

TERNA v. Italy

Leading | Case | 21052/18 | Pending | Enhanced Procedure | Judgment date: 14/01/2021 | Final judgment date: 14/04/2021

Case Description:

The Terna group of cases concerns the authorities' failure to make adequate and sufficient efforts to ensure respect of the applicants' visiting rights under the conditions set by judicial decisions issued in the framework of marital separation and foster care proceedings (violations of Article 8).

The Court considered that, while the legal resources provided under Italian law are sufficient to ensure the implementation of judicial decisions ordering specific measures, the recurrence of numerous judgments against Italy concerning this issue pointed to the existence of a systemic problem (Terna, §§ 75 and 97).

The *R.V. and Others* case concerns childcare measures adopted in respect of the applicant's two children that remained in force for over ten years (violation of Article 8).

The Court expressed its general concern over the foster care system which made it possible for placement into public care – a temporary measure to be taken in situation of urgent necessity – to be protracted indefinitely, with no time limits being set for its duration or for its judicial review, with extensive delegation by the courts in favour of social services, and without parental rights being ultimately determined (§ 107).

Status of Execution:

In view of the first examination of these cases by the Committee at the present meeting, the authorities provided, on 10 January 2022, an action report with regards to the *R.V. and Others* case (DH-DD(2022)56) followed, on 13 January 2022, by an action report concerning the *Terna* group of cases (DH-DD(2022)75). The main information provided and that available in the public domain can be summarised as follows.

Individual measures:

Just satisfaction: The just satisfaction awarded by the Court in respect of non-pecuniary damage and costs and expenses was paid to all the applicants in these cases.

Other measures: In *Terna*, the applicant's granddaughter (born in 2010) was declared adoptable in 2018 and the applicant's visiting rights were formally suspended in 2017 (they had never been implemented even before that date). By a decision published on 2 September 2021, the Court of Cassation quashed the judgment which had confirmed the adoptability of the child and referred the case back to the Court of Appeal of Milan for a new assessment. These proceedings are pending.

In *R.B. and M.*, on 10 February 2021, the Juvenile Court of Genoa, confirmed the placement of the child (born in 2009) with the mother for 24 months and the continuation of the psychological support of all the parties involved. The authorities indicate that the implementation of this decision is being monitored and is proceeding smoothly with a view to facilitate the future contact between the applicant and his son.

With regards to *A.T.*, which became final on 22 September 2021, the authorities indicated that they will soon provide information on the measures adopted to ensure, as far as possible, the contacts between the applicant and his son (born in 2014).

In *R.V. and Others*, the Court of Appeal of Genoa, on 20 May 2021, closed the proceedings in respect of one of the applicant's children who has reached the age of majority. With the agreement of all the parties involved, it also decided to confirm the placement of the other child with the foster family until

he reaches the age of majority (in July 2022), while allowing unrestricted contacts with the applicant. This decision was not appealed.

General measures:

A. Legislative reform

A major legislative reform is ongoing and aims at restructuring, streamlining and improving the quality and timing of juvenile justice. This is expected to address several shortcomings highlighted by the Court in these judgments.¹

The reform envisages the establishment of the Tribunal for Persons, Families and Minors (the “Tribunal”) which will have jurisdiction over all matters concerning minors that were previously split between juvenile and civil courts. It will be composed of specialised judges assisted by experts (e.g. psychologists and family mediators) with demonstrated high level of experience in the field of juvenile justice. To ensure the Tribunal’s extensive presence on the national territory, district and local sections will be created within the existing first instance and appeals courts. The reform envisages one single simplified procedure for these proceedings with extensive powers attributed to the judge to ensure their rapidity.

With regards to the placement of children in foster care, the reform amends the civil code (article 403) limiting the recourse to this measure to cases of material abandonment of the minors and danger for their psychological and mental health. The reference to the ignorance, intelligence, and morality of the parents is removed. The reform also establishes mandatory judicial control over the initial decision taken by social services to remove children from their families. It envisages strict deadlines for judicial validation which if not met lead to the initial decision to be automatically revoked.²

Several procedural safeguards are also foreseen to improve the regulation and clarify the limits of the activities of the social services (i.e. intervention, monitoring and reporting) and to enhance the participation of the biological parents and the representation of the minor in the proceedings.

With regards to the implementation of visiting rights, the reform amends the code of civil procedure (article 709 *ter*) to enhance the possibility for the judge to adopt coercive, financial measures when confronted with the opposition of one of the parents to the implementation of a judicial decision regulating contact rights. In this context, the judge can impose a daily sum due for each day of infringement or failure to comply with the measures taken by the court. The decision ordering the payment can be enforced by the parents whose visiting rights are being hindered.

B. Recent Case law of the Court of Cassation

The Court of Cassation stated that declaring children adoptable is a measure of last resort which can be envisaged only when it has been demonstrated that other measures aimed at facilitating the reunification with the biological parents, including temporary foster care, are not feasible for the purpose of protecting the child’s best interests. Proceedings deciding on the adoptability of a child requires a thorough and complete examination of the conditions of the parents (and relatives up to the fourth degree of kinship who are available to take care of the child) and the possibility for their improvement, if the parents are supported by interventions which should be adapted to the socio-cultural context of reference.³

¹ Delegation Law No. 206 of 26 November 2021, conferring the power to the government to adopt, within one year from the entry into force of this law, the necessary legislative measures to ensure the simplification, expeditiousness and streamlining of civil proceedings, in accordance with the principles and the guidelines outlined in the Delegation Law (for more details see also CM/Notes/1419/H46-20, DH-DD(2021)1063, DH-DD(2022)75 and DH-DD(2022)56).

² The previous disposition only required that the child be placed in a safe place until his or her protection could be permanently ensured. The reform establishes a clear path and timeframe providing that when the social services decide to take children into care, they must communicate immediately to the public prosecutor their decision and transfer all the relevant document within 24 hours. The public prosecutor has the power to quash the order or, within 72 hours, to ask the competent court to validate it. The Court must decide within 24 hours. It must then appoint a special guardian for the minor and schedule a hearing within 15 days to hear all the parties involved. Within 15 days from the hearing it must confirm, modify, or revoke the placement order. The decision can be appealed.

³ Court of Cassation, judgments Nos. 1476/2021, No. 24717/2021, No. 13435/2016, No. 23979/2015, No. 11758/2014.

With regards to the non-implementation of visiting rights, the Court of Cassation stressed that each parent has the duty to preserve the continuity of parental relations with the other parent, to protect the child's right to dual parenthood and to a balanced and peaceful upbringing.⁴ It held that judges may therefore adopt the deterrent measures provided for by the Code of Civil Procedure (Article 709 *ter*), in respect of a parent who hinders the proper implementation of a judicial decision regulating visiting rights.⁵

C. Capacity building and awareness raising

Courses on the case law of the European Court concerning different aspects of the protection of minors are regularly offered to newly appointed and more experienced judges in the framework of their centralised trainings. In this context, the authorities indicate that in 2020 and 2021, specific sessions of these courses were dedicated to the analysis of the implications of the Court's judgments on the implementation of visiting rights in conflict situations and the taken into custody of minors.

Furthermore, the judgments have been translated into Italian, published on the websites of the Ministry of Justice and the Court of Cassation, and disseminated among the relevant authorities.

Last Exam of the Committee of Ministers:

Reference Texts:

DH-DD(2022)75, DH-DD(2022)56, DH-DD(2021)89

Notes/Issues:

| Application | Case | Judgment of | Final on | Indicator for the classification |
|-------------|-----------------|-------------|------------|----------------------------------|
| 21052/18 | TERNA | 14/01/2021 | 14/04/2021 | Structural problem |
| 40910/19 | A.T. | 24/06/2021 | 24/09/2021 | |
| 41382/19 | R.B. AND M. | 22/04/2021 | 22/07/2021 | |
| 37748/13 | R.V. AND OTHERS | 18/07/2019 | 18/10/2019 | Complex problem |

Notes – 1428th DH meeting (08-10 March 2022)

Joint examination

Given the similarities as concerns the general measures to be taken, it is proposed to examine jointly at the present meeting the *Terna* group of cases and the case of *R.V. and Others*.

Transfer to the enhanced procedure of the *Strumia* group of cases

The European Court in *Terna* (§ 97) highlighted the systemic nature of the problem of the non-implementation of judicial decisions regulating visiting rights. It appears therefore appropriate to

⁴ Court of Cassation, judgments Nos. 6919/16 and 25339/2021.

⁵ Court of Cassation, judgment No. 16980/2018.

propose to the Committee to continue the examination of the *Strumia* group of cases⁶, which concern the same issue, in the framework of the *Terna* group under the enhanced supervision procedure.

Individual measures

It is important that in *Terna*, the Appeal Court rapidly carries out the required reexamination of the applicant's granddaughter's adoptability considering the judgments of the European Court and the Court of Cassation, the paramount importance of the best interests of the child and the Convention rights of all the parties involved. Information about the outcome of these proceedings and the supporting reasoning should be provided as soon as it becomes available. The authorities should also provide information on the reassessment of the possible resumption of the applicant's visiting rights.

Updated information should be provided moreover with regards to the ongoing implementation of the last decision of the juvenile Court of Genoa in *R.B. and M.* and its impact on the restoration of the contacts between the applicant and his son to allow a comprehensive and possibly final assessment of this issue.

Information is expected from the authorities in due course on the individual measures in *A.T.*

With regards to *R.V. and Others*, the information provided shows that a constructive balance between the children and their biological parents and foster family has been reached. The applicant enjoys unhindered contacts with her children, one of whom came of age and the other will do so in July 2022. In these circumstances it appears that no further individual measures are required in this case.

General measures

The root cause of the violations found by the Court in these cases appears very often to be the approach of the domestic juvenile courts and the social services in handling domestic proceedings involving foster care measures and contact rights.

It is therefore essential to ensure that all the authorities involved in these proceedings act swiftly and with the requisite exceptional diligence in taking and implementing the appropriate specific measures to facilitate, where feasible and in the best interest of the child, family reunification and ensure compliance with court decisions.

Legislative reform

The ongoing reform of juvenile justice deserves to be noted with interest as it shows the resolve of the Italian authorities to address the shortcomings raised by these judgments. The authorities should keep the Committee informed about its implementation, entry into force and impact of the relevant provisions.

In particular it is a positive development that the reform introduces additional safeguards in foster care proceedings (e.g. precise timing for the mandatory judicial control, involvement of the biological parents, judicial representation and hearing of the minors and regulation of the powers of social services) which address some of the general concerns expressed by the Court over the functioning of the system.

It is also notable that the reform strengthens the arsenal of measures that judges can adopt to ensure effective contacts between parents and children in conflictual family situation (i.e. enforceable injunctions to pay a sum). It is however noted that the Court had already considered sufficient the existing procedural measures and criticised, albeit indirectly, their non utilisation.

Moreover, it is noted that this legislative intervention is part of a broader overhaul of civil justice aimed at drastically reducing the average length of civil proceedings which should also contribute to ensure the required expediency of proceedings concerning minors which the Court found lacking in these cases.

⁶ *Strumia*, No. 53377/13, *Endrizzi*, No. 71660/14, *Improta*, No. 66396/14, *Luzi*, No. 48322/17, *A.V.*, No. 36936/18.

Domestic case law

Nevertheless, it is noted that most of the shortcomings identified by the European Court in these judgments can be remedied by changing the practices of juvenile courts and social services in applying the relevant legal framework.

It is therefore positive that the case law of the Court of Cassation appears to have incorporated several of the principles set out by the Court with regards to the exceptional and temporary nature of the placement of children in foster care, its requisite, strict preconditions, and its aim of facilitating, to the extent reasonably possible, family reunification. Similarly, it is encouraging that the High Court recalled the parental duty to ensure the continuity of parental relations with the other parent and the availability of coercive measures where appropriate.

The authorities could be invited to provide examples of relevant recent decisions, particularly of first instance and appeal courts, reflecting the current application of the principles set out by the European Court in the present judgments. Such examples appear necessary, as the above-mentioned case law of the Court of Cassation does not seem to have set out direct guidelines for the concrete handling of domestic proceedings or acknowledged the need for adjustments of the lower courts practice which, as recalled, is the main target of the Court's findings.

Capacity building and awareness raising measures

The capacity building and awareness raising measures are also key to ensure the effective implementation of the European Court's judgments in these cases.

The information provided shows that the authorities have made efforts to reach a Convention compliant handling by domestic juvenile courts and social services of proceedings involving minors.⁷ While recognising these efforts, it must be also observed that the capacity building measures adopted, which consisted mainly of trainings organised at central level and which have been in effect for some time now, do not appear to have yielded the expected results at the level of the lower courts.

Under these circumstances, it seems important that the authorities reinforce their action and enlarge its scope, to reach out to district and local juvenile courts and include social services to secure the definite incorporation and application of the Court's case law. The information provided indicates that the relevance of this approach is shared also by members of the judiciary and was brought to the attention of the authorities (see DH-DD(2022)75 and DH-DD(2022)56).

The authorities could also usefully draw on the measures adopted by other Member States in similar cases⁸ to identify additional efforts that could encompass enhanced trainings for judges and social workers to be held at local level in the form of seminars, online courses, and discussions. The development of national procedural guidelines for juvenile courts and social services on how to effectively handle this kind of proceedings and the gathering and circulation of a compilation of updated good practices to strengthen the quality and timing of the judicial response and social assistance offered in complex family situations.

Decisions:

The Deputies

⁷ See also the capacity building measures adopted by the authorities in the *Strumia* group (DH-DD(2019)790).

⁸ Among others *Strand Lobben and Others v. Norway*, No. 37283/13, *Ribic v. Croatia*, No. 27148/12, *Wallová and Walla v. Czech Republic*, No. 23848/04.

1. recalled that these cases concern breaches of the applicants' right to family life due to the systemic problem of the non-implementation of judicial decisions regulating visiting rights (*Terna* group) and to shortcomings in the functioning of the foster care system (*R.V. and Others*);

As regards individual measures

2. noted that in *Terna* judicial proceedings on the adoptability of the child and the contacts with the applicant are ongoing before the Court of Appeal of Milan; underlined the need for them be dealt with swiftly and taking into account the indications of the European Court and the Court of Cassation, the best interests of the child and the Convention rights of all parties involved; and invited the authorities to inform the Committee about the outcome of these proceedings;

3. invited also the authorities to provide updated information on the implementation of the last domestic judicial decision in *R.B. and M.* and on the measures adopted in *A.T.* to ensure, as far as possible, the implementation of the applicant's visiting rights;

4. considered that no further individual measures are required in *R.V. and Others* given that from the information provided it appears that the applicant has unrestricted access to her children, one of whom has reached the age of majority;

As regards general measures

5. underlined that, to avoid shortcomings with irremediable consequences, it is crucial to ensure that the handling of proceedings involving children's rights is fully compliant with all the relevant requirements under Article 8 of the Convention;

6. noted with interest the ongoing reform of juvenile justice which testifies to the resolve of the authorities in addressing the issues raised by these judgments and invited them to provide, as soon as available, information on its implementation, entry into force and impact;

7. considered however that most of the shortcomings identified by these judgments, imply the need for changes in the practice of juvenile courts and social services, to ensure a Convention compliant application of the relevant legal framework; noted in this context the information provided on the case law of the Court of Cassation and invited the authorities to submit recent examples of decisions, particularly of first instance and appeal courts, on the application of the principles set out by the European Court in these judgments;

8. noting that the capacity building measures adopted previously by the authorities have not succeeded in remedying fully the shortcomings highlighted by these judgments; invited them to intensify their action to secure the definite incorporation of the relevant Court's case law by juvenile courts and social services, including by pursuing enhanced decentralised trainings and developing procedural guidelines and good practices; encouraged them to also draw on the measures adopted by other member States in similar cases;

9. decided to transfer the cases of the *Strumia* group to the enhanced procedure and to continue their examination in the framework of the *Terna* group;

10. invited the authorities to submit updated information on the individual measures in all these cases, including those of the *Strumia* group, by 10 May 2022 and on the general measures by 15 December 2022.

