



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

SECOND SECTION

**CASE OF E.P. v. ITALY**

**(Application no. 31127/96)**

JUDGMENT

STRASBOURG

16 November 1999

**In the case of E.P. v. Italy,**

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

Mr M. FISCHBACH, *President*,  
Mr B. CONFORTI,  
Mr G. BONELLO,  
Mrs V. STRÁŽNICKÁ,  
Mr P. LORENZEN,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr A.B. BAKA,  
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 28 October 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case was referred to the court by Mrs E.P. (“the applicant”), an Italian citizen of Greek origin, on 6 January 1999. It originated in an application (no. 31127/96) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) on 24 December 1995 under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The applicant is represented before the Court by Mr Pietro Nicotera of the Rome bar. The Italian Government (“the Government”) are represented by their Agent, Mr U. Leanza.

2. Following the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 4 thereof read in conjunction with Rules 100 § 1 and 24 § 6 of the Rules of Court (“the Rules”), a panel of the Grand Chamber decided on 31 March 1999 that the case would be examined by a Chamber constituted within one of the Sections of the Court.

3. The President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mr B. Conforti, the elected judge in respect of Italy (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr C. Rozakis, the President of the Section (Rule 26 § 1 (a)). The other members appointed by the President of the Section to complete the Chamber were Mr M. Fischbach, Mr G. Bonello, Mrs V. Strážnická, Mr P. Lorenzen and Mrs M. Tsatsa-Nikolovska, with Mr A.B. Baka and Mr E. Levits as substitutes (Rule 26 § 1 (b)).

4. Later, Mr Rozakis, who had taken part in the Commission's examination of the case, withdrew from sitting in the Chamber (Rule 28). His place as President of the Chamber was accordingly taken by Mr Fischbach (Rule 12) and Mr Baka was appointed to replace him as a member of the Chamber.

5. On 27 April 1999 the Chamber decided that it was not necessary to hold a hearing.

6. On 5 July 1999 the Government informed the Court that they did not intend to submit a memorial and would rely on the observations of 21 November 1997 which they had lodged with the Commission. The applicant had already filed a memorial on 8 March 1999.

#### AS TO THE FACTS

7. The applicant has a young daughter, M.-A., who was born in 1981.

8. On 3 October 1988 the applicant and her daughter, who had lived in Greece since the latter's birth, arrived in Rome by aeroplane. As soon as she had landed, the applicant consulted the airport medical service because her daughter had not been feeling well. The duty doctor found that the little girl was vomiting and had a temperature of 38° and, accordingly, had her admitted to hospital.

9. On 15 October 1988, the hospital psychiatric department applied to the Rome Youth Court to have M.-A. removed from her mother's care and for an injunction on the mother visiting her until the complex medical and psychiatric state of the child, who did not speak Italian, had been clearly diagnosed. According to the doctor in charge of M.-A.'s case, the applicant had a clinical obsession with her daughter's health. It had also been very difficult to assess the little girl's psychological state because the applicant had constantly interfered with her treatment and medical examinations. The doctor stated lastly that the applicant had attempted to remove her daughter from the hospital in breach (he said) of recommendations already made by the court. However, there is no evidence that the court had previously been called upon to make any decision with respect to the applicant or her daughter.

10. On 22 October 1988 the Child Support Institute (*Istituto provinciale per l'assistenza all'infanzia*) for the province of Rome supplied the court with the information it had been able to obtain by interviewing the applicant, the hospital staff and the applicant's brother, H.P., who had lived in Milan for a long time. According to the Institute, the evidence gathered showed that the applicant had had M.-A. hospitalised on several occasions, in particular in paediatric hospitals in Athens, Sofia and London, because she had believed the little girl to be seriously ill. The Institute also reported

that during M.-A.'s last period in hospital in Athens, in the summer of 1988, the Athens Youth Court had been asked to issue an injunction forbidding the applicant to remove her daughter from the hospital and to open proceedings to have the little girl adopted. The applicant had, however, succeeded in smuggling her daughter out of the hospital and reaching Rome. The Institute stated, lastly, that M.-A. did not appear to be troubled by the separation from her mother, even though she asked for news of her.

11. In its final report, dated 25 October 1988, the psychiatric department of the Rome hospital made the following recommendations to the Rome Youth Court:

- (a) that M.-A. should be kept away from her mother;
- (b) that M.-A. should be discharged from hospital as soon as possible;
- (c) that she should be placed with a family in which the parents had an emotionally stable relationship; and
- (d) that she should be settled in a school and take part in social activities.

12. The hospital had formed the opinion that M.-A. had developed a pathological bond with her mother, a bond which met the needs of the mother rather than the child's developmental requirements. The little girl had reacted to the separation from her mother with anxiety and depression but had shown herself capable of overcoming this by relying on other images of women. She had demonstrated great interest in other children of her age and an excellent capacity for socialisation.

13. On 26 October 1998 the Rome Youth Court ordered that M.-A. be temporarily placed with the applicant's brother's family.

14. In the meantime H.P. and his wife had persuaded the applicant to seek treatment and on 18 October 1988 she was admitted to the psychiatric department of a hospital in Melegnano, near Milan. According to a medical report dated 15 December 1988, she was suffering from chronic psychosis, the constitutive element of which was a form of vicarious hypochondria focused on her daughter. The applicant left the hospital on the date of the report and returned to Greece.

15. In an order of 16 February 1989 the Milan Youth Court, which had acquired jurisdiction over the case because of where the applicant's brother's family lived, found that M.-A.'s placement with that family could no longer continue because of a series of problems within it. The court decided, in consequence, to keep the child away from the applicant and to place her in the care of social services on the basis that she should be placed with another family as soon as possible. The court also ordered a comprehensive psychological report on the mother. Lastly, it ordered that proceedings under section 8 of Law no. 184 of 4 May 1983 (hereinafter "Law 184/83") should be set in motion with a view to a declaration that M.-A. was available for adoption. Under that provision, "the Youth Court, may, even of its own motion, declare .... a minor available for adoption if he has

been abandoned in the sense of being deprived of all emotional or material support from his parents or the members of his family responsible for providing such support (other than in temporary cases of *force majeure*)”.

16. In an order of 16 March 1989, the court suspended the applicant’s parental responsibility and ordered that there should for the time being be no contact between the little girl and her mother or the other members of her family. In view of the urgency of the matter, the court did not hear submissions from State Counsel or the applicant. It based its decision primarily on a report on M.-A.’s psychological health prepared by Milan University. According to that report, M.-A. was suffering from anxiety and depression together with an almost neurotic tendency to satisfy her immediate needs. Her perception of the image of her parents was problematic: that of her mother was difficult to identify and that of her father, whom she had never met, aroused fear and remained abstract. The report’s conclusion was that the little girl was suffering from serious emotional and relationship problems due to the pathological behaviour of her mother, who had for a long time been her sole source of stimulation. Noting the potential represented by the child’s will to develop emotionally in a positive way, the report recommended that she should be placed with an emotionally stable family, be given suitable psychological help and be integrated into a stimulating socio-scholastic environment.

17. On 9 May 1989 the applicant lodged her first application with the Milan Youth Court, seeking to have the order of 16 February 1989 revoked. She argued, *inter alia*, that her daughter had lived her whole life in Greece and that at the time at which she had been separated from her mother she had not even been able to speak or understand Italian. The applicant also pointed out that under Article 20 of the preliminary provisions of the Italian Civil Code, as it had stood at the time, the relationship between parent and child was governed by the law of the mother’s country if the father’s identity was not known.

18. On 22 May 1989 the court ordered the social services department in charge of M.-A.’s case to give an opinion on her suitability for adoption, emphasising that the matter was urgent.

19. In the meantime, M.-A.’s father had recognised her as his daughter.

20. On 30 June 1989 the Milan Youth Court declared M.-A. available for adoption after hearing submissions from, among others, the applicant, M.-A.’s maternal grandmother and H.P. The court held that the little girl had been abandoned within the meaning of section 8 of Law no. 184/83, given the mother’s situation and the fact that it was impossible to place the child with her maternal uncle’s family. It also held that no weight could be given to the late recognition of M.-A. by her natural father, who had never seen her and who did not know her first name. Lastly, on the question of whether Greek law applied, it held, following the case-law of the Court of

Cassation, that it was sufficient for a child who had been abandoned to be within Italian territory for Italian law to apply.

21. The applicant lodged a second application, submitting, *inter alia*, that the report of 15 December 1988 on her psychiatric state had been based on an account of her medical history reconstructed primarily from information supplied by her sister-in-law, with whom she had had no contact before coming to Italy, and who could not therefore know what her life with her daughter in Greece had been like. Moreover, the court should have taken account of the fact that the applicant had had herself voluntarily admitted to Melegnano hospital because she was afraid of being separated from her daughter. She submitted lastly that it could not be said that M.-A. had been “abandoned” since she (the applicant) received an allowance and also owned an apartment in Athens which brought in rent. The applicant asked the court to order a report on her mental health and enclosed an expert report which she had had drawn up privately and which stated that separating a child from its mother could be justified only on exceptional grounds, which did not exist in the applicant’s case, and that certain symptoms of anxiety and depression in the applicant had been caused by the separation from her daughter.

22. In the meantime, State Counsel at the Athens Youth Court had informed the Italian authorities that, contrary to the information provided by the Child Support Institute of the province of Rome on 22 October 1988, the Athens court had never taken any action concerning the applicant or her daughter.

23. The first hearing in the case was held on 29 November 1989. A second hearing was scheduled for 21 February 1990 but was apparently adjourned because of a delay in M.-A.’s case file arriving from the Rome Youth Court.

24. At a hearing on 22 March 1990 the doctor who had been in charge of the applicant’s case at Melegnano hospital stated that he had obtained his information on the applicant’s recent past directly from her but that the general information about her life had been supplied by her sister-in-law. He said that the applicant’s sister-in-law had at first thought it desirable for the applicant to stay in hospital and only later, when the doctor had asked her to think of an alternative, had suggested that the applicant should return to Greece. The doctor stated lastly that his diagnosis of chronic psychosis had been based on the information provided by the sister-in-law and acknowledged that he had never asked the applicant if she had had other children or any abortions.

25. On 23 March and 2 July 1990 the Milan Youth Court again asked the Rome Youth Court to send it the little girl’s case file, emphasising the urgency of the matter. The Rome case file was finally sent to the Milan court on 27 July 1990.

26. The final hearing took place on 31 October 1990. M.-A.'s guardian *ad litem* (*curatore speciale*) applied to have the order of 30 June 1989 set aside on the grounds that the bench had been improperly composed. That application was allowed and the order in question annulled.

27. In an order of 22 November 1990, deposited with the court registry on 1 December and served on the applicant on 12 December of the same year, the court issued a fresh declaration that M.-A. was available for adoption. The court, which had not heard evidence from the child and whose decision reflected the submissions of State Counsel, based its ruling on the same grounds as those given in the annulled decision of 30 June 1989, namely, *inter alia*, the medical reports of 15 December 1988 and 14 March 1989. The court also noted the fact that M.-A.'s natural father intended to marry the applicant but without attributing any significance to it.

28. The applicant, who had meanwhile applied for the adoption process to be suspended, applied for an order setting aside that decision. She submitted, first, that it slavishly followed the reasoning set out in the first order and argued in particular that the diagnosis of her mental health made in December 1988 could not provide grounds for a decision reached two years later, given that a declaration of availability for adoption should be based on the circumstances existing at the time it was made. The applicant also declared her willingness to be supervised by social services so as to ensure a better upbringing for her daughter. She asked lastly for permission to see her daughter again, on neutral ground and in the presence of social workers, for M.-A. to give evidence and for an expert report on herself to be ordered.

29. The applicant also filed a number of expert reports by psychologists in private practice. One of them, by a forensic medical examiner specialising in psychiatry, stated that a diagnosis of "chronic" psychosis would have to be based on psychotic antecedents, of which there was no evidence in the records of the applicant, a trained nurse who had always practised her profession successfully. It also stated that the applicant's concerns about her daughter's health were based on real evidence and were not "delusions".

30. There was indeed evidence that a number of doctors had in the past diagnosed M.-A. as having health problems. The case file contained:

- (a) a certificate of 3 September 1986 from the medical faculty of Athens University certifying the existence of an unspecified medical problem;
- (b) another certificate from the same faculty dated 12 December 1986 stating that the little girl's immune system was deficient and recommending that she should not be vaccinated, should avoid any contact with other children who might be carrying viruses and should not be sent to school;

- (c) a certificate of 30 December 1986 from a doctor in private practice recommending regular medical and pharmaceutical treatment and a change of climate;
- (d) a certificate of 2 September 1988 from another specialist in private practice diagnosing infections of the digestive and respiratory organs and prescribing the use of oxygen at home during attacks.

31. In March 1991 two expert reports ordered by the court were completed. In May of the same year evidence was taken from M.-A.'s grandfather and the applicant.

32. On 16 October 1991 the court took evidence from the applicant and ordered a psychological report on the little girl.

33. In January, April and May 1992 a number of lay and expert witnesses gave evidence (a hearing scheduled for 15 February 1992 was adjourned because the applicant's counsel had had a road accident).

34. A hearing on 20 May 1992 was devoted to evidence from a number of witnesses called by the applicant, who also asked for a hearing to be scheduled to enable witnesses from Greece to testify.

35. A hearing scheduled for 21 October 1992 was adjourned because of the need to replace one of the members of the bench and also because the applicant had applied for an adjournment. The following hearing, scheduled for 4 November 1992, was also adjourned because the witnesses from Greece whom the applicant had called had failed to appear. The court was consequently obliged to issue rogatory letters.

36. On 9 December 1992 the applicant, noting that the final hearing had been adjourned to April 1993, complained that, in spite of her repeated requests, no meeting between her daughter and herself had been arranged and the court had taken no measures to enable her to explore the possibility of re-establishing a relationship with her daughter but had failed to respond to her requests or refused them.

37. On 23 December 1992 the court, following State Counsel's recommendation, dismissed that complaint.

38. In a judgment of 16 July 1993 the Milan Youth Court dismissed the applicant's request for the declaration of availability for adoption to be set aside. The court first examined the time taken to reach a decision at first instance. It found that the length of the proceedings had been caused by the applicant's numerous requests for lay and expert witnesses to be called, to the large number of documents she had produced and her frequent changes of legal representative, as well as by the workload of the court. It pointed out, moreover, that it had not received the additional information requested from the Athens Youth Court until the final hearing.

39. As to the merits of the case, the court began by acknowledging the extremely complex nature of the case (which it described as one of the most difficult it had ever had to determine) and the difficulty of building an accurate picture of what the applicant and her daughter's situation in Greece

had really been. It noted that when M.-A. had last been in hospital in Greece, the department where she was a patient had informed the Athens Youth Court of her situation, with a view to possibly having her removed from the applicant's care. The applicant had then smuggled her out of the hospital and left for Rome. Indeed, while M.-A. was a patient in the hospital, the doctors had had her transferred to the child psychology department, the children in which were usually destined for adoption.

40. The court emphasised that the report which it had commissioned on M.-A. had established that she had never had any serious medical problem until 1988, a finding certified by the hospitals to which she had been admitted (in Athens, London and Rome). The report had also stated that the little girl suffered from common childhood complaints which could be treated by ordinary medical methods and did not justify her mother's obsessive health-care measures or the continual hospitalisations which the latter had made her undergo, frequently against medical advice.

41. The court placed particular emphasis on the fact that the report of 15 October 1988 from the Rome hospital referred to aspects of the relationship between the applicant and her daughter which were extremely similar to those noted just a few days earlier, on 30 September, by the doctor from the Athens hospital, aspects which had led the latter to notify State Counsel's Office at the Athens Youth Court. It was clear, according to the court, that the doctor in Rome had not known of the identical step taken by his Greek colleague. Those two documents demonstrated the tragic conditions in which M.-A. had lived up to that time: isolated, without contact with other children of her age and trapped in the role of patient which, in reality, was satisfying the needs of her mother, with whom she had a symbiotic relationship. The tribunal found that the circumstances of the sudden departure for Rome were equally significant: the applicant had taken only two cases, had bought the airline tickets at the airport, had abandoned her job only a few months before retirement, had abandoned her flat and had taken M.-A. out of school, which she had recently started attending for the first time. The court considered that the explanation put forward by the applicant, who had stated that she had left for Italy in order to find her father – whose address she did not know and whom she had not seen since 1980 – was not convincing. Moreover, once in Rome the applicant had again attempted to discharge her daughter from hospital without permission when criticised for the way in which she treated her – as had also happened in Greece.

42. The court went on to observe that the little girl who had arrived in Italy pale, sad, with numerous decayed teeth and difficulty in walking – despite constant treatment from her mother for health problems which were really not serious – was now a happy, healthy little girl. Furthermore, a psychological report on the child showed that during her life in Greece she had felt like a prisoner in her home, where she was constantly being given

injections, put on drips and treated with other medical apparatus and was taken to hospital against her will as soon as she felt in the slightest degree unwell. The report had also been able to establish that M.-A. had been happy to be placed with another family and had distanced herself from the memory of her mother, and that the idea of entering into contact with her again aroused fears in the child.

43. The court remarked, lastly, that the applicant, who had supplied it with a minute account of all the illnesses from which her daughter was allegedly suffering, had never told it about her physical characteristics, her personality or her preferences. Nor had the applicant at any point in the proceedings demonstrated a willingness to open certain of her attitudes towards her daughter up to discussion. In the face of this unwillingness to look at herself critically, all attempts to influence the convictions of the applicant, who had never been aware of having any psychological problems, had been in vain. Even though the applicant had spared no effort in relation to her daughter – albeit misguidedly – and even though her allegations as to the behaviour of the members of her family were not completely without foundation, she had not demonstrated an ability to remedy her psychological state so as to enable her to have renewed contact with her child.

44. The applicant appealed. She submitted, *inter alia*, that whenever M.-A. had been hospitalised it had always been for good reason and following medical diagnosis. She also emphasised that she had always been concerned for her daughter and her daughter's upbringing. She submitted that there were a number of witnesses to confirm that she had had a good relationship with her daughter and that the little girl had been living in a completely normal environment.

45. The Milan Court of Appeal (Youth Division) dismissed the applicant's appeal in a judgment of 2 June 1994, deposited with the court registry on 29 July 1994. The court of appeal placed emphasis on, *inter alia*, the importance of the fact that a doctor from the Athens hospital had sought to inform State Counsel's Office at the local court of the seriousness of the little girl's situation, and on the significant circumstance that an identical step had been taken by the doctor at the Rome hospital. The court also found that the expert reports which the applicant had commissioned could not diminish the weight of those prepared for the court, given the general nature of the contents of the former and their lack of specific observations. Nor had the testimony favourable to the applicant been such as to lead to a different conclusion from that set out in the thorough expert reports ordered by the court, since that testimony had concerned only limited contact with the applicant and her daughter and therefore did not go beyond appearances.

The court of appeal held, lastly, that it was unnecessary and undesirable to hear evidence from M.-A. again as she had already been questioned at length by the court-appointed expert and that examination had shown that the little girl had already made her choice from a psychological point of view.

46. The applicant appealed to the Court of Cassation on a point of law. She submitted, *inter alia*, that, under Law no. 184/83, an adoption order was justified only when a child had been abandoned in the sense of being deprived of all emotional or material support; the fact of taking great care of the child's health – on the basis of medical diagnoses, even ones later revealed to be mistaken – could not be a ground for such an order. The applicant also complained of the fact that the courts had never attempted to assess the manner in which her own situation and state of health had improved, something which, combined with the fact that M.-A. was older, could have justified an attempt to re-establish contact between herself and her daughter at a later stage, before any relationship between them had been finally destroyed.

47. In a judgment of 7 June 1995, deposited with the court registry on 24 October of that year, the applicant's appeal was dismissed. The Court of Cassation observed, first, that it had consistently held that a situation of abandonment could arise as a result not only of a lack of material and emotional support, but also of parental behaviour that prejudiced the healthy, balanced development of the child's personality. With regard to the applicant's complaint that the courts had separated her from her daughter without first making any recommendation, either to the applicant or social services, as to how the situation could be remedied, the Court of Cassation emphasised that such a decision was a matter for the discretion of the courts concerned, which had deemed any such attempt vain in view of the chronic nature of the applicant's illness. The court held, lastly, that the issue as to whether or not M.-A. should have given evidence was also a matter for the discretion of the tribunals of fact, so that it had no power to review it.

48. In 1996 the applicant's daughter was finally adopted by her foster parents. According to information from the applicant, which the respondent Government have not disputed, the applicant has succeeded in having presents delivered to her. On 17 February 1999 M.-A. came of age.

## PROCEEDINGS BEFORE THE COMMISSION

49. Mrs E.P. applied to the Commission on 24 December 1995. She alleged, among other complaints, a breach of her right to a hearing within a reasonable time (Article 6 § 1) and a violation of her right to respect for her family life on account of her daughter having been declared available for adoption and all contact between them having been broken off (Article 8).

50. On 16 April 1998 the Commission declared the application (no. 31127/96) admissible as regards the above complaints and dismissed the remainder of the complaints. In its report<sup>1</sup> of 21 October 1998 (former Article 31) it expressed the unanimous opinion that there had been a violation of Articles 6 § 1 and 8 of the Convention.

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. The applicant maintained that the length of the proceedings in her case constituted a breach of Article 6 § 1 of the Convention, which provides:

“In the determination of this civil rights and obligations ... , everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal... ”

52. The period to be taken into consideration commenced on 26 October 1988, the date on which the Rome Youth Court intervened for the first time by ordering M.-A. to be temporarily placed with the applicant's brother's family, and ended on 24 October 1995 when the Court of Cassation's judgment of 7 June 1995 was deposited with the court registry. It therefore lasted seven years.

53. The Court recalls that it held in four judgments of 28 July 1999 (see, for example, the judgment in the case of *Bottazi v. Italy*, to be published in *Reports of Judgments and Decisions* 1999, § 22) that there was in Italy an accumulation of breaches of the “reasonable time” requirement constituting a practice contrary to the Convention. It also recalls that, since the proceedings in this case concerned the custody of a child, particular celerity was required (see, *mutatis mutandis*, the *Johansen v. Norway* judgment of 7 August 1996, *Reports* 1996-III, p. 1010, § 88).

54. Having examined the facts of the case in the light of the arguments put forward by the parties and having regard to its case-law in this field, the Court considers that the length of the proceedings failed to meet the “reasonable time” requirement and constitutes a further example of the practice referred to above.

55. Accordingly, there has been a violation of Article 6 § 1.

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1. *Note by the Registry*. A copy of the report is obtainable from the Registry.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicant complained that she had been deprived of her daughter and alleged a violation of Article 8 of the Convention on that account. Article 8 provides:

“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.”

57. The Government observed, first, that declaring the little girl available for adoption had been justified in order to protect her right not to have her need for growth and development jeopardised by the dangerous presence of the applicant, who was suffering from a pathological mental disorder. In particular, meetings with the applicant had been judged harmful to the little girl, who had, rather, needed specific psychological help in a reassuring family environment. Moreover, the applicant’s clinical state had not admitted of any treatment.

58. The applicant disputed this version of the facts.

59. The Court, like the Commission, observes, first, that, as the Italian authorities themselves noted (see § 39 above), a number of aspects of the case have never been truly clarified – particularly as regards the life lived by the applicant and her daughter before they arrived in Italy on 3 October 1988.

60. The Court then notes that it was not disputed in the proceedings before it that there had been an interference with the applicant’s right to respect for her family life or that the impugned measures had been in accordance with the law within the meaning of paragraph 2 of Article 8 – that is, with Law no. 184/83. Likewise, it was not disputed that those measures had pursued a legitimate aim within the meaning of the same provision in that they were intended to further the well-being of the applicant’s child and thus “the protection of the rights and freedoms of others”.

61. It remains to be determined whether the interference with the applicant’s right to respect for a family life was “necessary in a democratic society” within the meaning of paragraph 2 of Article 8.

62. The Court recalls that a fair balance must be struck between the interests of the child and those of the parent (see, for example, the *Olsson v. Sweden* judgment (no. 2) of 27 November 1992, Series A no. 250, pp. 35-36, § 90) and that in doing so particular importance must be attached “to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular ... the parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child’s health and development” (see the *Johansen v. Norway* judgment cited above, p. 1008, § 78). Moreover, the State enjoys a certain margin of appreciation (see, for example, the *Hokkanen v. Finland* judgment of 23 September 1994, Series A no. 299-A, p. 20 § 55).

63. The Court notes that a number of experts concluded that the applicant was suffering from a psychological disorder which manifested itself primarily in a vicarious hypochondriac obsession centred on her daughter and by “over-protective” tendencies where the child was concerned. It was, moreover, established that the applicant, sensing a threat of her daughter being taken away from her, twice removed her from two different hospitals against medical instructions – first in Athens and then in Rome – in an apparent attempt to flee. Furthermore, the Italian authorities found that the applicant had never shown herself willing to call her own behaviour into question or to acknowledge her illness (see, *mutatis mutandis*, the *Johansen* judgment cited above, p. 1009, § 80).

64. The Court recalls, however, that taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child (see the *Olsson no. 1 v. Sweden* (no. 1) judgment of 24 March 1988, Series A no. 130, p. 36, § 81).

65. It is true that in the present case there appear to have been “relevant and sufficient” grounds (see the *Olsson v. Sweden* (no. 1) judgment cited above, p. 32, § 68) for intervening in the situation in which the applicant and her daughter found themselves, as the Milan Youth Court confirmed in its judgment of 16 July 1993. However, from the moment at which the authorities began to intervene, the ban on contact between the applicant and her daughter has been a total one and no encounter between them has ever been arranged, despite the mother’s repeated requests for permission to meet her daughter, if only “on neutral ground and in the presence of social workers.” The Court, like the Commission, considers that so severe a measure against a mother who had just arrived in Italy with her little daughter who spoke only Greek, and about whose past the authorities dealing with the case knew very little, raises serious questions.

66. It must be stated, first, that the Italian authorities' first attempt to address the problems affecting the relationship between the applicant and her daughter was characterised by a lack of accurate information. Thus, on 15 October 1988, the doctor from the Rome hospital stated that the applicant had attempted to remove her daughter from the hospital in breach of the recommendations of the Rome Youth Court, whereas that court had at that time no cognisance of the matter. Furthermore, the medical report of 15 December 1988 was based exclusively on information furnished by the applicant's sister-in-law (see §§ 14, 21 and 24).

67. The Court then notes that no reliable medical report on the applicant was carried out before the Milan Youth Court decided, irrevocably, to suspend her parental responsibility and to declare the child available for adoption.

68. The Court considers that, in reality, despite the applicant's willingness to be supervised by social services (see § 28 above), she had no chance of re-establishing bonds with her daughter. After the applicant returned to Greece following her period in Melegnano hospital, no expert ever had the opportunity to see how the little girl behaved in her mother's presence (and *vice versa*), or to form an opinion as to whether there were real prospects of an improvement in the applicant's state of health, the subsequent deterioration in which should probably, in the Court's view, be attributed at least in part to the shock of having been separated from her daughter so suddenly and irreversibly. The respondent Government, who confined themselves to arguing that it had been considered harmful for the applicant's daughter to meet her mother and that the applicant's state of health was incurable, have not put forward any convincing explanation as to why the relationship between the applicant and her daughter had to be broken off in this manner.

69. Having regard to the above considerations, the Court, like the Commission, concludes that the authorities dealing with the case, albeit enjoying a margin of appreciation, failed to take all the necessary steps, steps which could be reasonably expected of them in the circumstances, to ensure that the chances of the applicant and her daughter re-establishing their relationship should not be definitively compromised. Hence, the authorities did not strike a fair balance between the best interests of the child and the applicant's rights under Article 8 of the Convention.

70. There has accordingly been a violation of Article 8 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed compensation for the various heads of damage suffered, assessing them at between five and ten thousand million Italian lire (ITL) in total. With particular regard to pecuniary damage, she stated, *inter alia*, that she had had to sell a piece of land and borrow large sums of money in order to defray the expenses flowing from the events in question.

73. The Government, referring exclusively to the alleged violation of Article 6 § 1 of the Convention, denied that there was any causal relationship between the alleged pecuniary damage and the alleged breach of the Convention. They also pointed out that the applicant had not produced any concrete evidence to prove that she had really incurred the expenses claimed. With regard to non-pecuniary damage, they submitted that a finding of violation (if any) would represent sufficient satisfaction.

74. As to pecuniary damage, the Court notes that the applicant did not provide any concrete evidence in support of her claims.

75. The Court considers, however, that the applicant must certainly have suffered non-pecuniary damage, primarily on the account of the violation of Article 8 and secondly through the violation of Article 6 § 1 represented by the length of the proceedings. The Court observes in particular that since being separated from her daughter in October 1988 the applicant has never seen her again. Almost eleven years have elapsed since that time and the applicant's daughter has now come of age. It is reasonable to presume that this must have caused the applicant very great and acute suffering which will have worsened as the proceedings continued and the hope of seeing her daughter again diminished. Ruling on an equitable basis, the Court awards the applicant the sum of ITL 100,000,000.

## **B. Other requests**

76. The applicant also asked for a meeting between her daughter and herself to be arranged as rapidly as possible, for her to be given the opportunity to re-establish a relationship with her daughter and for the adoption order to be annulled.

77. The Court recalls that the Convention does not give it any power to require the Italian State to commit itself to taking the measures requested. Article 46 § 1 of the Convention leaves the State the choice as to what measures – general and/or, if applicable, individual – to adopt within its national system in order to fulfil its legal obligation to put an end to the breach and remedy its consequences.

## **C. Costs and expenses**

78. The applicant also sought to be reimbursed for her costs and expenses incurred in the national courts and before the Commission and the Court but does not provide any figures in this respect.

79. The Government, who referred exclusively to the alleged breach of Article 6 § 1, invited the Court to dismiss the first part of this claim on the grounds that the applicant would have had to pay the sums in question regardless of the length of the proceedings. For the rest, they relied on the discretion of the Court, while emphasising the simplicity of the case.

80. With regard to the costs of the proceedings in the domestic courts, the Court observes that although part of those costs – contrary to the Government's assertions – were incurred with the aim of having the violation of Article 8 of the Convention remedied, the applicant has furnished no proof of their amount. This head of claim must therefore be dismissed.

81. As regards the expenses incurred in the proceedings before the Convention bodies, the Court considers that the case was of some complexity. However, the applicant's lawyer has not produced any fee note or record of his expenses. Having regard to its case-law in these matters and to the limited number of steps taken by the applicant's counsel in the proceedings, the Court considers it reasonable to award ITL 3,000,000 in respect of all costs and expenses.

## **D. Default interest**

82. According to the information available to the Court, the statutory rate of interest applicable in Italy on the date of adoption of the present judgment is 2.5% per annum.

## FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;
3. *Holds*
  - (a) by six votes to one that the respondent State is to pay the applicant, within three months, 100,000,000 (one hundred million) Italian lire in respect of non-pecuniary damage and 3,000,000 (three million) Italian lire in respect of costs and expenses;
  - (b) unanimously that simple interest at an annual rate of 2.5% shall be payable on these sums from expiry of the above-mentioned three months until settlement;
4. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in French and delivered in writing on 16 November 1999 in accordance with Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Marc FISCHBACH  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Bonello is annexed to this judgment.

## PARTLY DISSENTING OPINION OF JUDGE BONELLO

1. I am unable to concur with the majority in finding a breach of Article 8.

2. I am fully in agreement with the principle that Article 8 covers both the right of parents to be assisted by the State in staying or reuniting with their children and the corresponding obligation on the part of the national authorities to take effective measures towards the fulfilment of that aim. Those principles, however, are not at issue.

3. At issue is the fact that the duty of the Italian State to promote the reunion of the applicant and her child went hand in hand with its other duty, which was to establish whether there were reasons, related to the welfare of the child, that outweighed, on balance, the obligation to ensure the continuation or re-establishment of the relationship between the applicant and her daughter.

4. Facts which, in my view, appear relevant to the problems inherent in the present case include the following.

4.1 The psychiatric hospital to which the applicant voluntarily referred herself certified her as “suffering from chronic psychosis, the constitutive element of which was a vicarious form of hypochondria focused on her daughter”<sup>1</sup>. This finding has been challenged, but no satisfactory alternative diagnosis has been offered in its stead.

4.2 The Athens hospital authorities, alarmed by the seriousness of the applicant’s daughter’s situation with her mother<sup>2</sup>, had the girl transferred to a child psychology department<sup>3</sup>. The psychiatric department of the Rome hospital, though unaware of the Athens precedent, formed an identical opinion, recording that the applicant’s daughter “had developed a pathological bond with the mother, a bond that met the needs of the mother rather than the child’s developmental requirements”<sup>4</sup>.

4.3 The Milan University experts defined the child as suffering “from anxiety and depression, together with an almost neurotic tendency to satisfy her immediate needs”. This was linked to “serious emotional and relationship problems due to the pathological behaviour of her mother who had, for a long time, been her sole source of stimulation”<sup>5</sup>.

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<sup>1</sup> Para. 14 of the judgment.

<sup>2</sup> Ibid., para. 45.

<sup>3</sup> Ibid., para. 39.

<sup>4</sup> Ibid., para. 12.

<sup>5</sup> Ibid., para. 16.

4.4. The psychological report on the applicant's child's life in Greece with her mother shows that the child "felt like a prisoner in her home, where she was constantly being given injections, put on drips and treated with other medical apparatus and was taken to hospital against her will as soon as she felt the slightest degree unwell"<sup>6</sup>.

4.5. The Milan Youth Court described the condition in which the daughter lived with the applicant as "tragic" – "isolated, without contact with other children of her age and trapped in the role of patient, which, in reality, was satisfying the needs of her mother with whom she had a symbiotic relationship"<sup>7</sup>.

4.6. That court also noted that the applicant's child, who had arrived in Italy "pale, sad, with numerous decayed teeth and difficulty in walking", was, after separation from the applicant, "a happy, healthy little girl"<sup>8</sup>.

5. I find it difficult to resist the conclusion that the relationship the applicant had developed with her daughter had left the domains of normality to stray far into the realms of the pathological. The applicant had already achieved substantial progress in destroying her daughter. Left to her own devices, she would have completed her work.

6. It is almost platitudinous to repeat that interference by the State with the fundamental right to family life can be justified only by "relevant and sufficient considerations". In order to be justifiable, the interference must – to fall back on an alternative formula – correspond to a pressing social need and be proportionate to the legitimate aim pursued.

7. The case-law of the former Convention institutions, particularly that of the Commission, offers abundant and forceful guidelines for the regulation of family relationships (care, custody, adoption, visiting rights and cognate conditions). Those institutions always maintained that "the interests of the child must take precedence. The interference is therefore justified when it is motivated by the protection of the child's health"<sup>9</sup>. Measures interfering with the rights of one of the parents have been deemed justified in cases in which they were "necessary for the protection of the health and future well-being" of the child in question"<sup>10</sup>.

8. Circumstances in which the termination or drastic regulation of a parent's relationship with his or her children have been considered justified include situations of conflict between the parents: "it [is] important for the child's well-being to be kept out of [such] difficulties"<sup>11</sup>. Interference by the State has also been found to be justified where the child had been injured or

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<sup>6</sup> Ibid., para. 42.

<sup>7</sup> Ibid., para. 41.

<sup>8</sup> Ibid., para. 42.

<sup>9</sup> *Garcia v. Switzerland*, decision of 14 March 1985, DR 42, p. 98.

<sup>10</sup> *W. v. the Federal Republic of Germany*, decision of 10 October 1986, DR 50, p. 219.

<sup>11</sup> *Jonsson v. Sweden*, decision of 7 December 1987, DR 54, p. 187.

neglected<sup>12</sup>, where the parent was not in a position to take proper care of the child<sup>13</sup>, where the child had not been treated in the correct manner<sup>14</sup>, and where the parent had lost interest in the child<sup>15</sup>.

9. Again, if one of the parents suffers from grave psychiatric problems<sup>16</sup>, or if the father has been sentenced to a very long term of imprisonment for violent crimes which require his detention under strict security measures<sup>17</sup>, or if he is of a very violent nature<sup>18</sup>, or if the child lives in filthy accommodation and has an “educational deficit”<sup>19</sup>, the State’s interference with parental rights – including, in some cases, a total rupture in the relationship with the child – is justified.

10. The considerations which prompted the Italian authorities to intervene in the relationship between the applicant and her daughter were not, I believe, “relevant and sufficient”: they were compelling and mandatory.

11. The position taken by the majority in the present proceedings flies in the face of all the principles established by a long, uninterrupted line of case-law. Interference by the State with parental rights has consistently been considered justifiable in cases in which the situation of the children involved was far less harmful than the psychotic dungeon in which the applicant’s daughter was chained.

12. It is not contested that putting the applicant’s child up for adoption constituted a radical measure, in that the inevitable consequence of adoption in Italy is the severance of all ties with the natural parent and the establishment of new legal and emotional bonds with other parents in their stead. That, understandably, caused the applicant great unhappiness. But opting, as the majority did, for the mother’s happiness rather than for the child’s welfare is surely paying nothing more than lip-service to the principle that the child’s interests should be paramount.

13. The core question, in my view, should have been: did this unfortunate child have a right to a normal family and a happy home once her mother became unable to provide her with those basic minima? Saying, as the majority did, that the child’s adoption was wrong is tantamount to saying that this particularly wretched child did not, for reasons undisclosed, deserve a normal family life. The Court does not dispute that adoption is the next best thing to a family life with a natural parent. The conclusion that the majority underwrote was, in substance, that since the applicant’s daughter

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<sup>12</sup> Nowacka v. Sweden, decision of 13 March 1989, DR 60, p. 212.

<sup>13</sup> Grufman v. Sweden, decision of 9 May 1989, DR 61, p. 176.

<sup>14</sup> T. v. Austria, decision of 14 December 1989, DR 64, p. 176.

<sup>15</sup> X v. France, decision of 5 October 1982, DR 31, p. 241.

<sup>16</sup> L., H. and A. v. the United Kingdom, decision of 13 March 1984, DR 36, p. 100.

<sup>17</sup> X v. the United Kingdom, decision of 9 May 1977, DR 9, p. 166.

<sup>18</sup> X v. Sweden, decision of 12 December 1977, DR 12, p. 192.

<sup>19</sup> X and Y. v. the Federal Republic of Germany, decision of 3 October 1978, DR 15, p. 208.

could not have the best (the mother had manifestly failed to provide that), she was not entitled to the next best either. It seems that the mother's ability to wreck all the child's chances in life had to be total. In the Court's view, the fact that she was unable to give her child happiness conferred on her the right to ensure that no one else should.

14. In my view the Court has not taken sufficiently into account the vulnerability of the child and has thwarted all her struggles to develop normally. This judgment, in my view, translates into an impressive disincentive to those authorities which are faced with difficult decisions when defending helpless children.