in the way. As confirmed by the child care employees, I.R. had disregarded the agreement that had been signed at the bailiff's office on 25 September 2008 obliging her to allow the first applicant to communicate with his daughter for four hours per day.

According to the testimony of a psychologist from the Klaipėda Pedagogical Psychological Service, the first applicant had consulted her about how best to communicate with the child and how to establish closer contact with her, so that she would be traumatised as little as possible. Such actions on the part of the first applicant showed that he had sought goodwill and lawful execution of the court decision, so that as little harm as possible would be caused to the child. Moreover, the case file also showed that the first applicant had made preparations for the lawful transfer of the child, ensuring that everyone who had to take part in the transfer would be present at the child care authority premises, where the court decision should have been executed. All this showed that he did not have a premeditated intention to execute the court decision as he saw fit.

128. Lastly, turning to the behaviour of I.R., the prosecutor pointed out that during the proceedings concerning the execution of the court decision she had concealed her place of residence, which she shared with the child, and had also appealed against all the actions of the bailiff. According to I.R.'s own testimony, she had not been preparing the child for her return to Germany, nor had she visited psychologists so that the girl could be prepared for going to live with her father. The prosecutor also noted I.R.'s statement to journalists when asked what she planned to do when the time came for her daughter to go to Germany, namely "There are various ways. We will be together with Luisa. I will fight until the end". For the prosecutor, this showed that I.R. had no intention of executing the court decision and returning the child to her lawful custodian. That being so, it had to be concluded that the first applicant had not caused major damage to I.R., who had no custody rights.

129. In the light of the above the prosecutor concluded that the first applicant had good reason to consider I.R.'s actions as unlawful. Even so, he had not undertaken any extreme or violent measures against her. In fact, it had been the actions of I.R. that had been obstructive and provocative, since she had prevented the first applicant from properly taking care of his child. The prosecutor also concluded that the first applicant's actions on 20 October 2008 were to be considered as spontaneous, taken so as to avoid calamity and physical violence which would only have harmed the child's interests or prevented the execution of the court decision. Even if the child had been taken away suddenly and might have been stressed during the journey, the psychological report ruled out any negative and lasting consequences of the action, and currently her situation was deemed very good. From that it followed that the first applicant had not caused harm to the second applicant either.

II. RELEVANT DOMESTIC LAW AND PRACTICE

130. As to the right to respect for family life, the Lithuanian Constitution reads:

Article 38

"The family shall be the basis of society and the State.

Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.

...

In the family, the rights of spouses shall be equal..."

131. As regards Lithuanian citizenship, the Lithuanian Constitution reads:

Article 12

"Citizenship of the Republic of Lithuania shall be acquired by birth or on other grounds established by law.

With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time.

The procedure for the acquisition and loss of citizenship shall be established by law."

Article 13

"The State of Lithuania shall protect its citizens abroad.

It shall be prohibited to extradite a citizen of the Republic of Lithuania to another state unless an international treaty of the Republic of Lithuania establishes otherwise."

132. The Law on Citizenship, at the material time (Article 9 until 22 July 2008; see paragraph 133 below), read:

Article 9. Citizenship of children of whom one of the parents is a Lithuanian citizen

"1. A child whose parents have different citizenships, but one of whom was a citizen of the Republic of Lithuania at the time of the child's birth, will be a citizen of the Republic of Lithuania if he or she was born in the territory of the Republic of Lithuania ..."

Article 16. Granting citizenship by way of exception

"1. The President of the Republic may, in compliance with this Law, grant citizenship of the Republic of Lithuania by way of exception to citizens of other States or stateless persons of outstanding merit to the Republic of Lithuania who have integrated into Lithuanian society, without applying the [usual] conditions for granting citizenship of the Republic of Lithuania ... Under this Law, outstanding merit to the Republic of Lithuania shall include any action by a foreign citizen or a stateless person, which significantly contributes to the consolidation of the statehood of the

Republic of Lithuania, as well as to the strengthening of its power and authority in the international community ..."

Article 22. The change of children's citizenship upon the change of citizenship of both parents

"1. If both parents acquire citizenship of the Republic of Lithuania or they both lose it, the citizenship of their children under fourteen years of age changes accordingly ..."

Article 23. Recognition of citizenship to children of whom one of the parents has citizenship of the Republic of Lithuania

"1. If one parent has the citizenship of the Republic of Lithuania and the other parent remains a citizen of another country, their child may obtain the citizenship of the Republic of Lithuania if both parents so ask in writing. If the parents are divorced, the child may obtain the citizenship of the Republic of Lithuania on the basis of a written request of one of the parents who has obtained the citizenship of the Republic of Lithuania, and with whom the child has been left to live by a court decision or with whom the child habitually lives *de facto* ..."

133. On 15 July 2008 the Law on Citizenship was amended to provide (wording in force as of 22 July 2008):

Article 9. Citizenship of children of whom one parent is a citizen of the Republic of Lithuania

"1. A child whose parents have different citizenships, but of whom one was a citizen of the Republic of Lithuania at the time of the child's birth, will be a citizen of the Republic of Lithuania irrespective of whether he or she was born within or outside the territory of the Republic of Lithuania ..."

134. The Law on the Implementation of EC Regulation No. 2201/2003 was passed by the Seimas on 21 April 2005 (*Įstatymas dėl 2003 m. lapkričio 27 d. Tarybos reglamento (EB) Nr. 2201/2003 dėl jurisdikcijos ir teismo sprendimų, susijusių su santuoka ir tėvų pareigomis, pripažinimo bei vykdymo, panaikinančio reglamentą (EB) Nr. 1347/2000, įgyvendinimo*). A request for return of a child who had been brought to Lithuania or held there unlawfully had to be examined within the time-limits set out in Article 11 of Regulation (EC) No. 2201/2003 [that is, within six weeks] (Article 2 § 5 of the aforementioned Law). When examining such a request, a regional court with jurisdiction for the child's last known place of residence was to act as the court of first instance (Article 2 § 2). An appeal (*atskirasis skundas*) could then be lodged with the Court of Appeal, whose decision whether or not the child should be returned was final. The Law explicitly stated that "in cases concerning a child's return, an appeal on points of law is not possible" (Article 2 § 6). In matters concerning the return of a child, the Central Authority for the performance of the functions designated in the Regulation was the State Child Rights and Adoption Service under the Ministry of Social Security and Labour. Its function was to provide a conclusion (*išvada*) regarding the child's return when such a dispute was heard by a court (Article 2 § 3). The Law also read that certificates issued in

accordance with Articles 41 and 42 of the Regulation in a Member State were considered as valid enforcement orders (Article 3 § 1).

That Law was replaced by a new Law on the Implementation of the European Union and International Law Acts within Civil Proceedings (*Civilinį procesą reglamentuojančių Europos Sąjungos ir tarptautinės teisės aktų įgyvendinimo įstatymas*), passed by the Seimas on 13 November 2008. Article 7 §§ 5 and 6 of the new Law contained provisions identical to the provisions of Article 2 §§ 5 and 6 of the earlier Law.

Under the Law on the Constitutional Court, annulment of the legal act that has been challenged before the Constitutional Court is a ground to discontinue the proceedings before that court (Article 69).

135. According to the Law on Courts, as in force at the material time, the Supreme Court is the court which examines appeals on the points of law in cases, where decisions have become final (Article 23 § 1).

136. The Code of Civil Procedure at the material time read as follows:

Article 339. The coming into force of a ruling adopted by the appellate court (*Apeliacinės instancijos teismo nutarties įsiteisėjimas*)

"A ruling regarding a separate complaint (*atskirasis skundas*) adopted by the appellate court shall come into force with effect from the date of its adoption."

Article 346. Grounds for reviewing court decisions or rulings that have come into force in cassation proceedings

"1. Cassation proceedings are possible only if the grounds enumerated in this article exist.

2. The grounds for reviewing a case in cassation proceedings are:

1) breach of substantive or material legal norms which has an essential impact on the uniform interpretation and application of the law, if that breach could have meant that an unlawful court decision (ruling) was adopted;

2) if the court in the decision (ruling) departed from the Supreme Court's practice as to how a certain legal rule should be interpreted and applied;

3) if the Supreme Court's practice as regards a certain legal question is not uniform."

Article 353. The limits of examination of the case (*Bylos nagrinėjimo ribos*)

"1. The court of cassation, without exceeding the boundaries of the appeal on points of law, shall verify the court decisions and (or) rulings that have been appealed against inasmuch as the questions of law are concerned. The court of cassation shall be bound by the circumstances as established by the first-instance and appellate courts.

2. The court [of cassation] may overstep the boundaries of the appeal on the points of law if the public interest so requires ..."

Article 363. Suspension of execution of a court decision or ruling

"1. The President of the Supreme Court, the chairman of the civil cases division, the chamber for selection of the cases for the examination (*teisėjų atrankos kolegija*), a chamber of judges or plenary session of the civil cases division shall have the right to suspend the execution of a court decision or ruling until an appeal on points of law has been examined in the Supreme Court."

Article 365. Reopening of proceedings

"1. Court proceedings which have been terminated by a court decision (ruling) which has entered into force with final effect may be reopened on the grounds and according to the rules which are set out in this Chapter. A request for reopening may be submitted by the parties to the civil proceedings and by third parties, and also persons not involved in the case but whose rights or interests protected by law are breached by the court decision or ruling which had entered into force.

2. Requests for a reopening of court proceedings in order to protect the public interest and according to the rules set out in this Chapter may be submitted by the Prosecutor General."

Article 366. Grounds for reopening proceedings

"1. Proceedings may be reopened if:

...

2) essential new circumstances come to light which had not been known and could not have been known to the applicant (*nebuvo ir negalėjo būti žinomos pareiškėjui*) when the case was heard initially;

9) the first-instance court made a clear mistake when applying the law and its decision (or ruling) has not been reviewed on appeal. The Prosecutor General also has the right to lodge a request for the proceedings to be reopened also regarding court decisions (rulings) which have been reviewed on appeal."

Article 372. Legal authority of a decision (ruling)

"1. A request to reopen proceedings shall not stop execution of a court decision or ruling.

2. A court which examines a request for reopening shall have the right to suspend the execution of a court decision or ruling until the case for reopening of the proceedings has been examined. A ruling for suspension of the court decision or ruling is not amenable to appeal."

137. According to the Commentary on the Code of Civil Procedure (*Lietuvos Respublikos civilinio proceso kodekso komentaras*, II tomas, Justitia, Vilnius 2005, p. 417), the norm set out in Article 353 § 1 means that the cassation court is bound by the circumstances of the case as established by the first-instance and appellate courts. The cassation court may not establish new facts or evaluate existing or new evidence afresh. When issuing a decision, the cassation court may not hold that a particular circumstance as established by a lower instance court exists or does not exist or, conversely, that a circumstance which a lower court had previously not established as existing does now exist. Furthermore, under Article 353

§ 1, the court of cassation is not bound to always rely on the circumstances as established by the appellate instance court if they differ from those established by the first-instance court. The court of cassation may choose which court's findings – those of the first instance or the appellate instance – to rely on.

138. By a ruling of 18 July 2017 in civil case no. 3P-1249/2017 the Supreme Court confirmed the settled case-law that questions regarding the establishment of facts could not be the object of cassation proceedings, because the court of cassation was bound by the circumstances that have been established by the first-instance and appellate courts. The cassation court reviewing such an appeal is bound by the facts established by lower courts and may decide only questions of law (Article 353 § 1 of the Code of Civil Procedure).

139. The Law on Courts at the material time provided that cases are heard at the Supreme Court in three or seven judges' chambers or in plenary session (Article 36 § 5). Under the Statute of the Supreme Court, its President, as a judge, hears cases when he or she is in the composition of the Supreme Court's chamber (Article 11).

140. Under the Lithuanian Constitution, justice shall be administered only by courts. When administering justice, judges and courts shall be independent. When considering cases, judges shall obey only the law (Article 109).

141. The Law on Bailiffs at the relevant time provided that when exercising their functions bailiffs were independent and were to act on the basis of the Constitution, international treaties signed by Lithuania, and the laws and other legal instruments adopted in Lithuania. Bailiffs are appointed and dismissed by the Minister of Justice. In carrying out their functions, bailiffs must adhere to the principle of lawfulness as well as to the principles of civil proceedings. A bailiff must carry out his professional duties in good faith. In enforcing writs of execution, the bailiff must use all lawful remedies to protect adequately the interests of the plaintiff, without violating the rights and lawful interests of other parties to the enforcement procedure (Article 3 § 2). At the material time, Article 594 of the Code of Civil Procedure provided that the procedural actions of a bailiff were supervised by the judge of the region in which the bailiff is active.

142. As regards parents representing children, the Civil Code reads:

Article 3.157. Representation of children

"1. Children who are legally incapable shall be represented by their parents under the law, except where the parents have been declared legally incapable by a court judgment.

2. Parents shall represent their children on presentation of the child's birth certificate."

143. The Lithuanian Criminal Code provides that a father, mother or a close relative who abducts their own or a relative's young child from a children's establishment or from a person with whom the child lawfully resides is punishable by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years (Article 156 § 2).

A person who, by disregarding the procedure established by law, wilfully exercises an existing or alleged right of his own or of another person which is disputed or recognised but not yet exercised, and causes major damage to that person's rights or legitimate interests is punishable by a fine or by arrest or by imprisonment for a term of up to three years (Article 294 § 1).

144. The Law on International Treaties at the material time read that the treaties that had entered into force must be executed (Article 11). The principle of *pacta sunt servanda* has been confirmed by the Constitutional Court as early as in its ruling of 17 October 1995. According to the Constitutional Court's ruling of 14 March 2006, that principle is also a constitutional principle in Lithuania.

III. RELEVANT INTERNATIONAL AND EUROPEAN LAW AND PRACTICE

A. The Hague Convention

145. The relevant provisions of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 ("the Hague Convention"), which came into force in respect of Lithuania on 1 September 2002, read as follows:

> "The States signatory to the present Convention,
>
> Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
>
> Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
>
> Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –
>
> ...
>
> **Article 1**
>
> The objects of the present Convention are –
>
> a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

...

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

...

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. ...

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding

paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

...

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

...

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

..."

146. As noted by the Court in *X v. Latvia* ([GC], no. 27853/09, § 35, ECHR 2013), the Explanatory Report on the 1980 Hague Child Abduction Convention – prepared by Elisa Pérez-Vera and published by The Hague Conference on Private International Law (HCCH) in 1982 (hereinafter – "the Pérez-Vera Report") – seeks to throw into relief the principles which form the basis of the 1980 Convention and to supply to those who must apply it a detailed commentary on its provisions. It appears from this report that, in order to discourage the possibility for the abducting parent to have his or her action recognised as lawful in the State to which the child has been taken, the 1980 Convention enshrines, in addition to its preventive aspect, the restoration of the *status quo*, by an order for immediate return of the child, which would make it possible to restore the situation that had been unilaterally and wrongfully changed. Compliance with custody rights is almost entirely absent from the scope of the 1980 Convention, as this matter is to be discussed before the relevant courts in the State of the child's habitual residence prior to removal. The philosophy of the Hague Convention is to fight against the multiplication of international abductions, based always on a wish to protect children by acting as interpreter of their real interests. Accordingly, the objective of prevention and immediate return corresponds to a specific concept of "the child's best interests".

147. The Pérez-Vera Report, insofar as relevant, reads:

"A. Definition of the Convention's subject-matter

11. With regard to the definition of the Convention's subject-matter, we need only remind ourselves very briefly that the situations envisaged are those which derive from the use of force to establish artificial jurisdictional links on an international level, with a view to obtaining custody of a child. The variety of different circumstances which can combine in a particular case makes it impossible to arrive at a more precise definition in legal terms. However, two elements are invariably present in all cases which have been examined and confirm the approximate nature of the foregoing characterisation.

Firstly, we are confronted in each case with the removal from its natural environment of a child whose custody had been entrusted to and lawfully exercised by a natural or legal person. Naturally, a refusal to restore a child to its own environment after a stay abroad to which the person exercising the right of custody had consented

must be put in the same category. In both cases, the outcome is in fact the same: the child is taken out of the family and social environment in which its life has developed. What is more, in this context the type of the legal title which underlies the exercise of custody rights over the child matters little, since whether or not a decision on custody exists in no way alters the sociological realities of the problem.

Secondly, the person who removes the child (or who is responsible for its removal, where the act of removal is undertaken by a third party) hopes to obtain a right of custody from the authorities of the country to which the child has been taken. The problem therefore concerns a person who, broadly speaking, belongs to the family circle of the child; indeed, in the majority of cases, the person concerned is the father or mother.

14. It frequently happens that the person retaining the child tries to obtain a judicial or administrative decision in the State of refuge, which would legalize the factual situation which he just brought about. However, if he is uncertain about the way in which the decision will go, he is just as likely to opt for inaction, leaving it up to the dispossessed party to take the initiative. Now, even if the latter acts quickly, that is to say manages to avoid the consolidation through lapse of time of the situation brought about by the removal of the child, the abductor will hold the advantage, since it is he who had chosen the forum in which the case is to be decided, a forum which, in principle, he regards as more favourable to his own claims.

15. To conclude, it can firmly be stated that the problem with which the Convention deals – together with all the drama implicit in the fact that it is concerned with the protection of children in international relations – derives all of its legal importance from the possibility of individuals establishing legal and jurisdictional links which are more or less artificial. In fact, resorting to this expedient, an individual can change the applicable law and obtain a judicial decision favourable to him. Admittedly, such a decision, especially coexisting with others to the opposite effect issued by another forum, will enjoy only limited geographical validity, but in any event it bears a legal title sufficient to 'legalise' a factual situation which none of the legal systems involved wished to see brought about."

Second Part — Commentary on the specific articles of the Convention

Article 11 – The use of expeditious procedures by judicial or administrative authorities

"104. The importance throughout the Convention of the time factor appears again in this article. Whereas article 2 of the Convention imposes upon Contracting States the duty to use expeditious procedures, the *first paragraph* of this article restates the obligation, this time with regard to the authorities of the State to which the child has been taken and which are to decide upon its return. There is double aspect to this duty: firstly, the use of the most speedy procedures known to their legal system; secondly, that applications are, so far as possible, to be granted priority treatment.

The *second paragraph*, so as to prompt internal authorities to accord maximum priority to dealing with the problems arising out of the international removal of children, lays down a non-obligatory time-limit of six weeks, after which the applicant or Central Authority of the requested State may request a statement of reasons for the delay. Moreover, after the Central Authority of the requested State receives the reply, it is once more under a duty to inform, a duty owed either to the Central Authority of the requesting State or to the applicant who has applied to it directly. In short, the provision's importance cannot be measured in terms of the requirements of the

obligations imposed by it, but by the very fact that it draws the attention of the competent authorities to the decisive nature of the time factor in such situations and that it determines the maximum period of time within which a decision on this matter should be taken."

148. In 2003 the HCCH published Part II of the Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Although primarily intended for the new Contracting States and without binding effect – especially in respect of the judicial authorities – this document seeks to facilitate the Convention's implementation by proposing numerous recommendations and clarifications. The Guide repeatedly emphasises the importance of the Explanatory Report to the 1980 Convention (the Pérez-Vera Report), in helping to interpret coherently and understand the 1980 Convention (see, for example, points 3.3.2 "Implications of the transformation approach" and 8.1 "Explanatory Report on the Convention: the Pérez-Vera Report"). In particular, it emphasises that the judicial and administrative authorities are under an obligation, *inter alia*, to process return applications expeditiously, including on appeal (point 1.5 "Expeditious procedures"). Expeditious procedures should be viewed as procedures which are both fast and efficient: prompt decision-making under the Convention serves the best interests of children (point 6.4 "Case management"). The Guide to Good Practice specifies that delays in the enforcement of return orders, or their non-enforcement, in certain Contracting States are matters of serious concern, and recommends that States Parties ensure that there are simple and effective mechanisms to enforce orders for the return of children within their domestic systems, noting that the return must actually be effected and not just ordered (point 6.7 "Enforcement") (see *X v. Latvia* [GC], cited above, § 36).

149. The Guide to Good Practice (Part I - Central Authority Practice, 2003) under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction specifically reads:

1.5.1 Expeditious procedures are essential at all stages of the Convention process

"Speed is of the essence in Hague abduction matters. Expeditious procedure is a key operating principle for any person or body involved in the implementation of the Convention. This is clear from the objects of the Convention as set out in Article 1, to secure the prompt return of children. It is also clear from the general direction in Article 2 to use the most expeditious procedures possible, and in Article 11 to act expeditiously in proceedings for the return of children.

To encourage expeditious procedures, Article 23 of the Convention removes any requirement for legalisation of documents or similar formalities."

1.5.2 Failure to act promptly undermines the Convention

"The most contentious issue surrounding implementation of the Convention concerns delay, in processing applications, resolving matters in court, or enforcing return orders.

The need for speed at all stages of the process cannot be over-emphasised.

...

Many Contracting States have expressed concerns about delays and excessively complex procedures used by Central Authorities in processing cases, in responding to communications, and in referring cases to court. An essential step that minimises these obstacles, and achieves speedy or prompt action, is to develop clear and effective administrative and legal procedures for handling Convention applications. This should be done at an early stage of implementation."

1.5.3 Interests of the child require expeditious action

"The Preamble to the Convention states that the interests of children are paramount, and that the Convention's purpose is to protect them from the harmful effects of abduction. Experience has shown that speedy, prompt or expeditious action under the Hague Convention is a critical factor in protecting children's interests.

An expedited process will:

minimise disruption or dislocation to the child taken from its familiar environment;

minimise harm to the child caused by separation from the other parent;

reduce the further disruption for the child which may result where a return order is made after a settled period abroad;

prevent or limit any advantage to the abductor gained by the passage of time.

Without derogating from the importance of speed as a key operating principle, a Central Authority or its intermediary needs to exercise some discretion in resolving any conflict between taking action promptly or speedily, and allowing time to negotiate an amicable resolution of the matter or a voluntary return..."

2.4.5 Commitment to achieving the goals of the Convention

"If personnel are committed to achieving the goals of the Convention, they will:

be professional and objective in dealing with applications;

not be influenced by issues of nationalism, gender bias, class or racial prejudice;

..."

6.8 Enforcement

"The real success of the Convention as a remedy for child abduction can be measured, not by the number of return orders made, but by the number of return orders enforced.

Unfortunately there is some discrepancy between the two.

The enforcement of return orders will be improved if the following matters are addressed in each Contracting State:

effective mechanisms for enforcement are included in implementing measures, including implementing legislation;

co-operation between the judicial authority and the enforcement agency;

clear directions in the return order about how the return arrangements are to be effected;

any necessary precautionary measures to reduce the risk of flight by the abductor with the child after the return order is made.

In most jurisdictions, the Central Authority is not directly involved in enforcement of return orders, but it will work co-operatively with other agencies and personnel to assist the enforcement process.

Legislative enforcement provisions already in effect include:

measures for the immediate execution of final orders;

directions for specific return arrangements to be made;

measures to prevent the child's re-abduction pending return;

punitive measures to discourage avoidance of a return order;

authority for coercive detention or use of force;

issue of a warrant for the apprehension or detention of the child."

B. European Union law

150. Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility ("the Brussels II *bis* Regulation") reads as follows:

"...

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

...

(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the

child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

...

(21) The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.

..."

Article 10

"Jurisdiction in cases of child abduction

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention."

Article 11

"Return of the child

1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "the 1980 Hague Convention"), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

...

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

...

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with ... [Article 42] below in order to secure the return of the child ...”

Article 28

“Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

...”

Article 41

“Rights of access

1. The rights of access ... granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin...”

Article 42

“Return of the child

1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;

(b) the parties were given an opportunity to be heard; and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment."

Article 47

"Enforcement procedure

1. The enforcement procedure is governed by the law of the Member State of enforcement.

2. Any judgment delivered by a court of another Member State and ... certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State..."

Article 50

"Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 21, 28, 41, 42 and 48 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement."

Article 60

"Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

...

(e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

151. The applicants complained of a breach of their right to respect for their family life under Article 8 of the Convention because of the way the proceedings for the second applicant's return to Germany had been handled in Lithuania. The applicants also argued that the decision-making process in Lithuania had been politicised, and that this had further compounded their situation and had been in breach of Article 6 § 1 of the Convention.

152. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018); and taking into account its case-law on the subject (see, for example, *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 77, 24 April 2003; *Karadžić v. Croatia*, no. 35030/04, § 67, 15 December 2005; *Gobec v. Slovenia*, no. 7233/04, § 105, 3 October 2013; and *Adžić v. Croatia*, no. 22643/14, § 68, 12 March 2015), considers in the circumstances of the present case that the applicants' complaints under Article 6 § 1 of the Convention must be regarded as absorbed by their principal complaint under Article 8 thereof. The case thus falls to be examined only under the last-mentioned Article, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

(a) The Government

153. The Government maintained that the first applicant had not exhausted the domestic remedies, given that he had not initiated any proceedings against the bailiff as regards the latter's actions or inaction. They noted that, unlike the first applicant, I.R. had appealed against almost all the bailiff's procedural acts. The bailiff had nevertheless made efforts to cooperate with the first applicant and had refused the "myriad" requests from I.R. to have execution proceedings suspended and had also attempted to fine her. In the Government's view, the bailiff could therefore not be

reproached for failure to execute the Court of Appeal decision of 15 March 2007 (see paragraph 26 above) for the second applicant's return.

154. The Government further noted that it was I.R. who had asked the Lithuanian courts not to recognise the Oranienburg District Court decision of 20 June 2007 granting the first applicant permanent custody of the second applicant and ordering the second applicant's return to Germany (see paragraph 92 above). The Government thus considered that the first applicant had failed to bring that particular German court's decision to the attention of the bailiff in Lithuania, notwithstanding the fact that by that time I.R. had already manifested a lack of good will to comply with the decisions obliging her to hand over the child to the first applicant. The Government also considered that the first applicant could have presented the German court's decision of 20 June 2007 – as confirmed by the Brandenburg Regional Court's decision of 20 February 2008 – directly to the Lithuanian bailiff for execution. The Government admitted, however, that the decision of the Court of Appeal of 15 March 2007 (see paragraphs 19-21 above), and the aforementioned German court decisions in compliance with Regulation (EC) No. 2201/2003 obliging the mother of the child to return her to the father, were to be regarded as overlapping and subject to the same enforcement.

155. The Government also considered that, if the first applicant considered that the decision-making in his case had been politicised in Lithuania, this being in breach of Article 6 § 1 of the Convention, he had failed to bring this to the attention of the domestic courts. They pointed out that the applicant had been supported by professional lawyers throughout the court proceedings in Lithuania, and that the fact that the first applicant lived outside Lithuania did not exempt him from the obligation to exhaust the domestic remedies (they relied on *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, ECHR 2010).

156. Alternatively, the Government considered that the applicants' complaints were manifestly ill-founded.

(b) The applicants

157. The first applicant pointed out that he had not been dissatisfied with the actions of the bailiff. In fact, it had been the second applicant's mother who had opposed the child's return to Germany. Accordingly, he himself had seen no reason to challenge the bailiff's decisions or actions, which had been in his interests, even though those decisions and actions had not brought about the desired result, namely the two applicants' reunion.

158. The first applicant also highlighted that both the Court of Appeal decision of 15 March 2007 (see paragraphs 19-21 above) and the Oranienburg District Court decision of 20 June 2007 (see paragraph 93 above) had ordered the second applicant's return. As far as the enforcement of the former decision was concerned, the Lithuanian courts – in

cooperation with I.R. and, above all, the Prosecutor General – had "impressively demonstrated" that they had not been interested in a swift enforcement of the child's return. Accordingly, given that enforcement of the domestic – Lithuanian – court's judgment had not been successful, he had no reason for assuming that the same enforcement procedure on the basis of the German court's decision of 20 June 2007 would be any more encouraging.

He also noted that the Government had failed to explain why the enforcement of the certificate under Article 42 of Regulation (EC) No. 2201/2003 might have been more promising than the enforcement of a return decision in accordance with the Hague Convention. The enforcement of the certificate issued by the German court pursuant to Article 42 of Regulation (EC) No. 2201/2003 would have met the same resistance as the enforcement of the Lithuanian Court of Appeal decision of 15 March 2007 regarding the second applicant's return on the basis of the Hague Convention. It should also be mentioned that the Lithuanian courts had repeatedly suspended the enforcement proceedings, including during the procedure concerning non-recognition of the certificate issued under Article 42 of Regulation (EC) No. 2201/2003, making those enforcement measures dependent on the preliminary ruling from the ECJ.

159. The applicants did not specifically comment regarding the Government's objection that they had not raised the issue of the politicisation of their case before the Lithuanian courts. They observed, however, that the first applicant had approached all the institutions from which he could have expected some measure of assistance, including the President of the Republic, the Ombudsman for Children's Rights, the Ministry of Justice, the Klaipėda child care authority, and the European Commission.

2. The Court's assessment

160. The Court reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. The obligation to exhaust domestic remedies therefore requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70 and 71, 25 March 2014, and *Tavares de Almeida Fernandes and Almeida*

Fernandes v. Portugal, no. 31566/13, §§ 35 and 36, 17 January 2017, with further references).

161. On the facts of the case, the Court firstly notes that it was I.R. who appealed against the bailiff's actions when the latter attempted to execute the Court of Appeal decision that the second applicant be returned to the first applicant's custody (see paragraphs 31-32 above). It does not find unreasonable the first applicant's argument that, as the bailiff had taken a number of measures to locate the second applicant and thus acted in his interests (see paragraphs 28-30 above), the first applicant was not obliged to bring any court proceedings against him. This is supported by the Government's own argument that the bailiff's actions were beyond reproach and that most of the bailiff's decisions had been in the first applicant's favour, rather than in favour of I.R. (see paragraph 153 above and paragraph 179 below; see also paragraph 214 below).

162. As to the second aspect of the Government's objection, the Court points out – and this has been acknowledged by the Government – that at the time when the Oranienburg District Court delivered its judgment of 20 June 2007 – which, moreover, was not final but had been appealed against by I.R. – the enforcement proceedings on the basis of the Hague Convention and the Lithuanian Court of Appeal decision of 15 March 2007, initiated by the first applicant, had been ongoing in Lithuania. That being so, the Court does not consider that the first applicant had an obligation also to bring to the Lithuanian bailiff's attention the intermediary decision by the Oranienburg District Court of 20 June 2007, which, all the more so, did not become final until 20 February 2008. In the particular circumstances of this case, the Court also shares the applicant's hesitation that enforcement proceedings on the basis of Article 42 of Regulation (EC) No. 2201/2003 would have been any more promising than those on the basis of the Hague Convention and the Court of Appeal decision of 15 March 2007. Indeed, both sets of execution proceedings had been suspended by the President of the Supreme Court unilaterally or by the Supreme Court (see paragraphs 73, 79 and 94 above).

Moreover, as the Government themselves acknowledged, and as it can be understood from the decisions of the Court of Appeal, which consistently refused to examine I.R.'s requests to suspend the proceedings for the second applicant's return (see paragraph 93 above), those two decisions, namely the Lithuanian Court of Appeal's decision of 15 March 2007 and the Oranienburg District Court of 20 June 2017, had overlapped and had been subject to the same enforcement. In this context the Court also observes that in September 2007, when the Court of Appeal was deciding whether or not to examine I.R.'s request for the certificate issued by the Oranienburg District Court not to be recognised, the first applicant was in fact in Lithuania, where he was liaising with the bailiff who was about to enforce the Court of Appeal decision of 15 March 2007 (see paragraphs 26-31

above; contrast *Manic v. Lithuania*, no. 46600/11, §§ 109 and 110, 13 January 2015).

163. Accordingly, the Government's objection that, by not having appealed against the bailiff's actions or by not having submitted to him an additional request to directly execute the Oranienburg District Court's decision of 20 June 2007 the first applicant did not exhaust the available domestic remedies, must be dismissed.

164. The Court also considers that the admissibility of the applicants' complaint that the decision-making in their case had been politicised is inherently linked to the merits of their grievances under Article 8 of the Convention. It therefore joins this complaint to the merits.

165. The Court lastly finds that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties

(a) The applicants

166. The applicants argued that the Lithuanian authorities' actions when handling the case for the second applicant's return to Germany had been in breach of Article 8 of the Convention.

167. The applicants firstly considered that the Lithuanian State could not renege on its liability by claiming that the case concerning the second applicant's return was the first case of its kind in Lithuania and that it did not have any practical experience in such cases. For the first applicant, the second applicant was also his first and – above all – only child, who had been abducted to a foreign country and for whose release he had been struggling in vain for two and a half years, which amounted to a considerable loss in their relationship.

168. The first applicant did not rule out that initially he would have agreed to an amicable solution, had I.R. permitted him to take part in the upbringing of the child and to keep in touch with her. It had never been his intention to enforce only his own interests, but rather to find the solution that was in the best interests of the child. The mother of the child, however, had not only kidnapped the child, but had also failed to respond to the father's proposed peaceful dispute resolution, and, with the help of the Lithuanian State institutions, had created such an "(un)lawful and inhuman circus", that allowing the child to grow up in Lithuania had in his view become unthinkable. A country in which public institutions clearly deny the equal rights of a father and a mother was not a country in which the second applicant should grow up. Ultimately, leaving the child with her mother in

Lithuania was not justifiable for the father – at least at that point in time – since he himself had been vilified by the child's mother, the Lithuanian press, as well as by the politicians. In those circumstances the first applicant was sure that he would have lost his daughter forever had he not continued fighting. He considered that in such circumstances the continued stay of the child in Lithuania was not compatible with the child's welfare.

169. From the applicants' point of view, the Lithuanian authorities had not done their best to resolve the case in an appropriate manner. In fact, instead of supporting both of the applicants' lawful interests – which had been confirmed by court decisions – or trying to convince the child's mother to return the child peacefully, they had worked against the child's father – and thus expressly against the child's interests – in "an apparently misunderstood form of sympathy for the mother of the child as a mother and as a Lithuanian woman". From the State institutions, however, one could and should expect more, in particular that they should act in an objective and impartial manner in assessing the interests of the child.

170. The applicants pointed out that, after the first applicant had started court proceedings in Lithuania regarding his daughter's return under the Hague Convention, as early as in December 2006 the Klaipėda child care authority had already expressed the view that I.R. would have its support because she was the child's mother and a child's mother, as such, could not be an abductor (see paragraph 36 above). The first applicant asserted that those statements to the press had been made public before the authority had even spoken to him and that it was also clear from those statements that the Klaipėda child care authority not only tolerated child abduction but even advocated it.

171. Afterwards, having recognised that this was a case of international child abduction, the child's mother had reacted dramatically, advancing her cause by obtaining unlawful assurances, promises, and moral and financial assistance from State officials such as the Minister of Justice, members of the Seimas, the Klaipėda child care authority, the Ombudsman for Children's Rights, and prosecutors, to name but a few. All those players had offered I.R. options – including financial aid – designed to make effective enforcement virtually impossible. Their actions had been inappropriate and counterproductive, rather than demonstrating restraint in the matter. The first applicant thus considered that the main aim of the Lithuanian authorities had been to force him to "desist" from taking the child back to Germany. He also underlined that without such support from the authorities, I.R. would not have had the opportunity to obstruct proceedings for the second applicant's return and her actions as regards obtaining suspension of the enforcement proceedings would not have been "crowned with success". In such circumstances the bailiff's opportunities for enforcing the court decision were virtually non-existent. The Government misconstrued this when, even though it was in fact the sole responsible entity, it perceived I.R.

to be acting as a private person and rejected any responsibility on the part of the State for the "disastrous conduct" of the proceedings. As a result, although the return decision had been taken as early as 15 March 2007 (see paragraphs 19-21 above), it was of no help to the applicants since the enforcement thereof had remained ineffective. Ultimately, a non-enforceable title was no more useful than no title at all, and the German courts' decision had thus been "thwarted".

172. Furthermore, although the Lithuanian State should have ensured that its legal and institutional bodies had been trained to handle this type of procedure – namely child return under the provisions of the Hague Convention – those State institutions, instead of preventing the abusive lawsuits brought by I.R., had condoned her unlawful behaviour. For the applicants, the greatest blame in that connection lay with the Prosecutor General – who had submitted repeated requests to reopen the court proceedings – and with the Supreme Court and its President, who on multiple occasions had for spurious reasons suspended the enforcement of both the Lithuanian and the German courts' decisions ordering the second applicant's return. With regard to the Supreme Court, the applicants also specifically criticised its decision of July 2008 to order a psychological expert opinion two years after the child's involuntary separation from the first applicant even though it was aware of the fact that I.R. had been retaining the child in Lithuania illegally throughout that time, disconnected from the first applicant.

173. As regards the speediness of the court proceedings in child return cases, the applicants also pointed out that the ECJ had been in a position within a period of eight weeks – which included conducting proceedings entailing the participation of several interested European Union Member States and thus an extremely complex situation involving multilingualism and oral presentations – to pronounce a preliminary ruling and to deliver a written judgment (see paragraphs 94-103 above). After the very clear ruling by the ECJ, the Supreme Court had required yet a further six weeks to implement the ECJ's judgment in a separate domestic decision. For the applicants, it was unjustifiable that it had taken two and a half years to resolve his case in Lithuania, a period of time that contradicted the principle that cases concerning child care should not be protracted – a fact which was also emphasised by the ECJ.

174. The first applicant also pointed out that, despite the German courts' judgments, it had not been possible for the two applicants to arrange family cohabitation from 21 July 2006 to 20 October 2008. He submitted that, in total, during those two years, only three personal meetings had taken place – in December 2006, in January 2008 and in September 2008 – over a total of 66 hours, and with intervals of eleven and nine months between those meetings. The first applicant also stated that until the Supreme Court's ruling of 25 August 2008 (see paragraphs 106 and 107 above) the two

applicants had been able to see each other for only 36 hours during a two-year period. Moreover, these meetings had taken place under the supervision of I.R. or the Ombudsman for Children's Rights or the Klaipėda child care authority and had been further complicated by the fact that language barriers had been created in the meantime, since the first applicant was fluent only in German, and the second applicant spoke only Lithuanian. In such circumstances, one could not talk in terms of family life having existed, or even any form of cohabitation, despite the fact that the first applicant had sole custody rights in respect of the second applicant. In this context the first applicant was also dissatisfied that the Klaipėda child care authority and the Ombudsman for Children's Rights had not been able or willing to make arrangements for more frequent contact between the first applicant and the second applicant, in spite of the former's repeated requests.

175. The applicants underlined that their right to respect for their family life had been violated not only due to ineptness of the Lithuanian courts and institutions, but also because of "massive public and media-related, country-wide hostility" against the first applicant.

176. The applicants also pointed out that even after the legitimate return of the second applicant to Germany, the first applicant had had to face criminal proceedings in Lithuania. They pointed out that a criminal prosecution had been opened against him not only at the request of I.R., but also at the request of a State institution, namely the Klaipėda child care authority.

177. In his observations to the Court of 21 December 2016, the first applicant lastly asserted that at that time (namely December 2016) the second applicant was an exceptionally good student and athlete, and a self-confident girl participating in many hobbies and extra-curricular activities. He pointed out that this was the result not only of his and the German child care authorities' efforts, but also thanks to "self-moderation of I.R.", who at some point had recognised that the second applicant could no longer live with her in Lithuania for legal reasons. According to the first applicant, due to a fresh danger of abduction, only protected or accompanied interaction could be arranged in the first three years after the child's return to Germany. By 2016 though, the mother had unlimited interaction with the child, who spent every alternate weekend and half of the German school holidays with I.R. This was possible because, in spite of all previous allegations and statements before the Lithuanian courts, the child's mother had in fact moved back to Germany in 2010, had married there for the third time and was now living in the same town as the first applicant. The son, whom I.R. had asserted that she could not take with her to Germany and could not leave in Lithuania, had been left in Lithuania in 2010. He visited the second applicant regularly in Germany, but lived alone in Klaipėda. The first applicant thus insisted that all the arguments put

forward to prevent the return of the second applicant between 2006 and 2008, and which had been employed during the court proceedings in Lithuania and had caused the suspension of the enforcement of the return decision, had therefore been without substance and unfounded, which the first applicant had already made clear during each of the court proceedings at that time.

(b) The Government

178. At the outset the Government "felt an urge" to point out that this case had been very famous in Lithuania, given that it was the first time that questions relating to international child abduction and involving domestic law on civil procedure, private international law and European Union law had been raised, questions which required even a referral for a preliminary ruling to the ECJ. Furthermore, the case concerned a particularly delicate issue: a family matter, which involved "a child's painful return to the father and thus her inevitable separation from the mother". Such a "sore situation of a family" required the courts − which had been presented for the first time ever with such an exceptional situation involving questions of the Hague Convention, European Union law and the European Convention on Human Rights − to examine the case with particular care and precision, all of which had demanded careful scrutiny and had thus been time-consuming. Moreover, it had required laying the foundations for the formation of proper case-law by way of leading precedent for future situations.

179. The Government admitted that the case at hand had been a very particular one, and that therefore it had been widely commented on by the mass media and had gained the attention of the public, including many politicians. The case, involving such complex questions of law and a sensitive factual situation, posed many questions even for professional judges. Needless to say that somewhat wider repercussions in the media and by politicians had been inevitable. However, professional judges were both required and perfectly able to dissociate themselves from that kind of material and from all external influences of whatsoever nature. Even so, they could not ignore I.R.'s arguments, since she was one of the parties in the civil case, and to do so would have risked possibly undermining her interests. The Government also considered that the materials of the case did not substantiate the applicants' allegations about the possible politicisation of the case or undue influence on the courts, or those courts being biased against the first applicant. In fact, given the seriousness of the case, the courts had given careful scrutiny to both parties' complaints and had employed every possible measure, including referral to the ECJ for a preliminary ruling, in order to arrive at lawful and well-founded decisions. During the court proceedings in Lithuania the first applicant had been represented by a professional lawyer of his choice and had also been fully involved in those proceedings, taking part in the court hearings, and

submitting claims and appeals. Moreover, most of the bailiff's decisions had been in the first applicant's favour, rather than in favour of I.R. The applicant's allegation that the decision-making in his case had been unfair was therefore merely his subjective perception. The Government thus were of the view that the fact that the case was of great interest to society, the media and politicians did not necessarily mean that it had been politicised, or that the courts which heard the case had been anything other than impartial and independent. In sum, the decision-making process had not been flawed but had satisfied the requirements of the Convention.

180. Whilst acknowledging that the decision-making process in the applicants' case, taken as a whole, could be considered to have been time-consuming, the Government considered that the delays had not been unreasonable or unjustified. The scrupulousness of the Lithuanian courts in conducting a detailed analysis in the best interests of the child and balancing those interests against the overall family situation, with the aim of tackling major difficulties in relation to the enforcement of those decisions, should be regarded as outweighing the individual interests of the two applicants. It was true that two major procedural steps – firstly, the decision of the President of the Supreme Court of 22 October 2007 to suspend the execution of the second applicant's return (see paragraph 73 above) and, secondly, the referral of the case to the ECJ (see paragraph 94 above) – had delayed the resolution of the case. The Government pointed out, however, the necessity of bearing in mind the principle that it is first and foremost for the national courts themselves to interpret the provisions of domestic law, and that their interpretation may not be questioned unless there has been a flagrant violation of the domestic law (they relied on *DMD GROUP, a.s., v. Slovakia*, no. 19334/03, § 61, 5 October 2010).

To that end the Government considered that the decision of the Supreme Court of Lithuania to accept appeals on points of law by I.R. and by the Prosecutor General regarding the reopening of the civil proceedings had been adopted in compliance with Articles 363 and 372 of the Code of Civil Procedure (see paragraph 136 above). Moreover, the child's best interests, also in the light of Article 13 § 2 (b) of the Hague Convention, had been the principle guiding the Lithuanian courts, which, in the Government's view, had acted promptly in adopting their final decisions. In fact, as early as November 2006 the State Child Rights and Adoption Service had submitted to the Klaipėda District Court the conclusion that the return of the second applicant would not breach her interests, and it had maintained that position throughout the court proceedings − a position that favoured the first applicant's interests rather than those of I.R. However, the mother had shown "hostility and resistance" and made "extraordinary efforts", having recourse to each and every legal remedy available to her, submitting convincing arguments which the courts found themselves obliged to verify. At the same time the courts had adopted numerous related interim decisions

whilst still putting all their efforts into examining the case as quickly as possible and ultimately adopting all final decisions in the first applicant's favour. The Government asserted that the Lithuanian authorities should therefore not be held responsible for the situation about which the two applicants complained because those authorities had acted in a most diligent and balanced manner.

181. In response to the first applicant's accusations that the Prosecutor General had abused his position, the Government felt it necessary to explain to the Court that the Prosecutor General had acted on the basis of I.R.'s request (see paragraph 64 above). It also had to be noted that under Article 365 § 2 of the CCP the Prosecutor General had the right to apply to a court as regards reopening when he was protecting the public interest. The Government also disputed the applicants' suggestion that I.R.'s interests had been unjustly furthered in Lithuania because the Minister of Justice P.B. had promised her financial aid. Contrary to the first applicant's beliefs, I.R. had concluded a contract for her representation with a private lawyer (see paragraph 25 above) in May 2007, whereas her meetings with the Minister of Justice had taken place only later (see paragraphs 52, 56 and 62 above). For the Government, and in any event, the State guaranteed legal aid so that individuals would not be prevented from seeking justice even if they had no financial means. Moreover, under Article 50 of Regulation (EC) No. 2201/2003 the first applicant would have been eligible for free legal aid in Lithuania, but he had chosen to hire a private lawyer instead (see paragraph 150 above).

182. As to the inquiry by the European Commission into the reasons why the procedures laid down in Community law had not been implemented (see paragraph 81 above), the Government pointed to the response from the Ministry of Justice explaining that the courts had been independent in administering justice, and that State institutions as well as politicians had been prohibited from interfering in the courts' activities (see paragraph 83 above). The Government submitted that the answer from the Ministry of Justice had apparently satisfied the European Commission, because the latter had not instituted proceedings against Lithuania before the ECJ.

183. The Government also considered that, in any event, the decision of the Lithuanian Court of Appeal of 15 March 2007 and that of the Oranienburg District Court of 20 June 2007 had been enforced on 20 October 2008 when the first applicant had taken the second applicant away with him "in a drastic way" (see paragraph 112 above).

184. Lastly, in their observations of 14 March 2017, and having noted the applicants' overview of the current family situation, the Government were "glad to know" that in such a difficult situation as the present one the first applicant and I.R. "had finally overcome emotional hurdles and established a mature relationship focussing on the best interests of the child, that is, those of the second applicant". They referred to the Court's case-law

indicating that, obviously, a certain amount of time had to pass before parents could arrive at reasonable decisions (the Government cited *Pascal v. Romania*, no. 805/09, § 85, 17 April 2012). However, in the Government's view, the present state of affairs did not invalidate the arguments used during the proceedings that had taken place between 2006 and 2008. The Government still saw that the Lithuanian authorities had acted in compliance with the law and within the margin of appreciation given to them in such cases.

2. The Court's assessment

185. The general principles regarding the relationship between the Convention and the Hague Convention, the scope of the Court's examination of international child abduction applications, the best interests of the child and the procedural obligations of the States, are laid down in the Court's Grand Chamber judgment in the case of *X v. Latvia* ([GC], no. 27853/09, §§ 93-102 and 107, ECHR 2013) and in a number of other judgments concerning proceedings for the return of children under the Hague Convention (see, among the most recent authorities, *Vilenchik v. Ukraine*, no. 21267/14, § 43, 3 October 2017 and the case-law cited therein). The Court has held, in particular, that the Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law. Account should be taken, as indicated in Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties of 1969, of "any relevant rules of international law applicable in the relations between the parties", and in particular the rules concerning the international protection of human rights (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 131 and the case-law cited therein; as to fundamental rights and the principle of mutual trust within the EU, see *Avotiņš v. Latvia* [GC], no. 17502/07, §§ 46-49, ECHR 2016).

186. In the instant case, the primary interference with the applicants' right to respect for their family life may not be attributed to an action or omission by the respondent State, but rather to the action of the first applicant's former wife and the second applicant's mother, a private individual, who retained the second applicant in Lithuania (see *K.J. v. Poland*, no. 30813/14, § 52, 1 March 2016).

187. That interference, however, placed the respondent State under a positive obligation to secure for the applicants their right to respect for their family life, which included, where appropriate, taking measures under the Hague Convention with a view to ensuring their prompt reunion (see *Adžić*, § 92, and, more recently, *Vilenchik*, § 45, both cited above).

188. The boundary between the State's positive and negative obligations under Article 8 does not lend itself to precise definition; the applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the relevant competing

interests (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 99, ECHR 2012). In all decisions concerning children their best interests should be the paramount consideration (see *Neulinger and Shuruk*, cited above, § 135).

189. As regards the Hague Convention proceedings, the Court has emphasised that Article 8 of the Convention requires that domestic courts carry out a careful analysis of the matter and make a ruling giving specific and sufficiently detailed reasons in the light of the circumstances of the case. This would enable the Court, whose task is not to take the place of the national courts, to carry out the European supervision entrusted to it (see, *mutatis mutandis*, *X v. Latvia*, cited above, § 107). The Court has also held that where the courts of a State which is both a Contracting Party to the Convention and a Member State of the European Union are called upon to apply a mutual recognition mechanism established by EU law, they must give full effect to that mechanism where the protection of Convention rights cannot be considered manifestly deficient. However, if a serious and substantiated complaint is raised before them to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by EU law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law (see *Avotiņš*, cited above, § 116).

(a) As to the domestic courts' conduct until 15 March 2007

190. The Court observes that the assessment of the child's best interests carried out by the Lithuanian courts at least at the beginning of the first applicant's Hague Convention proceedings did indeed revolve around the question of whether returning the child to Germany into her father's care and separating her from the mother would disturb the child's sense of security and have a negative impact on her emotional state.

191. Firstly, questions to this effect were put to experts from the State Child Rights and Adoption Service with a view to obtaining the conclusion which later served as the basis of the Lithuanian courts' assessment of the applicability of the exceptions under Article 13 (b) of the Hague Convention (see paragraphs 15 and 145 above). Those experts in fact stated that the second applicant's return to Germany would not place her in an intolerable situation, provided that her interests were protected upon her return to Germany, whilst also pointing out the absence of any proof that the first applicant would be incapable of taking care of his daughter (see paragraph 15 above). In this context the Court also reiterates its position that the exceptions to return under the Hague Convention must be interpreted strictly. Thus the harm referred to in Article 13 (b) of the Hague Convention cannot arise solely from separation from the parent who was responsible for the wrongful removal or retention. This separation, however difficult for the child, would not automatically meet the grave risk test. Indeed, as the Court

concluded in the case of *X v. Latvia*, the notion of "grave risk" cannot be read, in the light of Article 8 of the Convention, as including all the inconveniences linked to the experience of return: the exception provided for in Article 13 (b) concerns only the situations which go beyond what a child might reasonably bear (see *X v. Latvia*, cited above, § 116, see also *G.S. v. Georgia*, no. 2361/13, § 56, 21 July 2015, with further references).

192. The first applicant's Hague Convention request was dismissed by the Klaipėda Regional Court, whose main line of reasoning rested on three arguments: firstly, that the child could be harmed by separation from her mother because the latter might be arrested, secondly, that I.R.'s son had a psychological ailment and refused to return to Germany, and thirdly, that the second applicant could move to Germany only after a decision regarding her custody had been taken (see paragraph 17 above). Hence, the first-instance court concluded that there was a high probability that her return to Germany would cause her serious psychological harm.

193. The Court notes that in its decision of 15 March 2007 the Court of Appeal rejected the lower court's arguments, holding that the second applicant's suffering would not exceed the normal stress linked with relocation from one parent to another such that she would be placed in an intolerable situation (see paragraph 20 above). The appellate court held that the retention of the child outside her habitual place of residence in Germany was wrongful within the meaning of Article 3 of the Hague Convention. The court underlined that the criminal proceedings against I.R. had been discontinued in Germany, and that it had no reason to doubt that the German courts could properly evaluate the factual circumstances relating to the question of custody. Furthermore, the Court of Appeal also pointed out that questions relating to the child's custody were separate from those regarding the child's return (see paragraph 19 above). This is also supported by the Court's own case-law, which has consistently held that issues of custody and access are not to be intertwined in Hague Convention proceedings (see *Maumousseau and Washington v. France*, no. 39388/05, § 69, 6 December 2007, , and *K.J. v. Poland*, § 70, cited above; also see the ground rules of Pérez-Vera Report in paragraph 146 above).

194. The Court points out that the Court of Appeal reached that decision five months after the first applicant's request for his daughter's return (see paragraphs 14 and 19 above), thus exceeding the six-week time-limit provided for in Article 11 paragraph 2 of the Hague Convention – which applies both to first-instance and appellate proceedings (see paragraph 145 above; also see *Adžić*, cited above, § 97). That being so, the Court has held that while Article 11 of the Hague Convention does indeed provide that the judicial authorities must act expeditiously, this does not exonerate them from the duty to undertake an effective examination of allegations made by a party on the basis of one of the exceptions expressly provided for, namely Article 13 (b) in this case (see *X v. Latvia*, cited above, § 118).

In the circumstances of the instant case and concerning this particular set of court proceedings, the Court accepts that the Klaipėda Regional Court and the Court of Appeal had to reconcile their two obligations under Article 8 of the Convention. On the one hand, given the urgency of the situation caused by the child being held in Lithuania unlawfully, they had a positive obligation towards the applicants to act expeditiously (see *Vilenchik*, cited above, § 53). On the other hand, they had a procedural obligation towards I.R. to effectively examine plausible allegations that returning the second applicant to Germany would expose her to psychological harm, particularly in the light of I.R.'s claim that she could not follow the second applicant to Germany for fear of prosecution, as well as the need to procure and examine the evidence from the child care authority concerning the impact of the child's separation from her mother. The Court is therefore ready to accept that those questions required detailed and to an extent time-consuming examination by the Klaipėda Regional Court and the Court of Appeal, which was necessary in order to reach a decision achieving the requisite balance between the competing interests at stake, the best interests of the child being the primary consideration.

The Court also notes that, pursuant to Article 2 § 6 of the Law on the Implementation of EC Regulation No. 2201/2003, the 15 March 2007 Court of Appeal decision on the child's return pursuant to the Hague Convention was not amenable to appeal on points of law (see paragraph 134 above). Likewise, it notes that after that set of court proceedings, on 13 June 2007 the Klaipėda Regional Court issued a writ of execution, on the basis of which the bailiff was to facilitate the reunion of the two applicants (see paragraph 26 above).

The Court therefore finds that the decision-making in the courts, although lengthy under the standards of the Hague Convention, up to this point met the requirements of Article 8 of the European Convention on Human Rights.

(b) Developments after those court decisions

195. The applicants argued, however, that − with the help of the Lithuanian institutions − I.R. had created such "an (un)lawful and inhumane circus" in Lithuania that any kind of future for the second applicant in that country had become unthinkable. In that connection the applicants claimed that their case had been politicised, which had led to an unforgivable protraction of the decision-making process regarding the two applicants' reunion and had threatened to bring about the dissolution of their relationship.

196. The Court emphasises that in the present case it is called upon to examine whether Lithuania has fulfilled its positive obligation to protect the right to family life under Article 8 of the Convention. Under the Convention, this duty is incumbent on all national authorities, not only the

courts. Therefore, for the purposes of Article 8, the Court must also take account of material evidence or information that suggests, under the required standard of proof, that national authorities, including members of the executive and legislative branches, attempted to influence or exert pressure within the decision-making process before the courts (see also paragraph 209 below).

The Court will examine each of the aforementioned aspects (see paragraph 195 above), which formed the context of the decision-making in the applicants' case, in turn.

(i) Reaction to the Court of Appeal decision of 15 March 2007

197. The Court deems it necessary to recapitulate the sequence of events in the present case. It recalls that as early as December 2006, when the court proceedings concerning the second applicant's return were pending before the Klaipėda Regional Court, the director of the Klaipėda child care authority publicly proclaimed that she could not comprehend how a mother could be accused of kidnapping her own child, that the child belonged to the mother and that, in a similar situation, she herself would likewise have taken her child away (see paragraph 36 above).

198. Later on, as of summer 2007, the bailiff undertook measures to enforce the Court of Appeal decision of 15 March 2007 by contacting I.R. and asking her to show good will in the matter. The first applicant arrived in Lithuania to take part in those proceedings. As long as those proceedings were not suspended, which was on 22 October 2007 (see paragraph 73 above), the bailiff proceeded with the enforcement of the writ. However, either I.R. could not be found or – for instance in September 2007 − refused to disclose the child's whereabouts, thus further aggravating the two applicants' situation by denying the first applicant any contact with his daughter (see paragraphs 28-31 above; also see point 6.8 in paragraph 149 above). The child's mother instead chose to put all her efforts into garnering public and institutional support for the idea that "in Lithuania mother and child were sacred and inseparable", an idea which, in her view, had up to that point not been properly considered by the courts (see paragraphs 58 and 61 above).

199. It is quite impossible to overlook that the upsurge in public, institutional and political pressure, which in any case had already been a feature of the applicants' case (see paragraph 48 above), reached a "particular urgency" (see paragraph 46 *in fine* above) just at the time when the Lithuanian bailiff was about to execute the Court of Appeal decision of 15 March 2007 and to transfer the second applicant to the first applicant's custody. Firstly, a petition had been signed − as was considered appropriate by a significant part of Lithuanian population − to support "Luisa", notwithstanding the German and even the Lithuanian courts' findings that it was actually in the child's best interests for her to return to the first

applicant in Germany (see paragraph 57 above). The widespread media focus on the case was also acknowledged by the President of the Republic (see paragraph 40 above), and by parliamentarians (see paragraph 51 above). As pointed out by the first applicant in his letter to the Ombudsman for Children's Rights, R.Š., he had been demonised in the Lithuanian press and letters had been published calling him "a German pig", "a Nazi", "fascist" and "a criminal", and he, his lawyer and the bailiff had also received threats (see paragraphs 53 and 54 above).

200. In addition to the massive interest amongst the public at large, public statements of different sorts were made by various politicians in this connection. In particular, members of the Seimas pleaded that "the State should not remain a bystander ... when human fates were being broken" (see paragraph 51 *in fine* above) and that "a Lithuanian citizen must be defended", that "the link between the Mother and the child " and the "link to the family and the homeland was a great virtue" (see paragraph 46 above), and that one should not remain a bystander when "our children [were being] taken away to foreign countries" (see paragraph 42 above). The Court particularly notes the statements made by child care professionals, firstly the Ombudsman for Children's Rights, R.Š., revealing that "from the very beginning the position of the Ombudsman's Office was that the child should be with the mother", and that "we should search for ways and possibilities to let [the children] remain in Lithuania" (see paragraph 49 above). In similar vein, the director of the Klaipėda child care authority, whose position as regards the applicants' reunion apparently remained unchanged, confessed to the press that she had tried to persuade the first applicant to renounce his custody rights, but had been unsuccessful (see paragraph 60 above; about her earlier statements see paragraph 36 above). This, for the Court, appears to have been particularly inappropriate, given the maxim that the personnel dealing with the Hague Convention questions should be professional, objective and not be influenced by issues of nationalism, gender or any other prejudice (see point 2.4.5 of the Guide to Good Practice under the Hague Convention in paragraph 149 above).

201. Contrary to what has been suggested by the Government, the politicians' actions were not confined to merely voicing their opinions in public, which the Government thought the Court should perceive as normal, given society's interest in the case (see paragraph 179 above). They manifested themselves in much more disquieting forms, which may be seen as concerted efforts to help I.R. to keep the child with her in Lithuania (see also paragraph 211 below). The Court will address those actions below.

(ii) Calls for the courts to reopen the case, overt pressure on the bailiff and attempts to tailor legislation to I.R.'s situation

202. Whilst noting that the President of the Republic expressed the view that interference with the actions of the courts when the latter were deciding

the question of the second applicant's return would be unconstitutional and in breach of the courts' independence (see paragraph 40 above), the Court also observes that, as clearly transpires from their statements and actions, many Lithuanian politicians and State institutions did not share that view. It points to the statements by certain members of the Seimas who openly questioned the lawfulness of the court judgments, considering that they lacked "elementary logic" and were "not humane", and also asked the Minister of Justice to respond (see paragraph 51 above). Likewise, the Chairman of the Seimas Committee on Human Rights expressed the hope that the courts would have the "decency to reopen the case" for the second applicant's return should the Prosecutor General's Office request such reopening (see paragraph 48 above). The Committee and its Chairman also asked the Ministry of Justice to help I.R. in a way that would see the case moved from the German courts to Lithuania (see paragraphs 47 and 48 above). It is also clear that these questions had been discussed by I.R. and the Minister of Justice (see paragraph 56 above). It further transpires that the Minister of Justice encouraged such doubts and kept hope alive in I.R.'s mind for some time, because even after meeting her in summer 2008 he stated that it was important to endorse the Supreme Court's hesitation as to whether German courts had jurisdiction in her case (see paragraph 62 above). The Court finds that such statements can only be seen as calls to establish "artificial jurisdictional links" to legalise the unlawful factual situation brought about by I.R. (see points 11-14 of the Pérez-Vera report, cited in paragraph 147 above).

203. The Court further points out that on 7 September 2007 six members of the Seimas exerted pressure on the bailiff not to execute the court decision, even though under Lithuanian law the bailiff is independent when executing his functions and should abide by the law and international treaties (see paragraphs 39 and 141 above). Later that month, forty-one members of the Seimas asked the Constitutional Court to examine whether the provision of the Law on the Implementation of EC Regulation No. 2201/2003 which did not allow an appeal on points of law was not in breach of the Constitution (see paragraph 41 above). The Court is mindful that the members of the Seimas exercised their right to challenge, in the procedure of abstract review of constitutionality, the compliance of Lithuanian legislation with the Constitution granted to them under domestic law. However, it is plain that the Seimas members' request for such a Constitutional review was tailored to the specific situation of the second applicant, since they openly stated that the reason for it was "the German courts' decisions" which led to "our Lithuanian children ... [being] taken away to foreign countries" (see paragraph 42 above). It is true that the initiative by the Seimas members did not come to fruition. However, the Constitutional Court discontinued the legal proceedings regarding the constitutionality of that act on the grounds that a new Law on

Implementation of the EU Regulation had been passed (see paragraphs 43 and 134 *in fine* above).

(iii) Admonition of employees of the State Child Rights and Adoption Service

204. The Court now turns to another aspect of politicians' involvement in the decision-making in the applicants' case. As correctly noted by the Government (see paragraph 180 above), at the very beginning of the Lithuanian court proceedings under the Hague Convention for the second applicant's return, the State Child Rights and Adoption Service had submitted to the Klaipėda District Court the conclusion that it would be in the child's best interests to return to Germany. The child care experts supported this view at the Klaipėda District Court hearing (see paragraph 15 above), and the Court of Appeal was of the same view in its final decision of 15 March 2007 (see paragraph 19 above). However, according to the documents in the Court's possession, that institution and its employees were later severely criticised by politicians who not only interrogated them in person, but also publicly rebuked them for having been "ambivalent", "unpatriotic", "lacking simple humanity", and being "stubborn" for not having "defended a Lithuanian citizen" (see paragraph 46 above). On this last point the Court points out that at the time it was only I.R. who had Lithuanian citizenship, which allows it to conclude that the politicians' remarks implied that the State Child Rights and Adoption Service's employees should defend her, notwithstanding the principle that it was the best interests of the child which should prevail.

For the Court, such overt instructions to the child care specialists showed obvious disregard for child care employees' duty to be professional and objective in dealing with applications for a child's return, and, above all, not to be influenced by issues of nationalism and gender bias (see point 2.4.5 of the Guide to Good Practice under the Hague Convention in paragraph 149 above). It is also plain that the politicians' statements were not without purpose, since they clearly pointed out that the State Child Rights and Adoption Service's conclusions "affected court decisions", and that it was therefore paramount for those conclusions to be "just" and accurately reflect the "social situation" of the second applicant as perceived by those politicians (see paragraphs 38 and 45 above). The Seimas Committee on Human Rights as a body, as well as parliamentarians acting by themselves, went as far as to urge the State Child Rights and Adoption Service's employees to "wash off [their] tainted tunic" (see paragraph 46 above), also suggesting that their superiors at the Ministry of Social Security and Labour should examine whether those employees were fit for their duties (see paragraph 38 above) and should also order those employees to produce another conclusion, which would be objective in those politicians' view (see paragraph 45 above). The Chairman of the Seimas Committee on Human Rights also expressed the hope that those employees would "obey" the

instructions from the Ministry (see paragraph 48 above). It also transpires from the Supreme Court's ruling of 25 August 2008 that the experts were eventually reprimanded (see paragraphs 106 and 107 above).

205. Apart from the fact that such developments clearly show political pressure on the courts and child care employees charged with the decision-making in the applicants' case, even if indirectly, the Court also considers that such statements by the Lithuanian State institutions and the politicians unmistakeably demonstrate that they had substituted their own views as to the best interests of the child for those of the child care professionals and undermined their expert judgment. Indeed, the politicians had not shied away from making statements suggesting that the second applicant's return to Germany and her separation from her mother and brother would put her in an intolerable situation and possibly cause her irreparable damage (see paragraphs 38 and 45 above), whereas it is the immediate return of the abducted child that prima facie corresponds to the specific concept of "the child's best interests" (see paragraph 146 *in fine* above; see also point 1.5.3 of the Guide to Good Practice under the Hague Convention in paragraph 149 above). In this context, the Court particularly notes the inappropriate stance of the Chairman of the Seimas Committee on Human Rights, who, notwithstanding the domestic and international courts' decisions long in force, suggested that the first applicant should move to Lithuania on the grounds that I.R. had been "a mother beyond reproach" and the second applicant would not then be separated from her mother and her brother (see paragraph 63 above). The Court observes that those statements by the said politician were made already after and notwithstanding the ECJ's preliminary ruling, and also after the Supreme Court's ruling, pursuant to which I.R. should have executed the German courts' decisions and returned the second applicant to Germany (see paragraphs 106 and 107 above).

(iv) Recognising the second applicant's Lithuanian citizenship and financial support to I.R.

206. On the facts of the case the Court further notes that − in the context of a generally heightened atmosphere in Lithuania and with the aim of "defending a Lithuanian citizen", namely "the Mother" (see, for instance, paragraph 46 above) − certain Lithuanian State officials and politicians also considered another legal avenue for strengthening legal links between the second applicant and Lithuania (see points 11-15 of the Pérez-Vera Report, cited in paragraph 147 above), namely, that the likelihood of I.R.'s keeping the child in Lithuania would be improved if the second applicant were a Lithuanian citizen.

The Court refers in particular to the prosecutor's comments that "if [the second applicant] were a Lithuanian citizen, maybe it would be possible to help her somehow", and "we must have recourse to all the possibilities" (see

paragraph 59 above). The Court further observes that members of the Liberals' Union political faction in the Seimas asked the President of the Republic to grant the second applicant Lithuanian citizenship by way of exception and "as a matter of particular urgency" (see paragraph 46 *in fine* above).

The Court points out that, under Article 16 of the Law on Citizenship in force at that time, by way of exception Lithuanian citizenship could indeed be granted for the purpose of "strengthening Lithuania's power and authority in the international community" (see paragraph 132 above). The facts of this case undoubtedly demonstrate that the second applicant's story had indeed attracted international attention, but in a somewhat different sense (see paragraphs 81 and 100). Be that as it may, that political initiative apparently failed to persuade the President of the Republic, who by then had already expressed his confidence in the courts' ability to examine the second applicant's case objectively, and pointed out that it would have been unlawful for him to be involved in the decision-making in this case in any form (see paragraph 40 above).

207. That being so, as openly admitted by the Chairman of the Seimas Committee on Human Rights, the Committee and he personally had been working on the planned amendments to the Law on Citizenship, tailoring it to the second applicant's situation and, specifically, to "help I.R." (see paragraph 91 above, see also, *mutatis mutandis*, *Baka v. Hungary* [GC], no. 20261/12, § 149, 23 June 2016). Afterwards, the Seimas amended Article 9 § 1 of the Law on Citizenship to allow persons in the second applicant's situation – namely children born outside Lithuania but one of whose parents was a Lithuanian citizen − to be recognised as Lithuanian citizens (see paragraph 133 above).

The Court cannot but note that two days after that legislative amendment had come into force, I.R. asked the Lithuanian authorities to issue the second applicant with a Lithuanian passport, and her request was granted (see paragraph 88 above). Although the first applicant later appealed against that decision, conceding that his daughter had the right to be a Lithuanian citizen but nonetheless highlighting that certain rules for recognition of citizenship had to be observed, in particular, that pursuant to the German courts' decisions it was the first applicant who had been solely granted the right to deal with questions of his daughter's citizenship and that I.R. therefore had not had the right to lodge such a request (see paragraph 89 above), by a decision of January 2009 the Migration Department ignored his arguments and dismissed his complaint (see paragraph 90 above). It observes, specifically, that about one month prior to that decision the same Migration Department had ruled that agreement from both parents was necessary for a citizenship request (see paragraph 87 above).

Lastly, the Court notes that the first applicant had not argued having appealed against the Migration Department's decision of January 2009.

Even so, it takes account of the first applicant's argument that he had not been against his daughter also having Lithuanian citizenship as such (see paragraph 89 above) and, above all, of the fact that the applicant's complaint to this Court concerning the citizenship-recognition procedure in Lithuania had been only one element of his case for the child's return, which had in any case taken place *de facto* on 20 October 2008 (see paragraph 112 above).

The Court also points out that the first applicant had no standing to complain about procedures in Lithuania such as the amendment of the Law on Citizenship, which the Court has already found to have been tailored to accommodate the specific situation of I.R. and the second applicant. Accordingly, the Court rejects the Government's argument of non-exhaustion of the domestic remedies regarding this particular aspect of politicisation of the case.

208. The Court lastly turns to the applicants' argument that during the proceedings for the second applicant's return I.R. received support and assurances from the Minister of Justice, which only served to complicate the two applicants' situation still further. Although the Government pointed out that both the first applicant and I.R. had private lawyers during the court proceedings in Lithuania, which for the Government showed that they were on an equal footing, the Court cannot entirely agree with this. Firstly, it points to the public statements made by the Minister of Justice that the State-guaranteed legal aid office should guarantee I.R. free legal assistance, as far as possible (see paragraph 52 above). Taken in the context of other public remarks made by the Minister of Justice (see paragraph 62 above) as well as declarations by other politicians that the Court has already considered, such statements could not have instilled in the first applicant much confidence in the Lithuanian legal system.

The Court also finds undisputed the fact that support for I.R.'s cause was forthcoming right up to the level of the Lithuanian Government, which had gone as far as to pass a resolution allocating I.R. a sum of money to cover her lawyer's costs for the proceedings at the ECJ (see paragraph 97 above). It is apparent from I.R.'s lawyer's statements to the press that his position was one of support for I.R.'s argument that the second applicant should stay with her in Lithuania (see paragraph 101 above). This fact is also confirmed by the Advocate General in her View (see paragraph 98 above). I.R. had also declared that the ECJ was her last hope (see paragraph 96 above). Neither can the Government argue before this Court that granting money to pay for I.R.'s lawyer's services in the Luxembourg Court was beneficial for the Lithuanian legal system, in the light of their argument that the applicants' case set a precedent regarding how such cases were to be handled in Lithuania in future (see paragraph 178 above). It is sufficient to note that the Lithuanian Government's interests in Luxembourg in fact were represented by the European Law Department (see paragraph 101 above),

whatever its position may have been. That being so, the Court cannot but conclude that, notwithstanding the principle that the rights of the spouses in the family are equal (see paragraph 130 above), by having financially supported one of the spouses the State of Lithuania thus acted on her behalf.

(v) Conclusion as to the behaviour of and analysis conducted by the domestic authorities

209. The Court, in assessing evidence, has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems which use that standard. The Court's role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to issues of evidence and proof. The Court adopts those conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts in their entirety and from the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. It has been the Court's practice to allow flexibility in this respect, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved. In certain instances, only the respondent Government have access to information capable of corroborating or refuting the applicant's allegations; consequently, a rigorous application of the principle *affirmanti, non neganti, incumbit probatio* is impossible (see, *mutatis mutandis*, *Baka*, cited above, § 143, with further references, and, *mutatis, mutandis*, *Merabishvili v. Georgia* [GC], no. 72508/13, § 311, 28 November 2017, and the case-law cited therein; in this context also see paragraph 196 above).

210. In the light of the foregoing (see paragraphs 197-208 above), and although the Government invoked the absence of any tangible evidence that the decision-making in the applicants' case had been politicised (see paragraph 179 above), the Court cannot but find otherwise. In the Court's view, having regard to the sequence of events in their entirety, rather than as separate and distinct incidents, there is prima facie evidence of politics being involved in the applicants' case (see, *mutatis mutandis*, *Baka*, cited above, § 148). This is corroborated not only by I.R.'s own admission (see paragraphs 61 and 110 above), but also by the numerous documents submitted by the applicants which refer to a widespread political onslaught against the first applicant so that he would "desist" (see paragraph 171 above) from his efforts to be reunited with his daughter in Germany. These include not only articles in the Lithuanian media, official documents published on various Lithuanian Government Internet sites, but also texts

adopted by the European Union institutions (see paragraphs 80, 81 and 83-86 above).

The Court further notes that I.R. ran for election to the Seimas the same year on the list of a political party whose member – the Chairman of the Seimas Committee on Human Rights – had been supporting her throughout the proceedings for the second applicant's return (see paragraph 50 above). The Court also points out that support for I.R. came from across the political spectrum of the Seimas, since parliamentarians belonging to different political parties expressed their support for I.R. That being so, and noting that the first applicant in any case had raised the matter of his daughter's return with the Lithuanian courts as well as with other Lithuanian institutions, and, this being futile, also brought the matter to the attention of the European Commission, the Court does not reasonably see how else he could have effectively defended his right to respect for his family life. Accordingly, the Government's objection of non-exhaustion of domestic remedies (see paragraphs 155 and 164 above) must be dismissed.

211. The foregoing findings demonstrate that, with the exception of the President of the Republic (see paragraphs 40, 111 and 202 above), the Lithuanian authorities – and this includes politicians, child care officials, and prosecutors – failed to ensure fair decision-making in the applicants' case in the phase of execution of the Court of Appeal judgment of 15 March 2007, and their actions may be taken as suggesting that they did not even care about appearances. It goes without saying that their efforts, aimed at creating a negative atmosphere around the legal actions of the first applicant and constituting direct attempts to interfere in those proceedings, were unacceptable in a system based on the rule of law. The Court also finds that those activities undoubtedly alerted the judges and other officials that their steps in the applicants' proceedings were being closely monitored, which it finds particularly worrying (see, *mutatis mutandis*, *Kinský v. the Czech Republic*, no. 42856/06, §§ 95 and 98, 9 February 2012). The Court also considers that, by attempting to make Lithuania "the State of refuge" (see points 11-15 of the Pérez-Vera Report, cited in paragraph 147 above), those authorities misled I.R. by nourishing her hopes and thus making her situation, and that of the two applicants, much more severe (see paragraph 174 above). On this last point the Court notes that, as stated by the applicants, after the second applicant's return to Germany and over a period of time, normal communication between the child and both of her parents had been restored with the help of the German authorities (see paragraph 177 above). This statement is also supported by the German authorities' findings (see paragraph 125 above).

212. In the light of the foregoing and applying its standard of proof (see paragraph 196 above), the Court concludes that the Lithuanian authorities did not ensure the fair decision-making process in the applicants' case in the phase of execution of the Court of Appeal judgment of 15 March 2007 that

was indispensable for the discharge of the respondent State's duties under Article 8 of the Convention (see, *mutatis mutandis*, *Yordanova and Others v. Bulgaria*, no. 25446/06, § 137, 24 April 2012, and *Iosub Caras v. Romania*, no. 7198/04, § 41 *in limine*, 27 July 2006).

(c) The overall length of the decision-making procedure in the applicants' case

(i) The decision-making in the civil courts

213. Apart from the requirement of due examination, the cases under the Hague Convention also require urgent handling, as the passage of time can have irremediable consequences for relations between children and a parent who does not live with them (see *Iosub Caras*, cited above, § 38). The delays in the procedure alone may enable the Court to conclude that the authorities did not comply with their positive obligations under the Convention (see, for example, *Shaw v. Hungary*, no. 6457/09, § 72, 26 July 2011).

214. In the present case, the first applicant asked the Lithuanian authorities to return the child on 30 October 2006 (see paragraph 14 above). The Court has already acknowledged that up until 15 March 2007 the length of proceedings before the Klaipėda Regional Court and the Court of Appeal could be seen as reasonable, given the questions those two courts had to examine (see paragraph 194 above). In the circumstances of this case, and taking into account the actions of the bailiff who attempted to execute the Court of Appeal decision for the second applicant's return, the Court is also prepared to accept that, until he was prevented by the President of the Supreme Court on 22 October 2007 (who unilaterally adopted a ruling suspending the execution of the Court of Appeal decision of 15 March 2007; see paragraphs 34 and 73 above), the bailiff acted in the two applicants' interests with the requisite diligence (see paragraphs 28-31 above). The Court also notes that when attempting to execute the Court of Appeal's decision for the second applicant's return, the bailiff did not give up in the face of I.R.'s failure to cooperate but instead took the procedural measures which were available to him, announcing a search for I.R., and thus circumventing her avoidance of the return order (see paragraph 29 above; also see point 6.8 of the Guide to Good Practice under the Hague Convention, cited in paragraph 149 above). Indeed, the applicants had no reason to reproach the bailiff (see paragraph 157 above).

215. The applicants argued that their reunion pursuant to the provisions of the Hague Convention had subsequently been obstructed by the fervent efforts of I.R., whose obstructive actions not only were not effectively prevented by the Lithuanian authorities but, conversely, received active support through the actions of the Prosecutor General and the Supreme Court, and the latter's President in particular. In this connection the Court is mindful of the Pérez-Vera Report which highlighted the fact that, in

situations such as the one at hand, it is the hope of the person who is responsible for the child's unlawful removal from or non-return to his or her habitual residence to obtain a right of custody from the authorities of the country to which the child has been taken. It also frequently happens that the person retaining the child tries to obtain a judicial or administrative decision from the State of refuge which would legalise the factual situation which he or she has brought about (see points 11 and 14 of the report, cited in paragraph 147 above). Likewise, as stated by the Advocate General, "a child can have no interest in being dragged from one Member State to another by a parent in the quest for a court which he or she supposes will be the most sympathetic to his or her cause" (see point 88 of the Advocate General's View, cited in paragraph 99 above). However, it appears that this is precisely what occurred in this case.

216. The Court recalls that after consideration of the case by courts at two levels of jurisdiction, I.R. asked the Prosecutor General to apply to the Supreme Court so that the court proceedings which had been terminated by the Court of Appeal decision of 15 March 2007 could be reopened (see paragraph 64 above). Somewhat later, in summer 2007, the Prosecutor General and I.R. personally submitted requests for the court proceedings to be reopened, relying on the reasons that appear to be analogous to those already examined during the first set of proceedings that ended on 15 March 2007. However, the Klaipėda Regional Court refused to accept them for examination and the Court of Appeal upheld that decision, pointing out that its earlier ruling of 15 March 2007 was not amenable to reopening (see paragraphs 65-68 above). It also transpires from the Lithuanian courts' decisions that the first applicant's plea that the reopening of civil proceedings for the child's return would contradict the very essence of the goal set out by Regulation (EC) No. 2201/2003 – namely that such cases should be decided without undue delay (see paragraph 69 above) – was heard, since I.R.'s and the Prosecutor General's appeals on points of law were later examined and rejected by the Supreme Court, which ruled that no appeal on points of law was possible in proceedings involving a child's return under Regulation (EC) No. 2201/2003. The Supreme Court also pointed out that its ruling was "final and not amenable to appeal", and refused to suspend the enforcement proceedings (see paragraph 70 above), the latter fact having been noted by the Advocate General (see paragraph 100 above; point 39 of the View).

217. In this context the Court does not overlook the public intervention in October 2007 by the Chairman of the Seimas Committee on Human Rights that the Prosecutor General could ask for a reopening of the proceedings on the grounds that new circumstances had materialised (see paragraph 48 above). That being so, on 22 October 2007 and on the basis of a fresh appeal on points of law by the Prosecutor General – who pointed out that at that moment in time the proceedings regarding the second applicant's

return had been ongoing since the bailiff and the police had effectively taken measures to locate the second applicant and who based his request for suspension on arguments which the Prosecutor General himself saw as merely "theoretical" (see paragraphs 71 and 72 above) – the President of the Supreme Court decided unilaterally to suspend the execution of the final decision of the Court of Appeal (see paragraph 73 above).

Bearing in mind the circumstances of this case and contrary to the Government's suggestion (see paragraph 181 above), the Court does not consider it to be significant whether the request for reopening was lodged directly by I.R. or by the Prosecutor General acting at her request. In the Court's view, the President of the Supreme Court perceived his powers as allowing him to overrule the Supreme Court's chamber's decision on the same issue (see paragraphs 70 and 139 above) and used the opportunity created by those requests to halt the execution of the Court of Appeal decision and then to allow the Supreme Court to re-examine evidence which had already been established by the final and binding decision (see paragraphs 19-21 above; see also *Mitrea v. Romania*, no. 26105/03, § 29, 29 July 2008).

Indeed, although the President of the Supreme Court stated that the subject matter of the appeal on points of law was not the return of the child, the reasons advanced by him when granting the Prosecutor General's request were related to precisely the circumstances – namely the child's age, her linguistic abilities, her attachment to the mother and her brother, and Lithuania being the country where she had spent most of her life – which had either already been examined by the Klaipėda Regional Court and Court of Appeal (see paragraphs 17, 19 and 20 above) or had been influenced by the passage of time – as represented by the second applicant's unlawful stay in Lithuania – a factor which, under the Court's constant case-law, as well as under international law instruments, must not be allowed to confer any advantage on the abductor (see, for example, *Neulinger and Shuruk*, cited above, §§ 119 and 140; also see point 1.5.3 of the Guide to Good Practice under the Hague Convention in paragraph 149 above). The Court notes the applicants' position that the President of the Supreme Court misused his powers in order to help I.R. (see paragraphs 74 and 75 above). In this context the Court observes that in July 2008 the Supreme Court asked the child care authority to provide a fresh report on the second applicant's situation (see paragraph 104 above). However, this was a matter concerning questions of fact and not those related to the points of law, only the latter falling within the Supreme Court's competence under domestic law (see paragraphs 136-138 above). Most of this had already been pointed out by the first applicant, who also underscored that the suspension of the court decision for transfer would further aggravate the applicants' situation, since it meant that they would not see each other, a development which, taking into account the second applicant's young age, was detrimental to their

relationship and placed the child in an intolerable situation (see paragraph 74 above). However, the first applicant's attempts to challenge the ruling of the President of the Supreme Court, also drawing his attention to the harm that the two applicants' separation from each other might cause, were futile (see paragraphs 74 and 75 above).

218. The Court reiterates its previous findings regarding the politicians' attempts to help I.R. keep the second applicant in Lithuania by taking steps to amend the Law on the Implementation of EC Regulation No. 2201/2003 in such a way that an appeal on points of law could be permitted in child return cases (see paragraph 208 above). In the circumstances, the Court cannot but agree with the applicants' view that by using an interlocutory decision to undermine the validity of the main court decision (see paragraphs 19-21 above) the President of the Supreme Court used the reopening procedure as a disguised appeal in order to undermine the *res judicata* principle (contrast *Vilenchik*, cited above, § 55), thereby halting the execution of that main court decision.

219. The Court observes that a second delay during the Lithuanian court proceedings occurred when the Supreme Court decided to suspend them in order to ask the ECJ for a preliminary ruling (see paragraph 94 above). Given that no doubt had been expressed as to the authenticity of the certificate from the German court and given that (even before the certificate concerning the child's return was issued) the Lithuanian courts had already duly considered the allegations made by I.R. (see paragraphs 14-24 above, also see *Avotiņš*, cited above, § 116), once seised, the Lithuanian courts in principle simply had to order the child's return; to further delay the return only risked causing harm to the child (this was pointed out by the Advocate General, see paragraph 100 above; for the analogous position of the ECJ, see paragraph 102 above). In the Court's view, the fact that the Supreme Court asked the ECJ to hear the case urgently and the latter applied its accelerated procedure (see paragraphs 95 and 102 above) does not exempt the respondent State from its liability.

Indeed, as pointed out by the Advocate General and the ECJ, by that time the proceedings for the second applicant's return had already been ongoing for nearly two years and the outcome of those successive suspensions had been "totally incompatible with the fundamental aims of the [Hague] Convention and the Regulation" (see paragraphs 100 and 103 above). On the basis of the facts of the case, the Court takes the view that the suspensions that followed I.R.'s applications for the proceedings to be reopened (see paragraphs 76, 78 and 79 above) were particularly aptly dubbed "procedural vagaries" that had not been prevented by the Supreme Court in spite of its duty to act expeditiously (see Article 11 of the Hague Convention, cited in paragraph 145 above; also see, for example, *Maire v. Portugal*, no. 48206/99, § 74, ECHR 2003-VII; point 104 of the Pérez-Vera Report cited in paragraph 147 above and paragraph 148 above).

The Court finds that those "procedural vagaries" failed to achieve "the fundamental aim of depriving the actions of the abducting parent of any practical or juridical consequences by ensuring the child's prompt return", and completely disregarded the fundamental aims of not only the Hague Convention and Regulation (EC) No. 2201/2003 (see §§ 24 and 40 of the Advocate General View cited in paragraph 100 above) but also Article 8 of the Convention. In this context the Court also has regard to the fact that, whilst it took the ECJ less than nine weeks to deliver its preliminary ruling, the Supreme Court afterwards took a further six weeks to terminate the court proceedings regarding I.R.'s and the Prosecutor General's request for reopening (see paragraphs 102 and 106 above).

220. To make matters worse, the two applicants' hardship in Lithuania continued even after the ECJ's preliminary ruling and the Supreme Court's rulings of 25 August 2008. The Court turns to the next point argued by the Government, namely that on 20 October 2008 the first applicant had taken the second applicant with him "in a drastic way" (see paragraphs 112 and 183 above). The Court observes, however, that the first applicant, who by that time had sole rights of custody over the second applicant (see paragraph 92 above), had in fact arrived in Lithuania as early as 24 September 2008. He had not only liaised with the bailiff over the transfer (see paragraph 112 above) but had also been in contact with the child care authorities and psychologists, and had sought to communicate with the child, in order to avoid having the court decision executed by force (see paragraphs 120 *in limine*, 121, 122 and 127 above).

As testified by the first applicant during the criminal proceedings, upon his arrival in Lithuania in September 2008 his contact with his daughter had been either limited or had taken place in the presence of I.R., who had been hostile to him (see paragraph 121 above). This fact was supported by the director of the Klaipėda Pedagogical Psychological Service, who testified that at that time I.R. not only did not wish to reach any compromise but was determined only to fight and to "go until the end". The director also testified having heard comments that I.R. was about "to harm herself and the [the second applicant]" (see paragraph 120 *in fine* above); this fear had also been shared by the first applicant (see paragraph 121 above). Given the background as to how the case had been handled in Lithuania up to that point, the Court understands the first applicant's statement that he thought he would have had to wait a number of years to be reunited with his daughter if he had not acted as he did (see paragraph 114 above).

In this context the Court also points to the facts established during the criminal proceedings when I.R. had herself acknowledged that she had not been preparing the child for her return to Germany and that she had been prepared to "fight until the end" (see paragraph 123 above). She had also asserted not having "laid down [her] weapons" (see paragraph 110 above), notwithstanding that 20 October 2008 was the date set for the child's

transfer by the bailiff (see paragraph 127 above). The Court also notes that the first applicant's fears that the court decisions – even those reached in Lithuania by the Supreme Court on 25 August 2008 – did not provide a sufficiently sound basis for him to be reunited with his daughter in Germany, which could be illustrated, *inter alia*, by the fact that the Chairman of the Seimas Committee on Human Rights suggested that I.R. had been "a mother beyond reproach" and that the first applicant should move to Lithuania (see paragraphs 63 and 205 above), and this despite the fact that he had already been vilified and demonized there (see paragraph 80 above). The Court observes that it was in these circumstances that the first applicant had acted in an extemporaneous fashion and taken the second applicant away with him (see paragraphs 112 and 113 above). The Court notes that, although the first applicant had sole custody rights in respect of the second applicant, after taking her with him to Germany he was pursued by Lithuanian police officers and I.R. (see paragraph 114 above), and also had to face criminal proceedings in Lithuania, during which certain coercive measures – such as the European Arrest Warrant – were ordered against him by the Lithuanian authorities (see paragraph 116 above). All this was on the basis of the Lithuanian prosecutor's understanding that by taking the second applicant with him to Germany the first applicant had breached I.R.'s rights, even though she had no custody rights in respect of her daughter at that time (see paragraph 92 above). A month later the decision to detain the first applicant was quashed by the Klaipėda Regional Court (see paragraph 117 above) and one year later the Lithuanian prosecutor discontinued the proceedings by observing the German and Lithuanian courts' decisions regarding the applicants' right to be reunited and stating that the first applicant's actions did not amount to a crime (see paragraphs 125-129 above). Even so, the Court does not need to take a position on the first applicant's actions on 20 October 2008 and related subsequent developments (see paragraphs 112 and 113 above).

(ii) Final observations

221. Lastly, the Court is satisfied that, as it transpires from the psychological report procured in Germany and quoted by the Lithuanian prosecutor, the second applicant's separation from her mother, except for the normal reaction of sadness caused by separation from a parent, did not have any long-lasting impact (see paragraph 125 above). As noted by the applicants in their observations to the Court, the second applicant led a fulfilling life in Germany and because of her "self-moderation", I.R. was also able to move to Germany and to share in her daughter's life, having left her son, who by that time was a grown-up, in Klaipėda, with whom she has regular contact (see paragraph 177 above). It is not for the Court to speculate on whether this fact alone refutes the arguments employed by I.R. during the court proceedings held in Lithuania between 2006 and 2008, as

the two applicants have suggested. Even so, the Court gives certain weight to the applicants' submission that this "self-moderation" on the part of I.R. would hardly have been possible during the years when the Lithuanian authorities, both political and legal, demonstrated persistent support to her and even misled her about the possibility of retaining the second applicant in Lithuania, and regardless of the German and Lithuanian court decisions and Lithuania's international obligations (see paragraphs 197-208 above, also see *Avotiņš*, cited above, §§ 46-49).

(iii) Conclusion as to overall length of the decision-making in the applicants' case

222. In the light of the above the Court finds that the time it took for the Lithuanian courts to reach the final decision in the applicants' case failed to respond to the urgency of their situation.

(d) General conclusion as to the alleged violation of Article 8

223. The foregoing considerations are sufficient to enable the Court to conclude that, whilst the initial decision-making of the applicant's case by the domestic courts met the requirements of Article 8 of the Convention (see paragraph 194 *in fine* above), the later conduct of the Lithuanian authorities, including political interference into what was a pending court case, as well as the manner in which the case was subsequently handled by the domestic courts and other authorities, fell short of what was required from the State under that provision.

There has accordingly been a violation of Article 8 of the Convention in respect of both applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

224. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

225. The applicants claimed to have suffered grave hardship not only because of the Lithuanian authorities' failure to arrange their reunion despite the clear decisions of the German courts, but also because of massive public, media-related, country-wide hostility, including public humiliation by high-ranking politicians and State officials, aimed at the first applicant. The applicants therefore considered that they were eligible for

compensation in respect of non-pecuniary damage, but left the amount to the Court's discretion.

226. The applicants also claimed a sum of 35,997 euros (EUR) in respect of pecuniary damage, this being the amount which the first applicant had had to pay to a bank by way of interest on a loan he had taken out for the purposes of building a house. The first applicant implied that he would not have had to pay that interest if the court proceedings in Lithuania had not compelled him to spend money on lawyers.

227. The Government did not wish to speculate on what amount of compensation for non-pecuniary damage would be fair in the applicants' case. Even so, they considered that, as the outcome of the situation, "was in the applicants' favour", the finding of a violation in itself would be sufficient.

228. The Government disputed the applicants' claim for pecuniary damage as unjustified.

229. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. However, the Court considers that the applicants suffered distress as a result of the impossibility of enjoying each other's company for a significant period of time which was caused by a particularly serious violation of their right to respect for their family life. Making an assessment on an equitable basis as required by Article 41, the Court awards the applicants jointly EUR 30,000 under this head.

B. Costs and expenses

230. The applicants sought EUR 76,089 which the first applicant had had to pay for the services of German and Lithuanian lawyers during the Lithuanian domestic court proceedings concerning the second applicant's return, including the examination of the matter before the ECJ and the criminal case against the first applicant in Lithuania. The applicants also pointed out that, because of the complexity of the case, cooperation between German and Lithuanian lawyers had been essential and the first applicant could therefore not be accused of having been excessive in retaining their services. The applicants noted that in Lithuania alone, thirty-four lawsuits had been conducted concerning the return of the second applicant. Those included not only the actual return request, but also numerous proceedings regarding the suspension of those proceedings, measures undertaken by the bailiff, and criminal law measures. The applicants provided bills submitted by those lawyers, including detailed particulars as to their hourly fees, the number of hours worked, and explanations as to which procedural actions were involved and on which date the lawyers' fees had to be paid. In addition, the first applicant claimed EUR 722 that he had had to pay for the psychological expert opinion and legal literature in Germany.

231. The applicants also submitted proof of having incurred expenses of EUR 1,806 for translation costs, EUR 2,335 for the first applicant's travel expenses from Germany to Lithuania, and EUR 1,005 for hotel accommodation in Lithuania during the court proceedings, as well as EUR 348 for postal and communication expenses.

Lastly, the applicants also claimed the sum of EUR 10,925 which the first applicant had incurred in connection with the proceedings before the Court, and which he had had to pay to the German lawyer. The applicants provided a bill from their German lawyer, which included an hourly breakdown of those costs.

232. The Government firstly submitted that they were not convinced of the necessity of what were, in their view, very high legal costs in respect of the domestic proceedings. They considered that both the German and the Lithuanian lawyers' claims for their services, including consultations and research work were exaggerated. They also dismissed the documents detailing the lawyers' fees as not specific enough. Likewise, the Government disputed the applicants' remaining claims for the costs and expenses which the first applicant had incurred during the domestic courts' proceedings as being unsupported by evidence and excessive.

233. The Government further disputed the applicants' claim for legal costs in the proceedings before the Court as being insufficiently proven by evidence and disproportionate.

234. The Court points out that it has already held that the use of more than one lawyer may sometimes be justified by the importance of the issues raised in a case (compare and contrast *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 56, ECHR 2000-XI, with further references). The Court cannot neglect the particularly complex nature of this case, the exceptional nature of which was also acknowledged by the Government (see paragraph 179 above), and it therefore accepts that it was necessary for the first applicant to engage the services of all those lawyers specialising in private international, European Union and Lithuanian civil and criminal law who represented the first applicant before the Lithuanian civil courts and the European Court of Justice, and who also assisted him with regard to the criminal proceedings opened against him in Lithuania. The Court does not regard the sum of EUR 10,925 for the services of the applicant's German lawyer with regard to the proceedings before the Court as excessive (see, for example, *Koch v. Germany*, no. 497/09, §§ 92-94, 19 July 2012). That being so, and in the light of the documents in its possession, the Court grants the applicants jointly a sum of EUR 76,089 and EUR 10,925 for the legal costs in the domestic and Court proceedings. The Court also awards the applicants EUR 6,216 in respect of the remaining costs and expenses.

C. Default interest

235. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection concerning the non-exhaustion of domestic remedies in respect of the applicants' complaint that the decision-making in their case was politicised and *dimisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 93,230 (ninety-three thousand two hundred and thirty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President