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A.T. v. ITALY (Application no.40910/19)

28 June 2021
Oupa

FIRST SECTION CASE OF A.T. v. ITALY (Application no.40910/19)

STOP Art 8

• Family life

• Lack of adequate, sufficient and rapid efforts by the national authorities to ensure that the applicant's legally pronounced visitation rights are respected

• Opposition by the mother of the child

STRASBOURG June 24, 2021

This judgment will become final under the conditions defined in Article 44 § 2 of the Convention. It can undergo retouching.

In the case of A.T. v. Italy, The European Court of Human Rights (first section), sitting as a Chamber composed of:

Ksenija Turković, President, Krzysztof Wojtyczek, Alena Poláčková, Péter Paczolay, Raffaele Sabato, Lorraine Schembri Orland, Ioannis Ktistakis, judges, and Renata Degener, Section Registrar, Seen: the application (no 40910/19) directed against the Italian Republic and which an Italian national, AT ("the applicant") brought before the Court under Article 34 of the Convention for the Protection of Human Rights and fundamental freedoms (“the Convention”) on July 23, 2019, the decision to bring the request to the attention of the Italian government (“the Government”), the decision not to disclose the identity of the applicant, the parties' observations, After deliberating in the council chamber on May 18, 2021, Delivers the following judgment, adopted on that date:

INTRODUCTION

1. The application concerns the alleged inability by the applicant to exercise his visitation rights with regard to his son and to see him under the conditions set by the courts. The applicant complains of a violation of his right to respect for his family life. IN FACT

2. The applicant was born in 1969 and lives in Z.B., Italy. He was represented by Messrs M. Picco and E. Nardoni, lawyers in Udine.

3. The Government were represented by their Agent, Mr. L. D’Ascia, State Counsel.

4. From the union between the applicant and L.R. a boy, M.T., was born on February 12, 2014. On April 19, 2014, L.R. left the family home with the child, without the applicant's consent.

5. On October 17, 2014, the applicant filed a complaint against L.R. for the offense of child abduction.

6. On January 29, 2015, the applicant brought proceedings before the Court of Treviso on the basis of Articles 315 and 317 bis of the Civil Code. He complained of difficulties in exercising his visitation rights.

7. On 1 May 2015, the applicant lodged a further complaint alleging that L.R. was preventing him from seeing the child.

8. On March 29, 2016, the report drawn up following an expert report that had been carried out on the child and the parents was filed with the registry. According to the expert, the child suffered the deleterious consequences of deprivation of contact with his father during the first three years of his life, a period considered important for the formation of bonds of attachment between a parent and his child. L.R. was not in favor of a rapprochement between the applicant and his son. The expert's opinion gave a positive assessment of the applicant's parental capacities.

9. On July 25, 2016, the court, basing itself on the expertise carried out on the child and the two parents, entrusted MT to the care of the public assistance services of the municipality of Mogliano Veneto and established the main residence of the child at LR He defines the applicant's visitation rights and ordered a course of psychological support for LR

10. L.R. appealed against the decision.

11. On 27 December 2016, without obtaining prior authorization from either the applicant or the court, L.R. moved and settled in Rome, approximately six hundred kilometers from the applicant's home.

12. From that point on, the applicant was no longer able to see his son due to opposition from L.R.

13. On January 30, 2017, the Venice Court of Appeal rejected the appeal lodged by LR and established that the child's residence was in ZB It confirmed that the custody of the child was entrusted to the social services of Mogliano Veneto and denied that the move and the installation in Rome had been authorized given that this removal was such as to prevent the applicant from exercising co-parenting.

14. Notwithstanding the court's decision, L.R. refused to return to live in Z. B.

15. On April 10, 2017, the social services of Mogliano Veneto asked L.R. to comply with the decision of the court of appeal.

16. On 3 May 2017, the applicant lodged a criminal complaint for the offense of non-compliance with a judicial decision (Article 388 of the Criminal Code).

17. On an unspecified date, L.R. lodged an appeal with the Rome court to obtain sole custody of the child, notwithstanding the previous decisions of the court and the Court of Appeal of Treviso.

18. On 10 July 2017, the applicant applied to the Venice Juvenile Court (hereinafter "the court"), arguing that L.R. had moved without his consent and that he was therefore unable to see his son. He called on the court to rule urgently and demanded that L.R. be deprived of his parental authority.

19. On July 11, 2017, the prosecution asked the court to take measures as referred to in Articles 330 and 333 of the Civil Code. He relied on reports from social services which indicated that L.R. was not cooperating and that she was denigrating the applicant. In addition, the child, who presented with a language delay, was not followed by a speech-language pathologist, despite instructions given to L.R.

20. On 22 August 2017, knowing that the child had been hospitalized, the applicant went to Rome but was prevented from seeing him despite the intervention of the police.

21. On 6 January 2018 the applicant went to Rome to see the child, as planned, but on his arrival he found no one. He had this situation noted by the gendarmes and lodged a complaint.

22. During 2018 the applicant was able to see his son a few times while the child was hospitalized in Rome, but in the presence of L.R. and her parents.

23. Despite the applicant's repeated requests, the Venice court did not rule until two years later. By a decision of February 25, 2019, the court, called upon to assess whether the behavior of L.R., who had moved to Rome without the consent of the applicant and the court, had harmed the child, expressed itself as follows: “The court is not contesting L.R.'s decision to move because a parent is free to move around the territory as they wish. What is questionable, however, is that LR motivates this final departure for a town far from the place of residence of the applicant by the need to take care of the child, whereas the latter could very well be treated in his region of residence. 'origin. In this way, L.R. instrumentalized the child's illness. In addition, the geographic distance between the parents made it even more difficult for the applicant to maintain relations with the child, especially in the early years of the child's life. "

24. The court noted that LR was opposed to maintaining the relationship between the applicant and his son, that she had never allowed the applicant to be present in the child's life, and that by her behavior, she was wronging this one. He also found that LR denigrated the applicant, that she did not have the child followed by specialists, contrary to what the social services had recommended, and that she also refused to have the child vaccinated, who could not therefore not be enrolled in kindergarten. He concluded that this behavior was harmful to the child, but noted that it was the consequence of the conflict between L.R. and the applicant. The court found that it was not in the best interests of the child to have their primary residence transferred to the applicant or to be removed from L.R.

25. Consequently, the court decided to limit the parental authority of L.R.; he entrusted the child to the care of the public assistance services of the municipality of Rome, ordering them to provide a course of psychological support for the child and LR, to establish a schedule of meetings between the applicant and the child, to set up a mediation between the applicant and LR, and to report to the prosecutor any non-compliance with the court's prescriptions by LR

26. One hour fortnightly meetings were scheduled.

27. On March 10, 2019, the applicant sent an email to social services in order to find out the name of the person who was to follow his son. He got no response.

28. On the same day, he sent an email to the officer in charge of the case in the municipal administration of Rome to let him know that despite the instructions given by the court, LR was not answering his telephone calls. and did not inform her of her son's state of health and that, moreover, no meeting had been scheduled.

29. On 28 March 2019, the applicant sent a message to the head of social services. He was informed that there were no staff available to supervise the meetings.

30. His emails to social services on April 22 and 27, 2019, went unanswered.

31. On 11 June 2019, the applicant was able to speak with the head of social services. On August 19, 2019, he informed social services that L.R. had changed the child's residence without informing him.

32. In September 2019, while L.R. was still opposed to the meetings, an agreement was reached on a regime of two visits per month.

33. The first meeting between the applicant and his son took place on 24 October 2019, ie seven months after the decision of the Venice court.

34. The November meeting did not take place because L.R. refused to take the child.

35. On November 28, 2019, the criminal trial against L.R. and his parents was opened. L.R. was sentenced to one year and eight months' imprisonment for child abduction.

36. On February 1, 2020, the applicant lodged a complaint against L.R. for failure to comply with the decision of the Venice court.

37. In 2020, the applicant was able to meet his son on 16 and 30 January and on 20 February.

38. From 28 February 2020 until July 2020, the applicant could no longer see his child due to the unavailability of the center where the visits were to take place, notwithstanding the decrees of the President of the Council of Ministers (DPCM) of 8 and 9 March (see paragraph 45-46 below), which authorized travel motivated by the exercise of visitation and accommodation rights.

39. On 7 July 2020 the social services in Rome informed the applicant that the meetings could not be resumed because L.R. was opposed.

40. On 18 August 2020, the applicant asked social services to send him information on the state of health of his son, who had not yet been vaccinated, as well as on the psychological support provided to L.R.

THE RELEVANT INTERNAL LEGAL FRAMEWORK

41. The relevant domestic law in the present case is described in R.V. and Others v. Italy (no.37748 / 13, §§ 65-69, July 18, 2019).

42. Under Article 337 ter, first paragraph, of the Civil Code, a minor child has the right to maintain a balanced and continuous relationship with each of his parents, to receive care, education and moral assistance. from both parents and to maintain meaningful relationships with the ascendants and parents of each parental branch. According to the second paragraph of the same article, to achieve the goal indicated in the first paragraph, in the proceedings referred to in article 337 bis of the Civil Code, the judge adopts the measures relating to the descendants by referring exclusively to their moral interests and materials. The judge considers as a priority the possibility for minor children to remain in the custody of both parents, or, failing this, he decides to whom the children must be entrusted and he determines the time and the modalities of presence with each parent, as well. that the proportion and the modalities according to which each of the parents must contribute to the maintenance, care, education and instruction of the children. The judge can modify the custody arrangements and take note of the various agreements between the parties. The trial judge is responsible for implementing decisions relating to custody arrangements and may also intervene ex officio in the event of foster care. To this end, the public prosecutor sends a copy of the placement decision to the guardianship judge.

43. Article 709 ter of the Code of Civil Procedure reads as follows in the relevant part in the present case: "The judge is also competent to settle any dispute arising between the parents concerning the exercise of parental authority or the arrangements for custody. The judge summons the parties and takes the appropriate measures. In the event of serious non-compliance or acts which, in any way whatsoever, prejudice the child or hinder the proper application of the custody arrangements, the court may modify the measures in force and may, in the same time : 1. issue a warning to the defaulting parent; 2. Order one of the parents to pay the child compensation for damages; 3. order one parent to pay compensation to the other; 4. Order the defaulting parent to pay an administrative fine of between 75 euros and 5,000 euros (...) "

44. Article 614 bis of the Code of Civil Procedure provides as follows: "Indirect measures of coercion: By ordering the performance of obligations other than the payment of sums of money, the judge, unless this is manifestly abusive, fixes at the request of the party the amount that will be due by the debtor for each subsequent breach or non-performance or for each delay in the execution of the order. The conviction constitutes an enforceable title for the payment of the sums due for each violation or non-compliance. The judge fixes the amount of the sum referred to in the first paragraph taking into account the value of the dispute, the nature of the service, the quantified or foreseeable damage and any other useful circumstance. "

45. Due to the COVID-19 pandemic and as part of the containment measures taken by the Government on March 8 and 9, 2020, through two DPCMs (decree of the President of the Council of Ministers) all travel was prohibited except for those motivated by proven professional requirements, situations of necessity or health reasons.

46. On April 9, 2020, a frequently asked questions (FAQ) was published on the website of the Ministry of Internal Affairs. It read the following: “Travel to reach underage children at the home of the other parent or foster parent, or to bring the children to their home, are permitted from one municipality to another as well. These trips must in any case be carried out according to the shortest route and in compliance with all health rules (people in quarantine, positive, immunocompromised, etc.), as well as in the manner prescribed by the judge in the judgments. separation or divorce or, failing that, according to the agreement between the parents.

PLACE ON THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. Relying on Articles 6 and 8, the applicant alleges an attitude of opposition on the part of the mother of his child and he criticizes the domestic authorities for not having taken swift measures to ensure the implementation of his visiting rights. He says he is thus deprived of the possibility of exercising his right of access under the conditions set by the courts and he sees this as an infringement of respect for his right to family life. He argues that he has not had contact with his son alone since 2014.

48. The Court reiterates that it is not bound by the legal arguments put forward by an applicant under the Convention and its Protocols and that it can decide on the legal qualification to be given to the facts of a complaint by examining it in the light of articles or provisions of the Convention other than those relied on by the applicant (Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018) .

49. The Court further notes that while Article 6 offers a procedural guarantee, namely the "right to a court" which will have "civil rights and obligations", Article 8 meets the objective more wide to guarantee respect for private and family life. In this regard, it recalls that although Article 8 does not

contain any explicit procedural condition, the decision-making process relating to interference measures must be fair and capable of respecting the interests protected by this provision (Petrov and X v. Russia, no.23608 / 16, § 101, 23 October 2018). In view of the close link between the complaints, the Court will examine the application only under Article 8, which reads as follows: “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There can be interference by a public authority in the exercise of this right only insofar as such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary for security. national, public safety, the economic well-being of the country, the defense of order and the prevention of criminal offenses, the protection of health or morals, or the protection of the rights and freedoms of other. " On admissibility

50. The Government pleaded that domestic remedies had not been exhausted on the ground that the applicant had not appealed to the court of appeal. Nor would he have requested compensation for the damage suffered by the minor for failure to communicate the change of residence and he would not have lodged an appeal with the guardianship judge, responsible for overseeing the execution of the measures. Furthermore, the applicant had not lodged an appeal as provided for by the Pinto Law to complain about the length of the proceedings.

51. The applicant states that he was successful in the Venice Children's Court, which suspended LR's parental authority by ordering him to follow a psychological course, and he therefore claims that he was not required to appeal to the Court of Appeal. The applicant recalls that the present case concerns a non-execution of the various decisions of the domestic courts (Court of Treviso, Court of Appeal of Venice, Juvenile Court of Venice).

52. As to the Pinto appeal, the applicant emphasizes that it is an action of a compensatory nature and not an action aimed at accelerating the procedure, and that the Court has already rejected similar exceptions in cases concerning Article 8 of the Convention.

53. The Court notes that the applicant's complaint concerns the question of the implementation of the right of access according to the modalities fixed by the court. It recalls having already stated in previous judgments against Italy (Terna v. Italy, no 21052/18, § 90, January 14, 2021; Strumia c. Italy, no.53377 / 13, § 90, 23 June 2016; Lombardo v. Italy, no.25704 / 11, § 63, 29 January 2013, and Nicolò Santilli v. Italy, no.51930 / 10, § 46, 17 December 2013) that the decisions of the juvenile court relating in particular to the right of access were not final and that they could therefore be amended at any time depending on events related to the disputed situation. Thus, the evolution of the domestic procedure is the consequence of the non-final character of the decisions of the juvenile court relating to the right of access. Furthermore, the Court notes in the present case that the applicant has not been able to fully exercise his right of access since 2014 and that he lodged his application before it in 2019 after having referred several cases to the domestic courts. times. In addition, it observes that the complainant is complaining of a situation which has lasted since 2014 and which has not yet come to an end today, and that the complainant had at his disposal this internal remedy to complain about the complaint. 'interruption of contact with her son (Terna, cited above § 90; Strumia, cited above § 90, Lombardo v. Italy, no 25704/11, § 63, 29 January 2013, and Nicolò Santilli, cited above, § 46).

54. As to the fact that the applicant had not exhausted the Pinto remedy to complain about the length of the proceedings, the Court recalls that in proceedings whose length has a clear impact on the applicant's family life (and which fall within therefore of Article 8 of the Convention), it

considered that a more rigid approach was necessary, which obliges States to put in place a remedy that is both preventive and compensatory (Kuppinger v. Germany, no 62198/11 , § 143 15 January 2015, and Macready v. Czech Republic, nos 4824/06 and 15512/08, § 48, 22 April 2010). The Court observed in this regard that the positive obligation incumbent on the State to take appropriate measures to ensure the applicant's right to respect for his family life risked becoming illusory if the applicant had only at his disposal a compensatory remedy that can only lead to the subsequent granting of financial compensation (Macready, ibidem).

55. Finding that the application is not manifestly ill-founded or inadmissible on another ground referred to in Article 35 of the Convention, the Court declares it admissible. On the background Submissions of the parties a) The applicant

56. The applicant recalls having been able to exercise his role of father exclusively from April 12, 2014, the day of his son's birth, to July 19, 2014, the day of his son's removal by LR He indicates that since 2014, he has been able to pass only 126 hours in total alone with his son.

57. He explains that to this day he has not been able to see his son notwithstanding all the decisions granting him visitation rights. He says the authorities tolerated the mother's opposition to any relationship between him and the child for seven years. He adds that, despite the decision to entrust the custody of the child to social services, LR continues to behave in the same way, that the authorities remain inert and that no adequate measure likely to effectively promote the resumption of meetings. 'has been established.

58. He assures that during this period, the courts left to the mother of the child the freedom to choose unilaterally the modalities of the contacts between the applicant and her son. He recalls that this behavior has already been criticized by the Court in Improta v. Italy (no.66396 / 14, 4 May 2017).

59. He argues that the State must, through its organs (including social services) make adequate and effective efforts to execute judicial decisions in accordance with the best interests of the child and that the use of sanctions against the cohabiting parent who, by his illegitimate behavior, hinders the relationship with the other parent, cannot be excluded (VAM v. Serbia, no. 39177/05, March 13, 2007).

60. The applicant notes that in this case, the domestic courts did not even consider resorting to coercion to enforce the judicial decisions recognizing the illegitimacy of the transfer of the child's residence by LR He argues that On the contrary, faced with the obstruction and the total lack of cooperation on the part of the mother of the child (who was also the subject of a criminal conviction), the authorities took no action and the judgments handed down in favor of the applicant remained ineffective. b) The Government

61. The Government considers that the Italian authorities cannot be criticized for not having taken the necessary measures. He claims that the social services intervened on several occasions to facilitate contacts between the applicant and his son. In particular, the public prosecutor's office and the social services asked the court to take the necessary measures and the authorities took action.

The relocation of L.R. to Rome is prohibited.

62. The Government further argues that internal decisions were taken in the best interests of the child. He considers that the sudden termination of the relationship between the child and the mother

with whom he lives would constitute for a child under five years of age a trauma which cannot be inflicted for the sole purpose of ensuring the effectiveness of meetings with his child. dad.

63. The Government submitted that the applicant had not proved that he had not seen his son since 2016.

64. The Government stated that, in order to protect the best interests of the child, on May 4, 2015, the Venice court decided to establish the child's main residence with LR, while however charging the social services with a psychological support mission for the child and LR This decision would have been taken in the best interests of the child.

65. As to the length of the proceedings in the Venice Juvenile Court, the Government argued that this was due to the complexity of the case. Assessment of the Court a) General principles

66. As the Court has pointed out on numerous occasions, while the main purpose of Article 8 of the Convention is to protect the individual against arbitrary interference by the public authorities, it is not content to simply order the State to refrain from such interference: to this rather negative commitment may be added positive obligations inherent in effective respect for private or family life. These may involve the adoption of measures aimed at respecting family life even in the relations between individuals, including the establishment of an adequate and sufficient legal arsenal to guarantee the legitimate rights of those concerned and ensure respect. court decisions, or specific appropriate measures (see, mutatis mutandis, Zawadka v. Poland, no. 48542/99, § 53, 23 June 2005). This arsenal should enable the State to adopt measures to reunite the parent and his child, including in the event of a conflict between the two parents (see, mutatis mutandis, Ignaccolo-Zenide v. Romania, no 31679/96, § 108, ECHR 2000-I, Sylvester v. Austria, nos. 36812/97 and 40104/98, § 68, 24 April 2003, Zavřel v. Czech Republic, no 14044/05, § 47, 18 January 2007, and Mihailova v. Bulgaria, no.35978 / 02, § 80, 12 January 2006). The Court also recalls that the positive obligations are not limited to ensuring that the child can join his parent or have contact with him, but that they also encompass all the preparatory measures making it possible to achieve this result (see, mutatis mutandis, Kosmopoulou v. Greece, no 60457/00, § 45, 5 February 2004, Amanalachioai v. Romania, no 4023/04, § 95, 26 May 2009, Ignaccolo-Zenide, §§ 105 and 112, and Sylvester, § 70, both cited above).

67. The Court also recalls that the fact that the authorities' efforts were in vain does not automatically lead to the conclusion that the State has failed to fulfill its positive obligations under Article 8 of the Convention (see Nicolò Santilli, cited above) , § 67). Indeed, the obligation for the national authorities to take measures in order to reunite the child and the parent with whom he does not live is not absolute, and the understanding and cooperation of all those concerned always constitute an important factor. If the national authorities must endeavor to facilitate such collaboration, an obligation for them to resort to coercion in this matter can only be limited: they must take into account the interests and the rights and freedoms of these same persons, and in particular the best interests of the child and the rights conferred on him by Article 8 of the Convention (Voleský v. Czech Republic, no. 63267/00, § 118, 29 June 2004).

68. As regards the family life of a child, the Court reiterates that there is currently a broad consensus - including in international law - around the idea that in all decisions concerning children, their best interests must primer (see, inter alia, Neulinger and Shuruk v. Switzerland [GC], no 41615/07, § 135, ECHR 2010). It points out, moreover, that in cases in which questions of placement of children and restrictions on access are at stake, the interests of the child must come before any other

consideration (Strand Lobben and Others v. Norway [GC], no.37283 / 13, § 204, 10 September 2019). The greatest caution is required when it comes to resorting to coercion in this delicate area (Mitrova and Savik v. The former Yugoslav Republic of Macedonia, no.42534 / 09, § 77, 11 February 2016, and Reigado Ramos v. Portugal, no.73229 / 01, § 53, 22 November 2005). The decisive point therefore is whether, in the present case, the national authorities took all the necessary measures to facilitate parent-child visits that could reasonably be required of them (Nuutin in c. Finland, no.32842 / 96, § 128, ECHR 2000-VIII). b) Application of these principles to the present case

69. Turning to the facts of the present case, the Court considers that, in view of the circumstances before it, its task is to ascertain whether the national authorities have taken all the measures which could reasonably be required of them to to maintain the links between the applicant and his son (Bondavalli v. Italy, no 35532/12, § 75, 17 November 2015) and to examine the manner in which they intervened to facilitate the exercise of the applicant's right of access as defined by court decisions (Hokkanen v. Finland, 23 September 1994, § 58, Series A no. 299-A, and Kuppinger, cited above, § 105). It also recalls that, in a case of this type, the adequacy of a measure is judged by the speed of its implementation (Piazzi v. Italy, no 36168/09, § 58, 2 November 2010), because the passage of time alone can affect a parent's relationship with their child.

70. The Court notes that from 2015, when the child was only eleven months old, the applicant continued to ask the court for meetings to be organized, but that he was unable to exercise his visitation rights due to opposition from LR, who had left the family home and prevented him from having any contact with the child.

71. In 2016, the Treviso court observed that the applicant could not see his son and that L.R. persisted in opposing meetings between the applicant and the child.

72. From December 2016, after the child's mother moved to another town, some six hundred kilometers away, without the consent of the courts and the applicant, the latter was no longer able to see her son, especially because of the mother's refusal to organize meetings.

73. The Court observes that, notwithstanding the decision of the Venice Court of Appeal of 30 January 2017 establishing that the child's residence was in Z.B. and denying that the move to Rome had been authorized, L.R. fixed his residence in Rome.

74. Consequently, on 10 July 2017, the applicant again appealed to the Venice Juvenile Court, arguing that LR had moved without authorization and that therefore it was impossible for him to see his son because she was opposed to the meetings. .

75. In 2017, notwithstanding the appeals which the prosecution and the applicant lodged with the Venice court and the report made by the social services, the court took no action. The Court noted that in order to be able to see his son, the applicant was obliged to request the intervention of the police.

76. She notices that the Venice court waited two years before ruling. While acknowledging that LR's behavior was detrimental to the child, he considered that it was not in the best interests of the child to be removed from LR and therefore established the child's primary residence with his mother, by granting visitation rights to the applicant.

77. The Court notes that to date the applicant has been unable to exercise this right of access because L.R. is opposed to it and the meetings have not been organized.

78. The Court reiterates that it is not for it to substitute its assessment for that of the competent national authorities as to the measures which should have been taken, since those authorities are in principle better placed to carry out such an assessment, in particular because they are in direct contact with the context of the case and the parties involved (see Reigado Ramos, cited above, § 53). However, in this case it cannot ignore the facts set out above (see paragraphs 70-77 above). In particular, it notes that the applicant has not ceased to try to establish contact with his son since 2014 and that, despite the various decisions of the children's court and the court of appeal, the authorities have not found solution to enable him to exercise his right of access regularly. The warning from the Venice court had no effect on LR, who continued to prevent the applicant from exercising his visitation rights and even moved six hundred kilometers away without his and the courts' consent. . This behavior persists today despite a new juvenile court ruling and the applicant's criminal conviction for the removal of a minor.

79. Admittedly, the Court recognizes that the authorities were faced in the present case with a very difficult situation which arose in particular from the tensions existing between the parents of the child. It admits that the applicant's inability to exercise his right of access was initially mainly attributable to the manifest refusal of the mother of the child, then to the refusal of the child and to the distance between the place of residence of the child. child and that of the applicant. However, it recalls that a lack of cooperation between separated parents cannot exempt the competent authorities from implementing all the means likely to allow the maintenance of the family link (Nicolò Santilli, § 74, Lombardo, § 91, and Zavřel, § 52, all supra).

80. The Court considers that the authorities did not exercise due diligence in the present case and that they fell short of what could reasonably be expected of them. It considers in particular that the domestic courts have not taken the appropriate measures to create the conditions necessary for the full realization of the child's father's visitation rights (Bondavalli, § 81, Macready, § 66, Piazzi, § 61 , and Strumia, § 122 all cited above). It notes in particular that the social services in Rome, notwithstanding the judicial decisions ordering the organization of the meetings, intervened very late (see paragraphs 27-33 above), that they organized only one visit and that they did not not kept the applicant informed of his son's situation.

81. The Court considers that, as soon as the parents separated, when the child was only one year old, the domestic courts failed to take concrete and useful measures likely to allow effective contact to be established, and it notes that they then tolerated for approximately seven years that the mother, by her behavior, prevented the establishment of a true relation between the applicant and the child. It notes that the course of the procedure before the court rather reveals a series of automatic and stereotypical measures, such as successive requests for information or a delegation of the follow-up of the family to the social services, together with the obligation for them. to organize and ensure respect for the applicant's visiting rights (Lombardo, cited above, § 92, and Piazzi, cited above, § 61). Social services, for their part, acted late and did not properly execute court decisions.

82. The Court noted that the social services did not organize the meetings during the first period of confinement and well beyond (see paragraph 38 above), whereas the trips motivated by the exercise of a right of visit and accommodation was permitted (see paragraphs 45-46 above). However, although the legal arsenal provided for by Italian law seems sufficient, in the eyes of the Court, to enable the respondent State to ensure, in abstract, compliance with the positive obligations which it derives from Article 8 of the Convention , it must be noted in this case that the authorities did not use the existing legal instruments and did not take any action with regard to LR, also leaving him

the possibility of moving with his son to settle six hundred kilometers from the applicant's home without his consent and against the decision of the court of appeal; in particular, L.R. acted in this way without having previously agreed with the applicant on a co-parenting plan or without having submitted the said plan to the courts for approval. After that, the authorities failed to comply with previous decisions of the Treviso court and the Venice court of appeal which granted the applicant visitation rights. Further, the Court noted that L.R. was sentenced to one year and eight months' imprisonment for child abduction, but this did not change the situation of the applicant who continued to have no access to the child. The Court therefore considers that the authorities have allowed a situation to take root which has in fact taken hold in defiance of judicial decisions (K.B. and others v. Croatia, no. 36216/13, 14 March 2017). After the lockdown, when social services found that L.R. refused to take the child to see his father, they suspended the meetings without initiating court-ordered mediation. No control over the activity and omissions of social services has been carried out by the courts.

83. The Court notes that, in the present case, faced with the opposition of the mother of the child, which had persisted since 2014, and the difficulties encountered by the applicant in exercising his right of access, the national authorities no. " failed to take promptly all the measures necessary and which could reasonably be required of them to ensure respect for the applicant's right to have contact and to establish a relationship with his son (see Terna, cited above § 73 Strumia, cited above) , § 12 3).

84. In this regard, the Court recalls having already noted, in the Terna judgment (cited above, § 97), the existence of a systemic problem in Italy concerning the delays in the implementation of the judicial access rights granted.

85. The Court also notes the delay with which the Venice tribunal rendered its decision. It recalls in this regard that it may take into account, under Article 8 of the Convention, the duration of the decision-making process of the domestic authorities as well as that of any related judicial proceedings. In fact, a delay in the procedure always risks, in such a case, settling the problem in dispute with a fait accompli. However, effective respect for family life requires that future relations between parent and child be settled solely on the basis of all the relevant elements, and not by the simple passage of time (W. v. United Kingdom, July 8 1987, §§ 64-65, Series A no 121, Covezzi and Morselli v. Italy, no 52763/99, § 136, 9 May 2003, Solarino cited above, § 39, 9 February 2017, and D'Alconzo v. Italy, no.64297 / 12, § 64, 23 February 2017).

86. For the Court, greater diligence and speed were required in adopting a decision affecting the rights guaranteed by Article 8 of the Convention. What was at stake for the applicant required urgent treatment, as the passage of time could have irreparable consequences on the relationship between the child and his father, who was not living with him. The Court reiterates that breaking off contact with a very young child can lead to an increasing deterioration of his relationship with his parent. In this regard, it notes that despite the requests made by the applicant, the social services and the prosecution, which indicated a dangerous situation for the child, it took two years for the Venice court to take a decision, which, To this day, has still not been executed, without this lack of execution leading to consequences for LR, despite the court's warnings and although LR was sentenced for subtraction of a minor.

87. Having regard to the foregoing and notwithstanding the respondent State's margin of appreciation in the matter, the Court considers that the national authorities did not make adequate

and sufficient efforts to ensure respect for the applicant's right of access. and that they disregarded the applicant's right to respect for his family life.

88. Accordingly, there has been a violation of Article 8 of the Convention.

ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Under article 41 of the Convention: "If the Court declares that there has been a violation of the Convention or of its Protocols, and if the internal law of the High Contracting Party only permits imperfect erasure of the consequences of this violation, the Court grants the party injured, if applicable, just satisfaction. " Pity

90. The applicant claimed 100,000 euros (EUR) for non-pecuniary damage which he considered he had suffered as he had been unable to establish a relationship with his son since 2014.

91. The Government contested the applicant's claims.

92. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated by the sole finding of a violation of Article 8 of the Convention. She considers that the complainant's inability to maintain meaningful contact with his child caused him frustration and suffering and prevented him from developing relationships with his son over a period of years. Consequently, having regard to all the information at its disposal and ruling on an equitable basis, as required by Article 41 of the Convention, it awards the person concerned the sum of EUR 13,000 under this head.

Costs and expenses

93. Supporting documents, the applicant claimed EUR 39,692.01 for the costs and expenses which he claims to have incurred in the context of the proceedings before the domestic courts and EUR 4,085.54 for those he allegedly incurred. incurred for the purposes of the proceedings before the Court.

94. The Government considers that this request for reimbursement must be rejected.

95. According to the case-law of the Court, an applicant may obtain reimbursement of his costs and expenses only to the extent that their reality, their necessity and the reasonableness of their rate have been established. In the present case, taking into account the documents in its possession and the aforementioned criteria, the Court considers it reasonable to award the applicant the sum of EUR 15,000, all costs combined, plus any amount which may be due on this sum as tax .

Default interest

96. The Court considers it appropriate to model the rate of default interest on the interest rate of the marginal lending facility of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Declare the request admissible; Holds that there has been a violation of Article 8 of the Convention; Said, a) that the respondent State do it pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts: EUR 13,000 (thirteen thousand euros), plus any amount that may be due out of this sum by way of tax, for non-pecuniary damage; EUR 15,000 (fifteen thousand euros), plus any amount that may be due out of this sum by way of tax, for costs and expenses; b) that from the

expiration of the said period and until payment, these amounts will be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during this period, increased by three percentage points; Dismisses the remainder of the claim for just satisfaction.

Done in French, then communicated in writing on June 24, 2021, in application of Article 77 §§ 2 and 3 of the Regulation.

Renata Degener Ksenija Turković Clerk President