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

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The Italian courts ruled promptly in an international child custody dispute

In its decision in the case of **S.L. and A.L. v. Italy** (application no. 896/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned child custody proceedings between parents of different nationalities (Italian and Romanian).

In 2009 the first applicant's wife brought divorce proceedings, seeking custody of her son, in the Romanian courts, while judicial separation and custody proceedings, brought by the applicant in 2007, were still pending before the Italian courts. The Romanian court granted the divorce and awarded custody to the mother in 2012, whilst the Italian court awarded custody to the father in 2013.

The applicants alleged that the Italian courts had not acted expeditiously as the proceedings had taken six years and they complained of a breach of their right under Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The Court took the view that the decision on child custody had been taken promptly, meeting the requirements of the right to family life. It concluded that the Italian authorities had acted with due expedition and had taken all the measures that could have been expected of them to ensure that the applicants maintained a family relationship. It noted, among other things, that the procedural activity of the first applicant and his wife had decisively affected the total length of the proceedings and that the applicant had failed to use certain remedies.

The application was thus manifestly ill-founded.

Principal facts

The first applicant, S.L., is an Italian national who was born in 1972 and lives in Italy. He lodged the present application in his own name and on behalf of his son A.L., an Italian national, who was born in 2006 and lives in Romania with his mother.

In 2005 S.L. married a Romanian national and had a child with her. The couple lived in Italy. Then in 2006 S.L.'s wife and son moved to Bucharest, with his consent, intending to return to Italy for the Christmas holidays. When the time came the wife decided to stay in Romania with her son.

In 2007 S.L. filed a request for judicial separation before the District Court in Teramo (Italy) and sought custody of his son. His wife applied to join the proceedings. Provisionally the court awarded custody to the mother, with an access right for the father. Then in January 2012 the court ordered the separation and in July 2013 it awarded the father sole custody, ordering the child's prompt return to Italy.

Subsequently S.L. applied for recognition and enforcement of this judgment by the Romanian courts. However, the Court of Appeal of L'Aquila (Italy), hearing the case on an application from his wife, suspended the enforcement proceedings on noting that in the meantime she had obtained a divorce and sole custody of the child in Romania, under a final decision of the Bucharest Court in December 2012. S.L.'s application for sole custody was thus declared inadmissible by the Italian Court of Appeal.

In 2015 S.L. appealed on points of law, seeking a preliminary reference to the Court of Justice of the European Union (CJEU) on the interpretation of the *lis pendens* concept in EU law within the meaning of Article 19 of Council Regulation (EC) No 2201/2003 of 27 November 2003, and on the effects of a breach of that provision for the procedure to secure recognition of the Romanian judgment. The Court of Cassation referred the question to the CJEU.

In 2019 the CJEU ruled on the preliminary question, finding in particular that the rules of *lis pendens* in Article 27 of Council Regulation (EC) No 44/2001 of 22 December 2000 must be interpreted as meaning that "where, in a dispute in matrimonial matters, parental responsibility or maintenance obligations, the court second seised, in breach of those rules, delivers a judgment which becomes final, those articles preclude the courts of the Member State in which the court first seised is situated from refusing to recognise that judgment solely for that reason. In particular, that breach cannot, in itself, justify non-recognition of a judgment on the ground that it is manifestly contrary to public policy in that Member State". In the same year, following that judgment, the Court of Cassation dismissed S.L.'s appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 December 2015.

Relying on Article 8 (right to respect for private and family life), the applicants alleged that the District Court of Teramo (Italy) had taken six years to give a ruling in their case and complained that it had not acted expeditiously.

The decision was given by a Committee of three judges, composed as follows:

Tim **Eicke** (the United Kingdom), *President*,
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Renata **Degener**, *Deputy Registrar.*

Decision of the Court

Article 8 (right to respect for private and family life)

For a parent and child, being together was a fundamental part of family life, and domestic measures preventing this would interfere with the exercise of the right protected by Article 8 of the Convention. In such cases States had to be exceptionally diligent in ensuring that a decision was forthcoming within a reasonable time (a procedural requirement implicit in Article 8). Measures to reunite the parent and child therefore had to be put in place quickly.

In the present case, the question was whether the applicants had sustained any interference with their right to respect for family life in view of the time it had taken for the court in Teramo (Italy) to rule on the child's main residence and return to Italy, having regard to the fact that the mother had in the meantime obtained custody of the child under a divorce decree delivered by the court in Bucharest (Romania).

The Court noted that S.L. had not applied to the central authority for the return of his son to Italy under the Hague Convention[1], but had merely brought proceedings for judicial separation before the civil court, applying for sole custody of the child and his return to Italy.

[1] Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

The court in Teramo had provisionally ruled on the custody and placement of the child 4 months and 12 days after the appeal was lodged, in accordance with the procedural requirements under Article 8 of the Convention.

With regard to the abduction of the child, the Italian authorities had not been called upon to examine this issue or to order his return, as the judicial separation procedure was not an effective remedy for this purpose.

Furthermore, S.L. had not challenged before the Court of Appeal the decision to award custody and residence rights to the mother, thus having to comply with the measures taken by the court.

The proceedings had then followed their course solely for the purpose of clarifying the manner in which the father's right of access was to be exercised. In that connection, the Court noted that, while some of the adjournments could be attributed to the authorities, the procedural activity of S.L. and his wife had decisively affected the overall length of the proceedings. The antagonistic nature of the relationship between the parties had prevented them from reaching concrete and effective agreements in the interest of their child. As a consequence of the difficulties encountered in the enforcement of access rights, the Teramo court had taken measures in the interest of the child alone.

The Court therefore found that the decision on custody had been taken promptly, in accordance with the requirements of the right to respect for family life. It concluded that the Italian authorities had acted with due expedition and had taken all the measures that could have been expected of them to ensure that the applicants maintained a family relationship, in the interest of both father and son.

The application was thus manifestly ill-founded (Article 35 §§ 3 (a) and 4 of the Convention).

The decision is available only in French.

Press contacts
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