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Meeting: 1243 meeting (8-10 December 2015) (DH)

Item reference: Revised action report (02/10/2015)

Communication from the Slovak Republic concerning the case of López Guió against Slovak Republic  
(Application No. 10280/12)

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Réunion : 1243 réunion (8-10 décembre 2015) (DH)

Référence du point : Bilan d'action révisé

Communication de la République slovaque concernant l'affaire López Guió contre République slovaque  
(Requête n° 10280/12) (***anglais uniquement***)

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DGI

02 OCT. 2015

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## ACTION REPORT

**Application No. 36997/08 *López Guió v. Slovakia*  
judgment of 3/6/2014, final on 13/10/2014**

### Introductory case summary

This case concerns the proceedings under the Hague Convention and Regulation No. 2201/2003 before the Slovak courts, initiated by the applicant as the father of a child removed from Spain to Slovakia in July 2010. Relying on Articles 6 and 8 of the Convention, the applicant complained before the Court that the Slovakian authorities had failed to ensure the prompt return of the child, that the proceedings for the child's return had not been expeditious, in the Hague Convention proceedings he had not been provided with a translation of judgments and decisions into a language he understood, those proceedings had been interfered with by an arbitrary judgment of the Constitutional Court, given in proceedings to which he had not been a party, and had thus not been able to affect the outcome of despite having a direct interest in it, and that as a result of the foregoing, he had been deprived of the contact with his child for a protracted period of time.

In its judgment the Court stated that the applicant's complaints most naturally fall to be examined under Article 8 of the Convention. The Court further stated that the applicant's application for the return of the child under the Hague Convention of October 2010 was examined once by courts at two levels of jurisdiction, that their order for the return of the child became final, binding and enforceable in February 2011, and that the order was nevertheless subsequently examined by the Supreme Court and the Public Prosecution Service, neither of these institutions having established any errors of substance or procedure justifying its quashing. It was then that the Constitutional Court intervened in December 2011, by quashing the Supreme Court's decision, which then led to the quashing of the return order and the remittal of the matter to the first-instance court. The Court observed that although the Constitutional Court's judgment in the present case did not constitute a final decision on the applicant's Hague Convention application, in view of the critical importance attached to the passage of time in the proceedings of this type it was instrumental in the ultimate determination of the applicant's application. In that respect the Court observed that the Constitutional Court proceedings were initiated by the mother and that the defendant was the Supreme Court. Consequently, the applicant was neither plaintiff nor defendant in those proceedings. The proceedings before the Constitutional Court are governed by the Constitutional Court Act, as the *lex specialis*, and that this Act does not envisage third parties, such as the applicant in the present case, having standing to intervene. In the present case there was no indication that, at the relevant time, the applicant actually had any knowledge of the constitutional complaint by the mother. As a result, the proceedings before the Constitutional Court were carried out without his participation and he had no opportunity to influence their outcome, despite having a legitimate interest in it. The remittal of the present case by the Constitutional Court to the ordinary courts resulted in yet more time being taken to deal with the case, which in the given type of case is of relevance for the outcome of the proceedings. The Court noted that as a result, for a protracted period of time the status of the child had not been determined by any court, the courts in Slovakia having no jurisdiction to do so, and the courts in Spain having no practical opportunity to do so, a state of affairs which can by no means be said to have been in the child's best interests. The final ruling that the child was not to be returned to Spain was given in November 2012. These considerations were sufficient for the Court to conclude that the respondent State failed to secure to the applicant the right to respect for his family life by providing him with proceedings for the return of the child under the Hague Convention in compliance with the requirements of Article 8 of the Convention.

#### **I. Payment of just satisfaction and individual measures**

Case	Application No.	Date of judgment	Just satisfaction (EUR)	Paid on
López Guió	36977/08	3/6/2014	27 000	26/11/2014

The applicant was awarded just satisfaction for non-pecuniary damage. The applicant did not turn to domestic courts with respect to his current contacts with his daughter and the Government do not have any information in this regard.

In conclusion, no other individual measures seem to be necessary.

#### **II. General measures**

##### **a) Publication and dissemination**

The judgment was published in the Judicial Revue No. 10/2014. Moreover, it was sent by a letter of the Minister of Justice of the Slovak Republic of 8 April 2015 to the president of the Constitutional Court with a request to inform all constitutional judges about the present judgment.

##### **b) Legislative amendments**

As to the Court's conclusion that the proceedings before the Constitutional Court were carried out without participation of the applicant and that he had no opportunity to influence their outcome, despite having a legitimate interest in it and therefore the Court found violation of Article 8, the Government submit that as of **1 January 2015** the Article 51 of the present Constitutional Court Act was amended (Law No. 353/2014 Coll.) in the context of this judgment. The previous Article 51 is marked as Article 51 paragraph (1) and following the amendment there is a new paragraph (2). Under this new paragraph, if the Constitutional Court decides at the preliminary hearing to proceed the complaint for further proceedings and if it is needed so, it shall notify natural or legal person, who took or is taking part at the proceedings in which the fundamental rights or freedoms are alleged to be violated according to the claimant. The notified person shall have the right to submit observations in the time-limit given by the Constitutional Court.

##### **bb) Code of Civil Procedure**

As to the Court's concern contained in the paragraph 108 of the judgment (linked to the admissibility of extraordinary appeals on points of law in the return proceedings) the Government point out that the Slovak Republic introduced legislative changes (amendment to the Code of Civil Procedure) to ensure more efficient compliance with the European and International legislation in the area of international parental child abductions. In March 2015 special civil proceedings were introduced concerning return of the child that has been wrongfully removed or retained. Strict time frames were introduced to ensure swift ruling on these cases and to avoid delays caused by the procedural behaviour of the parties to the proceedings. Moreover, a possibility to submit extraordinary remedies was excluded in this type of proceedings to ensure swift and effective rulings. These provisions shall enter into force on January 2016. Of course, the best interest of the child is and will be a crucial pre-condition when deciding this kind of cases in the Slovak Republic.

##### **c) Other general measures**

The Government also point out that the Judicial Academy organized seminars and workshops concerning the application of the judgments of the Court, focusing on problems specifically highlighted in the present judgment of the Court. The lecturer is the Agent of the Government of



the Slovak Republic, alternatively the Co-Agent of the Government of the Slovak Republic. The Agent of the Government also actively participates in the different conferences organized by whether the state authorities or non-governmental organizations.

The following seminars and conferences were held:

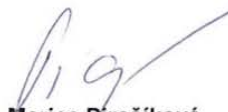
- 24 November 2014 (Omšenie) – active participation in 10<sup>th</sup> working session of the judges dealing with family agenda ("P");
- 12 January 2015 (Pezinok) – the seminar concerning the latest case-law of the European Court and its impact on the case-law of the domestic courts, organized for the civil judges;
- 21 January 2015 (Častá – Papiernička) – active participation in the conference *"Together for family"*
- 29 January 2015 (Banská Bystrica) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts, organized for the civil judges;
- 9 February 2015 (Košice) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts, organized for the civil judges;
- 1 June 2015 (Omšenie) – active participation in the seminar concerning the latest case-law of the family chambers of the civil courts;
- 5 June 2015 (Banská Bystrica) – active participation in the conference *"Rights of the children in the proceedings before the Slovak authorities"*.

### **III. Conclusions of the respondent state**

The Government submit that the issues leading to the finding of violation of Article 8 by the Court are addressed by the afore-mentioned legislation. According to these amendments, not only the persons possibly touched by the proceedings before the Constitutional Court have the right to take part at these proceedings but moreover, the Code of Civil Procedure's new provisions concerning the return proceedings of minor ensure that the proceedings shall be conducted speedy and effectively. This requirement is also strengthened by the parallel education of judges and legal trainees at the same time.

Thus, the Government consider that the Slovak Republic has thus complied with their obligations under Article 46 § 1 of the Convention.

In Bratislava, 1 October 2015



**Marica Pirošiková**  
Agent of the Slovak Republic  
before the European Court of Human Rights