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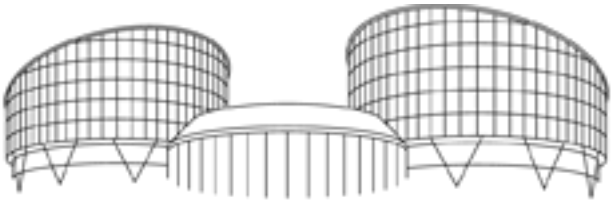

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF IMPROTA v. ITALY

(Application no. 66396/14)

STOP

STRASBOURG

May 4, 2017

FINAL

04/08/2017

This judgment became final under Article 44 § 2 of the Convention. It may undergo shape adjustments.

In the case of Improta v. Italy,

The European Court of Human Rights (first section), sitting in a chamber composed of:

Linos-Alexandre Sicilianos, president,
Kristina Pardalos,
Guido Raimondi,
Ledi Bianku,
Robert Spano,
Armen Harutyunyan,
Pauliine Koskelo, judges,
and Abel Campos, section clerk,

After having deliberated in private on April 4, 2017,

Renders the following judgment, adopted on this date:

PROCEDURE

1. The case originated in an application (no. 66396/14) against the Italian Republic, lodged with the Court by a national of that State, Mr Giammarco Improta (“the applicant”), on 6 October 2014 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

2. Before the Court, the applicant was represented by Mr A. Mascia, lawyer in Verona. The Italian Government (“the Government”) was represented by its Agent, Ms E. Spatafora.

3. On May 19, 2016, the request was communicated to the Government.

ACTUALLY

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Pozzuoli.

5. On 25 March 2010, the applicant and C's daughter was born. Shortly afterwards, the couple separated. On April 30, 2010, C. changed the lock on the front door of the family home, to which the applicant no longer had access.

6. C. decided unilaterally that the applicant could only see his daughter twice a week, for half an hour and in her presence.

7. On 16 November 2010, following difficulties encountered in exercising his access rights, the applicant applied to the Naples Children's Court ("the court") in order to obtain shared custody of the child and broader visiting rights.

8. On an unspecified date, the court set the hearing for the parties to appear on May 3, 2011. On February 14, 2011, the appeal filed by the applicant was notified to C.

9. On April 13, 2011, C. entered into the proceedings.

10. At the hearing on May 3, 2011, the court heard the applicant and C. and invited them to reach an agreement, before postponing the hearing until July 12, 2011. On that date, it heard the applicant and C again . and he reserved his decision regarding the requests made by the interested parties.

11. On 25 July 2011, the applicant made an urgent application to the court for broader visiting rights. He claimed to be forced to see his daughter according to the conditions decided unilaterally by C., adding that the latter was about to go on vacation and thus prevent him from seeing his daughter throughout the summer period.

12. On October 3, 2011, the public prosecutor asked the court to grant the applicant shared custody of the child. He considered that the child's main residence should be with the mother and that the applicant should be able to meet his daughter twice a week. It specified that, when she reached the age of three, the applicant should be able to benefit from visitation and accommodation rights every other weekend and that Christmas, Easter and birthdays should be shared between parents. Finally, he added that the applicant would have to pay, as alimony, the sum of 500 euros (EUR) per month.

13. By a decision of October 4, 2011, the court instructed the tax police to carry out an audit in order to determine the standard of living of the applicant and C., and to file a report in this regard with the registry before March 31. 2012.

He further ordered the carrying out of an expert opinion on the interpersonal exchanges and parental capacities of the applicant and C., on the psychological state of the child, on the relationships of the applicant and C. with their respective families and on the possibility of finding a mediator in the family circle of those concerned. He indicated that this expert report should also set out the best arrangements for custody of the child - without ruling out the possibility that it could be entrusted to a third party. He appointed two experts and added that the expert opinion had to be filed with the registry within one hundred and twenty days. He also decided that the applicant had to pay the monthly sum of EUR 500 in alimony, but he did not rule on the arrangements for exercising the applicant's visiting rights with regard to his daughter.

14. On November 17, 2011, the applicant again applied to the court to obtain regulated visiting rights, complaining of being forced to see his daughter according to the conditions decided unilaterally by C.

15. At the hearing on November 22, 2011, the experts appointed by the court were sworn in and the examination of the case was postponed until April 10, 2012.

16. By a decision of 23 November 2011, the court ordered that visits between the applicant and his daughter took place in the form of protected meetings, twice a week for an hour and a half, and that these meetings were regulated by the services competent social workers.

17. Between December 2011 and March 2012, the applicant and C. met the experts appointed by the court on several occasions. Their daughter was present at one of these meetings.

18. Between January and March 2012, the applicant met with social services three times. These allowed visits to take place between the person concerned and his daughter outside the protected environment.

19. Following these meetings, visits took place twice a week for an hour and a half, always in the presence of C.

20. At the hearing on April 10, 2012, the court postponed the examination of the case until May 15, 2012 on the grounds that the expert report had not yet been filed.

21. On May 8, 2012, the experts requested a postponement of the hearing for sixty days in order to benefit from this period to submit their report.

22. At the hearing on May 15, 2012, the court postponed the examination of the case until September 25, 2012 and indicated that the experts would have to submit their expert report at least five days before this date so that the parties could present their written observations.

23. In September 2012, the experts delivered a provisional expert report. In this report, they indicated that the relationship between the applicant and C. was conflictual; that neither the applicant nor C. presented any psychopathology; that both the father and the mother were capable of providing the necessary support to their child; that C. denied the father figure and was excessively concerned about the applicant's parental abilities; that the applicant recognized the face of the mother; that the child was serene and attached to both parents; that there was no potential mediator in the family circle of the applicant and C. and, finally, that the applicant had not demonstrated consistency in his relationship with his daughter.

24. In his brief of September 7, 2012, the applicant contested the conclusions of the expert opinion regarding this last point. In this regard, he indicated that he was not able to maintain a more ongoing relationship with his daughter due to C.'s unilateral establishment of visiting arrangements and their validation by the court. He complained that all meetings with his daughter, since her birth, had taken place in the presence of C. Consequently, he considered that he could not be accused of lacking the desire to maintain a relationship with his daughter.

25. He further indicated that it emerged from the expert opinion that C. had behavior likely to obstruct the relationship between his daughter and him and that she had difficulty allowing the child to have a relationship with him.

26. At the hearing on September 25, 2012, the court postponed the examination of the case until February 12, 2013 on the grounds that the experts had not yet submitted their final report.

27. On September 27, 2012, the experts responded to the parties' observations. They noted that the applicant had no experience of fatherhood due to the lack of a continuing relationship with his daughter and that their relationship therefore needed to be developed and strengthened.

28. In January 2013, the final expert opinion was filed with the registry. This report had the same content as the provisional expert report. The experts indicated in particular that custody of the child must be entrusted jointly to both parents and that the applicant must be guaranteed the possibility of seeing his daughter without the mother being present.

29. In his concluding observations, the applicant reiterated his request for shared custody of the child and an extension of his visiting rights.

30. By a decision of July 2, 2013, the court awarded custody of the child jointly to both parents and fixed the child's main residence at C.

31. As for the applicant's visiting rights, the court declared that, until the child's third birthday, the applicant could see his daughter for three hours twice a week and every other Sunday. He specified that, after that date, the applicant would be able to see his daughter at his home every other weekend, alternating with the mother, and that the alternation would also be valid for Christmas, Easter and birthdays. Finally, he indicated that the applicant had to pay maintenance of EUR 1,500 per month.

32. The applicant lodged an appeal with the Naples Court of Appeal (“the Court of Appeal”) against the court’s decision of 2 July 2013. He requested in particular broader visiting rights.

33. By a judgment of March 19, 2014, filed at the registry on April 7, 2014, the Court of Appeal, without ordering a new expert opinion, rejected the applicant's appeal concerning visiting rights and reduced the amount of alimony to 1 000 EUR per month.

34. The Court of Appeal considered that the court's decision should be confirmed on the grounds that, according to the expert report filed during the proceedings before it (dated January 2013), the applicant did not offer the emotional, psychological and relational conditions required to benefit from a modification of the terms of exercise of his visiting rights.

35. In October 2014, the applicant appealed to the Court of Cassation, alleging in particular that his right to shared custody was not guaranteed in practice.

36. To date, the procedure is pending before the Court of Cassation.

II. RELEVANT DOMESTIC LAW

37. The relevant domestic law in this case is described in the Strumia v. Italy (no. 53377/13, §§ 73-78, June 23, 2016).

PLACE

I. ON THE ALLEGED VIOLATION OF ARTICLE 8 § 1 OF THE CONVENTION

38. The applicant alleges a violation of his right to respect for family life. He considers that the domestic courts did not respect or concretely guarantee his right of access. Indeed, he complains that his relationship with his daughter has been irremediably compromised due to difficulties encountered in exercising his visitation rights in the early stages of his child's life. He also maintains that the lack of speed of the disputed procedure constituted excessive and arbitrary interference in his relationship with his daughter.

He invokes Article 8 of the Convention, worded in its relevant parts in the present case:

“1. Everyone has the right to respect for their private and family life (...).

2. There can only be interference by a public authority in the exercise of this right to the extent that this interference is provided for by law and that it constitutes a measure which, in a democratic society, is necessary for security national security, 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 'others. »

39. The Government contests the applicant's argument.

A. On admissibility

40. Noting that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not otherwise inadmissible, the Court declares it admissible.

B. On the merits

1. Theses of the parties

41. Citing the Court's case-law, the applicant considers that, in the present case, the response of the Italian authorities was not in conformity with their positive obligations arising from Article 8 of the Convention.

42. The Government maintained that the domestic courts paid full attention to the case and took all necessary measures to preserve the applicant's relationship with his daughter. He considers that the length of the proceedings before the domestic courts was necessary for the Italian authorities to grant the applicant's request, since he can now exercise his visiting rights twice a week. Finally, in the eyes of the Government, the domestic courts, which would have ruled on the basis of the expert opinions carried out in the case, rendered decisions verified several times, reasoned and adopted in accordance with the legislative provisions applicable to the present case (McMichael v. United Kingdom, February 24, 1995, § 87, Series A no. 307-B).

2. Assessment of the Court

43. The Court recalls that, for a parent and their child, being together represents a fundamental element of family life (Kutzner v. Germany, no. 46544/99, § 58, ECHR 2002) and that internal measures which prevent them from doing so constitute an interference with the right protected by Article 8 of the Convention (K. and T. v. Finland [GC], no. 25702/94, § 151, ECHR 2001-VII).

44. The Court also recalls that Article 8 of the Convention essentially aims to protect the individual against arbitrary interference by public authorities and that it can also give rise to positive obligations inherent in effective "respect" for family life. The boundary between positive and negative obligations of the State under this provision does not lend itself to precise definition; the applicable principles are nevertheless comparable. In both cases, consideration must be given to the fair balance to be struck between the competing interests of the individual and of society as a whole, while attaching decisive importance to the interests of the child (Gnahoré v. France, no. 40031/98, § 59, ECHR 2000-IX), which may, depending on its nature and seriousness, prevail over that of the parents (Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003 -VIII).

45. The Court further recalls that the obligation of national authorities to take measures to facilitate meetings between a parent and their child is not absolute. The decisive point is whether the national authorities have taken, to facilitate the visits, all the necessary measures that could reasonably be required of them in the circumstances (idem, § 58). In this type of case, the adequacy of a measure is judged by the speed of its implementation, because the passage of time can have irremediable consequences on the relationship between the child and the parent who does not live with him (Maumousseau and Washington v. France, no. 39388/05 § 83, 6 December 2007, Zhou v. Italy, no. 33773/11, § 48, 21 January 2014, and Kuppinger v. Germany, no. 62198/11, § 102 , January 15, 2015). The time factor is therefore of particular importance, because any procedural delay risks effectively deciding the issue in dispute (H. v. United Kingdom, July 8, 1987, §§ 89-90, Series A no. 120, and P.F. v. Poland, no. 2210/12, § 56, September 16, 2014).

46. Furthermore, since the national authorities benefit from direct relations with all interested parties, the Court repeats that it is not its task to regulate questions of custody and access. However, it is incumbent on it to assess from the perspective of the Convention the decisions that these bodies have rendered in the exercise of their power of appreciation. The margin of appreciation left to the competent national authorities varies according to the nature of the issues in dispute and the importance of the interests at stake.

47. Turning to the facts of the present case, the Court notes at the outset that it is not disputed that the link between the applicant and his child falls within family life within the meaning of Article 8 of the Convention. .

48. The Court first notes that, when the couple separated, C. changed the lock on the front door of the family home, so that the applicant no longer had access to it. It also notes that C. decided that the applicant could only see his daughter twice a week for half an hour and

that meetings between father and daughter had to take place in her presence. She observed that C. very early on opposed the applicant's visiting rights and any relationship between the latter and the child.

49. The Court further notes that, on 16 November 2010, following difficulties encountered in exercising his visiting rights, the applicant applied to the Naples court in order to obtain shared custody of the child and a extension of his visitation rights. It notes that the court, notwithstanding an urgent request filed by the applicant on July 23, 2011, only ruled on his visitation rights in November 2011.

50. The Court recalls that, when difficulties arise which are mainly due to the refusal of the parent with whom the child lives to allow regular contact between the latter and the other parent, it is up to the competent authorities to take appropriate measures to to sanction this lack of cooperation (see, mutatis mutandis, Tocarenco v. Republic of Moldova, no. 769/13, § 60, 4 November 2014; Strumia, cited above §§ 121-122).

51. He observes that the court only authorized the applicant to see his daughter in a protected environment one year after his referral, thus leaving the child's mother, during this period, the freedom to unilaterally choose the terms of the arrangements. contacts between the child and the applicant. It then notes that the court decided to only authorize meetings in a protected environment between the applicant and his daughter even though the latter ran no risk and that, four months later, these meetings were replaced by the social services in free meetings. He also notes that it took fifteen months for the experts to produce their final expert report on the child's situation.

52. The Court recalls 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 legal proceedings. Indeed, a delay in the procedure always risks, in such a case, resolving the issue in dispute with a fait accompli. However, effective respect for family life requires that future relationships between parent and child be regulated 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, and Covezzi and Morselli v. Italy, no. 52763/99, § 136, May 9, 2003; Solarino v. Italy, no. 76171/13, § 39, February 9, 2017; D'Alconzo v. Italy, no. 64297/12, § 64, February 23, 2017).

53. The Court observes that, in the present case, the applicant has not been able to see his daughter freely since 30 April 2010 and that, during the first twelve months of the proceedings, the domestic courts tolerated the mother unilaterally governing the terms of visiting rights for the applicant, who had been removed from the family home. She considers that the domestic courts therefore allowed C., through her behavior, to prevent the establishment of a real relationship between the applicant and his daughter.

54. For the Court, greater diligence and speed were required in the adoption of a decision affecting the rights guaranteed by Article 8 of the Convention. The issue at stake in the procedure for the applicant required urgent treatment, because the passage of time could have irremediable consequences on the relationship between the child and her father, who

did not live with her. The Court in fact recalls that breaking off contact with a very young child can lead to an increasing deterioration in their relationship with their parent.

55. The Court is not convinced that a period of one year was necessary for the court to rule on the applicant's request relating to his access rights, given that the financial investigation requested was not useful to it in rule on the question of visits. Consequently, it concludes that there was an unjustified delay on the part of the national authorities.

56. Furthermore, it notes that the court of appeal seized by the applicant following the court's decision rejected the request of the person concerned based on the results of the old expert report, without taking in consideration that the child had started to see his father regularly and without requesting an update of the said report in order to verify what the situation of the child and his relationship with the applicant were at the time.

57. Due to the shortcomings noted in the conduct of this procedure, the Court cannot therefore consider that the Italian authorities took all the necessary measures that could reasonably be required of them in order to ensure that the applicant maintained his a family bond with their child, in the interest of both of them.

58. In view of the above, the Court concludes that there has been a violation of Article 8 of the Convention.

II. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Under Article 41 of the Convention,

“If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party only imperfectly allows the consequences of this violation to be erased, the Court grants the party injured party, if applicable, just satisfaction. »

A. Damage

60. The applicant claims EUR 15,000 for non-pecuniary damage.

61. The Government disputes this claim.

62. The Court considers that the applicant should be awarded EUR 3,000 for non-pecuniary damage.

B. Fees and expenses

63. In support of this, the applicant also requests EUR 9,783 for costs and expenses incurred before the domestic courts and EUR 11,520 for those incurred before the Court.

64. The Government disputes these claims.

65. According to the Court's case-law, an applicant can only obtain reimbursement of his costs and expenses to the extent that their reality, their necessity and the reasonable nature of their rate are established. In the present case, taking into account the documents at its disposal and its case law, the Court considers the sum of EUR 12,000 all costs combined to be reasonable and awards it to the applicant.

C. Default interest

66. 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 increased by three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the request admissible;

2. Holds that there has been a violation of Article 8 of the Convention;

3. Says

a) that the respondent State must pay the applicant, within three months from the day on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:

i. 3,000 EUR (three thousand euros) plus any amount that may be due as tax, for moral damage,

ii. 12,000 EUR (twelve thousand euros), plus any amount that may be owed by the applicant in tax, for costs and expenses;

b) that from the expiry of the said period until payment, these amounts will be subject to 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;

4. Rejects the request for just satisfaction for the remainder.

Done in French, then communicated in writing on May 4, 2017, in accordance with Article 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Linos-Alexandre Sicilianos
Clerk President