

## **CASE OF JUCIUS AND JUCIUVIEN v. LITHUANIA - Application no. 14414/03 (2009)**

In the Chamber's judgment in the **CASE OF JUCIUS AND JUCIUVIEN v. LITHUANIA** the European Court of Human Rights held, unanimously that:

- **there has been a violation of Article 8 of the Convention;**
- **it is unnecessary to make a separate examination of the written nature of the appeal procedure under Article 6 § 1 of the Convention.**

### **I. Principal facts**

The Applicants, Mr Marijus Jucius and Mrs Gertr da Juciuvien , are Lithuanian nationals. The case concerns the complaint by the Applicants about a violation of their right to family life as the domestic courts originally granted permanent custody of their two orphaned nieces to grandparents.

In April 1999 Mr Jucius's sister and her partner died and the Applicants were awarded temporary custody of their nieces, RS and DS, four and six months old. Children's grandparents also applied to adopt RS and DS. Accordingly, the Applicants submitted a counter-claim. On 22 December 1999 the Mažeikiai District Court recognized girls as their adopted children and in August 2002 the domestic courts decided to grant permanent custody to grandparents. The court justified this decision on account of the better financial and living conditions of the grandparents, as well as the fact that they were closer blood relatives to the girls. RS, aged 7 then, objected and expressed her desire to stay with the Applicants. Unfortunately, her objection was rejected by the court. The Applicants and the Child Rights Protection Institution appealed, but on 4 November 2002 the Šiauliai Regional Court confirmed the first-instance reasoning. Afterwards, they lodged cassation appeals, however, in 2003, the Supreme Court held that it had no jurisdiction in child custody cases and dismissed it.

On 21 March 2003, when the bailiff attempted to execute the courts' decision, RŠ refused to leave the applicants' and DŠ was taken to the grandparents. The Prosecutor General decided to reopen the proceedings. As a consequence, The Telšiai District Court granted permanent custody of RŠ to the Applicants, who lived in Mažeikiai, and permanent custody of DŠ to the grandparents, who lived in Klaip da. The court considered RS having expressed her desire to stay with the applicants and DS with her grandparents, as well as the fact that the girls had lived separately and were used to their current environments.

The grandparents appealed to the Šiauliai Regional Court, which upheld the lower court's decision. On 6 June 2005 the Supreme Court gave a final ruling and upheld the decision of the Šiauliai Regional Court agreeing with the reasoning of the lower courts.

### **II. Complaints and procedure**

Relying on Article 8 (right to respect for private and family life) the Applicants argued that the State has violated their right to respect for family life, in that the courts originally awarded

custodianship of their two orphaned nieces, with whom they had lived for three years, to the children's grandparents. Moreover, the Applicant submitted that there has been a violation of the "reasonable time" requirement of Article 6 § 1 of the Convention (right to a fair hearing) due to the lengthiness of the custody proceedings before the domestic courts.

### **III. Decision of the Court**

Firstly, the European Court of Human Rights reminded that the existence of "family life" essentially depends on the genuineness of close personal ties. Taking into account the circumstances of the case, the Court observed that "at the time of the authorities' intervention, there existed between the applicants and the girls a genuine "family life" within the meaning of Article 8 § 1 of the Convention" and declared the application as admissible.

Furthermore, the Court noted that although Article 8 does not contain any specific time requirements, "the decision-making process leading to such an interference must be fair and such as to afford due respect for the interests safeguarded by Article 8". Consequently, the Court held that the proceedings had been of crucial importance for the Applicants and had involved an assessment of their character as well as of their nieces' wishes. It was stressed that to ensure the best interests of the orphaned children in the future, RS and DS should be given an opportunity to be heard before the court and to fully participate in the proceedings.

Unfortunately, the Applicants' appeal had been determined by way of a written procedure. Furthermore, the courts were prompted to amend those decisions and to rule partly in favor of the applicants by granting them the custody of RŠ only on account of her continued resistance. The Court also recalled that future relations between parent and child should not be determined by the mere passing of time. ECoHR concluded that "the initial decision-making process which fixed the custody and access arrangements in relation to RŠ and DŠ did not afford the requisite protection of the applicants' interests as safeguarded by Article 8".

Finally, the Court found it unnecessary to consider the matter separately under Article 6 § 1 and held that there has been a violation of Article 8 of the Convention.

### **IV. Just satisfaction**

The Court awarded the applicants 5,000 EUR in respect of non-pecuniary damage.