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

FIRST SECTION

CASE OF A AND OTHERS v. ITALIY

(Application no. 17791/22)
STOP

Art 8 • Family life • Absence of adequate and sufficient efforts by national authorities to enforce the visitation rights of a father recognized by judicial decisions and ensure his right to co-parenting • Art 8 applicable: existence of a “relationship potential family » • Absence of control of the activity or lack of action of the authorities concerned by the national courts • deficiencies in the decision-making process and long time required to correct them • Margin of appreciation • Increased complexity of the case regarding the applicants' benefit from the witness protection program

STRASBOURG

September 7, 2023

This judgment will become final under the conditions defined in article 44 § 2 of the Convention. It may undergo shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

JUDGMENT A AND OTHERS v. ITALY

In the case of A and others v. Italy, The European Court of Human Rights (first section), sitting in a chamber composed of:

Marko Bošnjak, president,
Alena Poláčková,
Krzysztof Wojtyczek,
Peter Paczolay,
Ivana Jelic,
Erik Wennerström,
Raffaele Sabato, judges,
and Liv Tigerstedt, Deputy Section Clerk,
Seen :

the application (no. 17791/22) directed against the Italian Republic and including two Italian nationals and one Romanian national (“the applicants") – named, with the information concerning them, in the table attached – applied to the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the convention”) on April 6, 2022,

the decision to bring to the attention of the Italian government (“the Government”) the complaints concerning Article 8 of the Convention and to declare the remainder of the application inadmissible, the decision not to disclose the identity of the applicants, the observations of the parties,

the decision of the Romanian government not to avail itself of its right to intervene in the procedure (Article 36 § 1 of the Convention), After having deliberated in private on July 11, 2023 , Renders the following judgment, adopted on this date:

INTRODUCTION

1. The application concerns an allegation of violation of the applicants' right to respect for their family life due to the alleged impossibility for A, the first applicant, to practice in relation to his children (B and C, the second and third applicants) the right of access granted to him by the domestic courts and thus to establish a relationship with them. Such a situation would result from the opposition of the mother of the children and the failures of the internal authorities, who allegedly failed to adopt measures capable of ensuring the conditions necessary for the establishment of a relationship between the parties concerned and thus guaranteeing the implementation of the first applicant's visiting rights. Article 8 of the Convention is at issue.

THE FACTS

2. The applicants are A, born in 1990 (“the first applicant” or “the father"), and his two minor children, B and C, born in 2009 and 2011 respectively ("the second and third applicants" or "the children"). As the persons concerned are part of a witness protection program, their place of residence is not communicated.
3. The first applicant was represented before the Court by Mr V. di Meo, lawyer in Rome. The second and third applicants were represented before the Court by Ms M. G. Ruo, a lawyer in Rome, special curator ad litem appointed by the domestic courts to represent the children before them (“the curator”).
4. The Government was represented by its agent, M. L. D’Ascia, State lawyer.
5. From the union of the first applicant and D (“the mother”), B was born in August 2009 and C in May 2011.
6. The first applicant did not recognize the children at the time of their birth. As he was in detention, he only lived with them for very brief periods.
7. In 2016, the first applicant was admitted to the benefit of a witness protection program as a collaborator of justice in an investigation concerning a mafia-type criminal association of which he had been a part.
8. Following this decision, D stopped visiting the first applicant in prison with their children.

I. THE PROCEDURE FOR RECOGNITION OF FILIATION

9. Faced with D's opposition to maintaining a significant relationship between him and his children, the first applicant filed an application for recognition of parentage before the Rome court (“the court”) on 29 September 2016. He explained that he had not been able to recognize the children because he was not regularly present on Italian territory at the time of B's birth, and because he was in detention and was being heard by the court of Rome in criminal proceedings at the time of C.'s birth.

10. On April 21, 2017, the court appointed Ms. M. G. Ruo as special guardian ad litem to represent the children.

11. On October 4, 2017, the curator requested the immediate organization of visits between the applicants.

12. By a judgment of August 2, 2018, the court recognized the existence of a parentage link between the first applicant and the second and third applicants and ordered the transcription of this decision in the registers of

civil status and the continuation of the procedure for the purpose of adopting decisions concerning the custody of children and changing their surname.

13. The same day, the court ordered a psychological assessment on the condition of the children and their relationships with their parents.

14. On May 24, 2019, the expert appointed for this purpose advised the court that given the complexity of the situation in question and the excessive workload which otherwise weighed on her, she could not carry out the expertise requested. The court took note of this information.

15. On September 19, 2019, the curator requested authorization from the court to meet the children to explain to them the procedure which concerned them and to listen to them. During the interview which followed, the children expressly asked the guardian to inform the court of their wish to see the first applicant.

16. On 21 January 2020, the guardian informed the court of the children's wish to see their father and establish a relationship with him. By an urgent request, he asked the court for the immediate organization of visits, the establishment of regular telephone contacts, as well as the establishment, with social services, of a program to prepare for visits.

17. On 17 August 2020, the court decided to entrust sole custody of the children to their mother and to grant the first applicant visiting rights. The conditions under which this right was to be exercised had to be determined by the social services in agreement with the other bodies concerned, in particular the witness protection service (paragraph 7 above) and the structure where the children were placed with their mother (paragraph 23 below). The court also ordered the latter to cooperate with the authorities to enable the execution of the visiting rights granted to the first applicant.

18. D appealed this decision. The first applicant and the curator contested the appeal.

19. On 28 October 2021, the Court of Appeal of Rome rejected the appeal and ordered the organization of visits between the applicants and the provision for the children, with a view to such meetings, of appropriate preparation under the form of a psychological support program.

II. THE PROCEDURE RELATING TO PARENTAL AUTHORITY

20. In the meantime, following the opposition of the children's mother to the integration of the second and third applicants into the witness protection program, the first applicant requested the authorities, the February 22, 2017, the adoption of immediate protection measures with regard to children. He feared that they would be targeted by the criminal organization with which he had been affiliated, in retaliation for his decision to collaborate with the authorities (paragraph 7 above).

21. Informed of the situation, the public prosecutor's office at the Children's Court filed an urgent request on 14 March 2017 before the Rome Children's Court ("the Children's Court"), under Articles 330 and 333 of the Civil Code the suspension of D's exercise of parental authority and the immediate adoption of protective measures with regard to the children.

22. By a decision of March 24, 2017, filed at the registry on April 4, 2017, the children's court ordered the suspension of D's exercise of parental authority and the placement of the children - in the company of their mother if she wanted it – in an institution. He also asked the authorities involved to examine the possibility of establishing a schedule of meetings between the applicants, in a protected environment if necessary.

23. The children, accompanied by the mother, were placed in an institution on April 14, 2017.

24. No meeting with the first applicant was organized at that time, due to the negative opinion of the social workers and the psychologist responsible for monitoring the children within the institution (paragraphs 35-37 below).

25. On October 26, 2017, the first applicant requested the organization of visits to a protected environment.

26. On February 9, 2021, the children's court, based on the decision of August 17, 2020 of the Rome court granting the first applicant visiting rights (paragraph 17 above), considered that it was necessary to take into account consideration the wishes of the children (paragraphs 15-16 above) and that nothing could lead to the belief that meetings with their father could harm them. He therefore ordered the social services to immediately establish a schedule of visits and to organize without delay regular telephone contacts between the applicants, according to modalities which were to be determined by the institution where the children were placed and by the psychologist of this establishment. It also decided to award custody of the children to social services on the grounds that D was not cooperating with the authorities in their efforts to allow the first applicant to exercise his visiting rights. He also declared that in the future the possible opposition of the mother to the organization of meetings between the children and their father could no longer have the effect of preventing such meetings from taking place.

27. On February 24, 2021, the children's court again appointed Ms Ruo special trustee for the purposes of the proceedings before him (paragraph 10 above).

28. On June 14, 2021, the public prosecutor's office issued a negative opinion regarding the continued organization of meetings between the applicants.

29. On 22 June 2021, on the basis of the report established during the first meeting between the applicants, which took place on 24 May 2021 (paragraph 49 below), the children's court ordered the suspension of visits due to the inability of the first applicant to establish a relationship with his children compatible with their best interests.

30. On 24 June 2021, the children's court included in the reasons for this decision the elements taken from the reports communicated to it by the social services and the psychologist of the placement institution (paragraph 50 below), in which it was indicated that continued visits would have been traumatic for the children.

31. On July 7, 2021, the first applicant appealed these decisions. He argued that the court had not heard the children before suspending visitation rights, and requested a psychological assessment on the children's condition and his parental capacities, the organization of visits, as well as the establishment of a psychological support program intended to prepare all applicants for meetings.

32. On September 30, 2021, the curator took part in the proceedings before the Court of Appeal. She urgently requested the organization of visits to a protected environment and complained of the lack of effective psychological support capable of preparing all the applicants for such meetings. She informed the Court of Appeal that on the day of the meeting between the applicants, she had suffered pressure from social services and other authorities involved to make her give a negative opinion regarding the continuation of the meetings. The curator also requested authorization to have an interview with the children which would allow her to determine whether or not they wanted the meetings to continue.

33. Before the Court of Appeal, the first applicant and the curator argued that two parallel proceedings relating to the same situation were pending before different courts, and that the children's court had suspended the exercise of visiting rights without transmitting to them the reports established by the social services and the psychologist on the meeting of May 24, 2021 and, therefore, without allowing them to submit their observations in this regard, which according to them violated their rights of defense.

34. On December 9, 2021, the Rome Court of Appeal recognized the lack of functional jurisdiction of the children's court due to the prior filing of the procedure for recognition of filiation before the Rome court (paragraph 9 above). By declaring the procedure relating to parental authority void, the Court of Appeal reminded the parties that the decisions adopted in the procedure for recognition of parentage (paragraph 19 above) were binding. Therefore, the Court of Appeal made no decision with regard to the curator's request to be authorized to meet the children.

III. EXECUTION OF THE RIGHT OF VISITATION

35. On 29 May and 16 June 2017, following the decision of 24 March 2017 (paragraph 22 above), the witness protection service informed the children's court that, according to the social services, the second and third applicants were not ready, due to the trauma they

would have suffered following their placement in an institution, to establish relations with the first applicant.

36. In a report dated July 31, 2017, social workers from the institution, citing difficulties encountered by the children following their placement, gave a negative opinion regarding the possible organization of telephone calls between the applicants. According to the educators, the difficulties in question were caused by the socio-cultural origins of the children, that is to say by the criminal mafia context in which they had grown up, and by the circumstance that they had witnessed scenes of violence during which, according to their mother's account, the first applicant had attacked her.

37. On 4 August 2017, the witness protection service confirmed that the social workers had given an unfavorable opinion.

38. It appears from the file that no visit was organized.

39. Following the decision of August 17, 2020 of the Rome court granting visiting rights to the first applicant (paragraph 17 above), the witness protection service informed the court on several occasions (on 4 September, 14 October, 27 October, 16 November, 3 December and 17 December 2020) of the desire of the first applicant to exercise his visiting rights and that the opposition of the children's mother prevented the organization of meetings.

40. In a report dated 15 November 2020, the educators at the placement institution informed the courts that the children had reacted badly when they learned that the first applicant was detained. They explained that it was necessary to provide the children with a preparation course for resuming meetings with their father.

41. On November 16, 2020, the children's psychologist indicated that resuming meetings with their father would disturb the children.

42. The first applicant also, as a prisoner, submitted a request to the sentencing judge for implementation of his visiting rights. On 23 November 2020, the sentence enforcement judge ordered the execution of the decision of the Rome court granting visiting rights to the first applicant (paragraph 17 above).

43. On December 15, 2020, the social services informed the courts that D and the children were being monitored by psychologists, including those from the placement institution, and that it was possible to schedule meetings with the first applicant at the end of January 2021.

44. On 29 January 2021, the witness protection service informed the courts that the social services had not organized the meeting between the applicants which was planned for the end of the month and that they had indicated that due to the measures in force as part of the fight against the COVID-19 pandemic, the children had only taken part in one psychological preparation session and, therefore, were not ready for meetings with their father.

45. On February 9, 2021, the date of March 26, 2021 was set for a encounter.

46. On February 27, 2021, the applicant filed a complaint against the social services for non-execution of judicial decisions relating to his visiting rights.

47. On March 17, 2021, the administration of the prison in which the The first applicant was detained and informed the court that due to the measures in force in the fight against the COVID-19 pandemic it was not possible to organize a physical meeting.

48. On 9 April 2021, social services informed the children's court that the second and third applicants were torn about the idea of meeting their father and that they were being followed by a psychologist to prepare them for such visits.

49. On May 24, 2021, a meeting between the applicants took place. According to the report drawn up following this meeting, the first applicant asked the children unauthorized questions relating to their placement during the visit and reacted badly to the reproaches subsequently made to him by the social services on this subject.

50. On June 21, 2021, the court received the minutes of the meeting drawn up by the social services and the child psychologist. The psychologist indicated that the event had been traumatic for the children, and she declared herself against continuing the visits; the social services, for their part, explained that the behavior of the first applicant during the visit had been inappropriate.

THE RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE INTERNAL LEGAL REGIME

A. Parental authority, child custody and visiting rights

51. The relevant domestic law regarding procedures for the control of parental authority is described in the R.V. and Others v. Italy (no. 37748/13, §§ 65-69, July 18, 2019).

52. Under Article 337 ter, first paragraph, of the Civil Code, the child minor has the right to maintain a balanced and continuous relationship with each of his parents, to receive care, education and moral assistance from both parents and to maintain meaningful relationships with the ascendants and parents of each parental branch. According to the second paragraph of the same article, to achieve the aim indicated in the first paragraph, in the procedures referred to in article 337 bis of the civil code, the judge adopts measures relating to descendants by referring exclusively to their moral interests and materials. The judge considers as a priority the possibility for minor children to remain in the custody of both parents, or, failing that,

he decides to whom the children must be entrusted and he determines the time and modalities of presence with each parent, as well as the proportion and modalities according to which each parent must contribute to the maintenance, care, education and the education of children. The judge can modify the custody arrangements and take note of the various agreements reached between the parties. The trial judge is competent to implement decisions relating to custody arrangements and can also intervene ex officio in the event of family placement. To this end, the public prosecutor sends a copy of the placement decision to the guardianship judge.

B. Appointment of the special curator ad litem for children

53. Article 78 of the Code of Civil Procedure read as follows in its wording in force at the material time: “In the absence of a representative or assistant and for reasons of urgency, a special curator may be appointed to the incapable person, the legal person or the unrecognized association to represent or assist them until the person who must represent or assist them takes over. A special curator is also appointed for the person represented when there is a conflict of interest with the representative. »

54. According to the jurisprudence of the Court of Cassation (see, for example, judgment no. 27729 of December 11, 2013), the child has the status of party in procedures for recognition of parentage within the meaning of article 250 of the Code civil and he is represented, in such proceedings, by the parent who recognized him. However, when the judge considers that there is a conflict of interest, actual or potential, between the child and the parent who represents him, an independent representative (curator ad litem) can be appointed.

55. On the other hand, in proceedings concerning parental authority carried out under Articles 330 and 333 of the Civil Code, even directed against only one of the parents, the jurisprudence of the Court of Cassation considers that there is by definition a conflict interests, at least potential, between the child and his parents, so that the judge must, under penalty of nullifying the procedure, appoint automatically a curator ad litem to represent the child (see, among others, the judgments of the Court of Cassation, no. 5256 of March 6, 2018, no. 29001 of November 12, 2018, no. 29723 of November 16, 2020, and no. 8627 of March 26, 2021).

C. Right of the child to be heard

56. The relevant provisions of the civil code relating to the right to the child to be heard read as follows in their wording in force at the material time:

Article 315 bis – Rights and duties of the child

"(...) A minor child over twelve years old, or even younger if he is capable of discernment, has the right to be heard on all questions and in all procedures which concern him. (...) »

Article 336 bis – Hearing of the minor

"A minor child over twelve years old, or even of a younger age if he is capable of discernment, is heard by the president of the court or by the delegated judge within the framework of the procedure in which the measures must be taken concerning him. If the hearing is contrary to the interests of the child or clearly superfluous, the judge does not proceed with the hearing, and issues a reasoned order to this effect. The hearing is conducted by the judge, with the help of experts or other assistants. The parents, including when they are parties to the procedure, the lawyers of the parties, the special curator of the minor, if already designated, and the public prosecutor are allowed to participate in the hearing on the authorization of the judge, to whom they can propose, before the start of the hearing, arguments and subjects to be explored in greater depth. Before proceeding with the hearing, the judge informs the minor of the nature of the procedure and the effects of the hearing. The hearing is recorded in a report including a description of the minor's behavior or in an audio-video recording. »

57. The Court of Cassation has said, in several judgments, that the hearing by the judge of a minor child over twelve years old, or even of a younger age if he is capable of discernment, is obligatory and not discretionary. (see, for example, judgments no. 18358 of August 2, 2013, no. 5097 of March 5, 2014, no. 19327 of September 29, 2015, and no. 1474 of January 25, 2021). The judge must duly justify the reasons which lead him to consider that the child under twelve years of age is not capable of discernment or that the hearing is contrary to the interests of the minor (see, among others, Court of cassation, judgment no. 22238 of October 21, 2009). If it is not duly justified, the failure to hear the child leads to the nullity of the procedure (Court of Cassation, judgment no. 18358 of August 2, 2013).

II. INTERNATIONAL LAW AND PRACTICE

58. Relevant international law and practice relating to representation of children, appointment of an ad litem representative and the child's right to be heard are described in the M. and M. v. Croatia (no. 10161/13, §§ 94-98 and 102, ECHR 2015 (extracts)).

THE LAW

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

59. The applicants complain of an infringement of their right to respect for family life due to failures of the authorities in putting in place

measures capable of enabling the establishment of a relationship between them, a failure to execute domestic decisions relating to the first applicant's right of access, and several failings which, according to them, marred the procedures carried out before the national courts. They invoke Article 8 of the Convention, which is worded as follows:

> “1. Everyone has the right to respect for their private and family life, their home and their correspondence.
> 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 security, the economic well-being of the country, the defense of order and prevention criminal offenses, the protection of health or morals, or the protection of the rights and freedoms of others. »

A. On admissibility

1. On the locus standi of the curator ad litem

60. The Court notes that the Respondent State has not raised any objection to the question of the jurisdiction ratione personae of the Court to entertain the Application provided that it was introduced in the name and in the interest of the second and third applicants, minors, by the curator appointed by the domestic courts. This question nevertheless calls for ex officio examination by the Court (Buzadji v. Republic of Moldova [GC], no. 23755/07, § 70, July 5, 2016, and Satakunnan Markkinapörssi Oy and Satamedia Oy v . Finland [GC], no. 931/13, § 93, June 27, 2017).

61. The Court recalls the general rule according to which, if an applicant decides to be represented under Article 36 § 1 of the Rules of Court rather than submitting the application himself, Article 45 § 3 of the regulations requires him to produce a duly signed written power of attorney. It is essential for the representative to demonstrate that he has received precise and explicit instructions from the alleged victim, within the meaning of Article 34, on whose behalf he intends to act before the Court (Magomedov and Others v. Russia, nos. 33636/09 and 9 others, § 60, March 28, 2017, and Kars and others v Turkey, no. 66568/09, § 54, March 22, 2016).

62. However, applications filed by individuals on behalf of the victim(s) were declared admissible even though no type of valid power of attorney had been presented. Particular attention was paid to vulnerability factors, such as age, sex or disability, likely to prevent certain victims from submitting their case to the Court, also taking into account the links between the victim and the perpetrator. of the application (Lambert and others v. France, no. 46043/14, §§ 91-92, June 5, 2015; see also, with regard to applications filed by non-governmental organizations, Legal Resources Center in the name of Valentin Câmpeanu v . Romania [GC], no. 47848/08, §§ 104-111, ECHR 2014, L.R. v. North Macedonia,

no. 38067/15, § 46-53, January 23, 2020, and Association Innocence in Danger and Association Enfance et Partage v. France, nos. 15343/15 and 16806/15, §§ 119-132, June 4, 2020).

63. The Court has already had occasion to say that the situation of children under Article 34 must be carefully examined because they generally depend on others to submit their complaints and represent their interests and that they do not necessarily have the required age or capacity to authorize steps to be taken concretely on their behalf (N.Ts. and Others v. Georgia, no. 71776/12, § 54, 2 February 2016, and A.K. and L. v. Croatia, no. 37956/11, § 47, January 8, 2013). It is therefore appropriate, as the Court has already said, to avoid a restrictive or purely technical approach with regard to the representation of children before it, the essential criterion in this area being the risk that certain interests of minors are not brought to its attention and that they are deprived of effective protection of the rights which they derive from the Convention (Lambert, cited above, § 94, Strand Lobben and others v. Norway [GC], no. 37283/13, § 157, September 10, 2019, C.N. v. Luxembourg, no. 59649/18, §§ 29-30, October 12 2021, and T.A. and others v. Republic of Moldova, no. 25450/20, § 33, November 30, 2021).

64. In the present case, the domestic courts, considering that there was or could be a conflict of interest between the interested parties and their parents, appointed Ms. Ruo special curator ad litem to represent the second and third applicants (paragraphs 10 and 27 above).

65. The Court notes that such designation, in the event of at least a potential conflict of interest between the child and his parents, was provided for by the relevant domestic law (paragraph 53 above), as interpreted by the Court of Cassation (paragraphs 54-55 above). It also notes that the appointment of a curator ad litem to represent children in the event of a conflict of interests between them and their parents may be required by Article 8 of the Convention (C v. Croatia, no. 80117/17, § 74-82, October 8, 2020), as interpreted in light of the relevant rules of international law (paragraph 58 above).

66. It further observes that the legitimacy of the curator has never been contested by the domestic authorities (see, mutatis mutandis, Center for legal resources in the name of Valentin Câmpeanu, cited above, § 110, Association for the Defense of Human Rights man in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania, no. 2959/11, § 44, 24 March 2015, and Bulgarian Helsinki Committee v. Bulgaria (dec.), nos. 35653/12 and 66172/12, § 56,
June 28, 2016).

67. It also notes that the curator was actively engaged in the mission entrusted to her: the person concerned met the children, explained to them what her role consisted of and gathered their wishes regarding the issue at stake in internal procedures (paragraphs 15-16 above). She also actively participated as a children's representative in all

the hearings before the domestic courts, as well as the meeting between the applicants on May 24, 2021 (paragraph 49 above). She therefore established a sufficient bond with the children (L.R. v. North Macedonia, cited above, § 51).

68. The Court also notes that the application before it, insofar as it is lodged by the special curator ad litem for children, is strictly linked to the proceedings before the domestic courts in respect of which the curator was appointed. In other words, the proceedings before the domestic courts had as their object the same right as that which the Court verifies compliance with in accordance with the principle of subsidiarity. The Court therefore considers that the ad litem appointment of the curator does not imply the impossibility for the interested party to also represent the children in the proceedings before the Court (S.P., D.P. and A.T. v. United Kingdom, no. 23715/ 94, Commission decision of 20 May 1996).

69. In light of the above, the Court concludes that the curator special ad litem appointed in the domestic proceedings has standing to act on behalf of B and C (V.D. and others v. Russia, no. 72931/10, §§ 80-84, April 9, 2019, and Valdís Fjölnisdóttir and others v. Iceland, no. 71552/17, § 2, May 18, 2021).

2. On the existence of a family life

a) The parties' arguments

70. Without expressly raising an objection of inapplicability of Article 8 of the Convention, the Government maintains that the family link between the applicants was only established by the judgment of the Rome court of August 17, 2020 and that consequently it is only in respect of the subsequent period on this date that the applicants can complain of a violation of Article 8.

71. The applicants reply that the family link between them was already established previously, in particular by the judgment of August 2, 2018 of the Rome court, and emphasize that the domestic courts had recognized a right of access to the first applicant and that B and C had expressed their desire to establish a relationship with their father.

b) The Court's assessment

72. The Court recalls that the notion of "family life" within the meaning of Article 8 of the Convention concerns relationships based on marriage, and also other de facto "family" relationships, where the parties cohabit outside of any marital bond or where other factors demonstrate that a relationship has sufficient of constancy (Paradiso and Campanelli v. Italy [GC], no. 25358/12, § 140, January 24, 2017). The question of the existence or absence of family life is first and foremost a question of fact, which depends on the existence of close personal ties (Marckx v. Belgium, June 13, 1979,

§ 31, Series A no. 31, and K. and T. c. Finland [GC], no. 25702/94, § 140, ECHR 2001-VII).

73. Article 8 cannot be interpreted as only protecting already established family life: it must extend, when circumstances so require, to the relationship which could develop between a child born out of wedlock and his natural father. To establish the existence of a link requiring the protection of Article 8 between the biological father and his natural child, the Court takes into account factors such as the nature of the relationship between the natural parents, as well as the interest and attachment shown by the natural father for the child before and after birth (Nylund v. Finland (dec.), no. 27110/95, ECHR 1999-VI, Chavdarov v. Bulgaria, no. 3465/03, § 40, 21 December 2010, Marinis v. Greece, no. 3004/10, § 56, 9 October 2014, and L.D. and P.K. v. Bulgaria, nos. 7949/11 and 45522/13, § 54, December 8, 2016).

74. In cases similar to the present case, the Court has considered that Article 8 could also extend to the "potential family relationship" (Pini and Others v. Romania, nos. 78028/01 and 78030/01, § 143, ECHR 2004 V (extracts), and Schneider v. Germany, no. 17080/07, § 81, September 15, 2011), in cases where the fact that family life has not been established is not attributable to the applicant (Anayo v. Germany, no. 20578/07, § 60, 21 December 2010, Kautzor v. Germany, no. 23338/09, § 61, 22 March 2012, and Katsikeros v. Greece, no. 2303/19, § 47, July 21, 2022).

75. In the present case, the Court notes that the first applicant did not recognize the children at the time of their birth and that, due to his detention, their cohabitation was very limited (paragraph 6 above). It observes, however, that he tried to establish a relationship with them (paragraph 8 above); that, faced with opposition from the children's mother, he filed a request for recognition of paternity before the judicial authority (paragraph 9 above), and that, when it seemed to him that the children were in danger because D refused to allow them to be included in the witness protection program, he asked the competent authorities to protect them (paragraph 20 above). Furthermore, the Court notes that, by a decision of 24 March 2017, the children's court ordered the social services to assess the possibility of establishing a schedule of meetings between the applicants (paragraph 22 above), that The existence of a family link between the parties concerned was established by a judgment of the Rome court of August 2 2018, which ordered the transcription of this decision in the civil status registers (paragraph 12 above), and finally that the children demonstrated, at least at the start of the procedure, their intention to establish contact with the first applicant (paragraph 15 above). Therefore, the Court considers that the applicants have been recognized, under national legislation and domestic decisions, the right to establish relations with each other.

76. The Court also notes that the failure to implement access rights was not the fault of the first applicant – who continued to bring cases before all the courts concerned (paragraphs 9, 18, 24, 30 and 41 above)

and to file criminal complaints in this regard (paragraph 47 above) – but results in particular from the opposition of the national authorities and the mother of the children.

77. Under these conditions, the Court concludes that there exists between the applicants, from the filing of the application for recognition of parentage, a "potential family relationship", and it considers that such a link is sufficient to give rise to the protection of Article 8 of the Convention, which is therefore applicable ratione materiae to the facts of the present case.

3. Conclusions on admissibility

78. Noting that this complaint is not manifestly ill-founded nor inadmissible for another reason referred to in Article 35 of the Convention, the Court declares it admissible.

B. On the merits

1. The parties' arguments

a) The applicants

79. The applicants consider that the national authorities have not taken all useful and necessary measures to enable the establishment and maintenance of a family relationship between them. They emphasize that despite several legal decisions handed down between 2017 and 2021, they only met once, and they consider that this situation is the consequence of the opposition of the children's mother and, above all, of social services. They explain that in defiance of all judicial decisions recognizing a right of visitation to the first applicant, they have to date no possibility of meeting, and they complain that the domestic courts tolerate this situation.

80. The applicants argue that while the second and third The applicants expressly informed the curator that they wished to meet the first applicant, their wishes were not taken into account.

81. They argue that no parenting support course was planned for the first applicant and complain of the inappropriate nature of the psychological course of preparation for meetings with their father which was offered to the children.

82. They further maintain that the judicial decisions were based almost exclusively on the reports drawn up by the social workers of the institute, which according to them were always unfavorable to the establishment of relationships between the first applicant and his children.

83. Finally, they highlight several procedural failures in the proceedings before national courts.

b) The Government

84. The Government considers that the Italian authorities quickly adopted all the measures required in the interests of the children.

85. He explains that it was not possible to organize visits before a parentage link between the applicants was recognized.

86. Furthermore, he emphasizes, the fact that the applicants are part of a witness protection program requires that the protection and security requirements of the persons concerned be taken into account for each measure envisaged.

87. The Government observed that the authorities had set up a psychological support program for the second and third applicants and their mother. In addition, he argues that the children had undergone traumatic experiences which, according to him, did not allow them to quickly establish a relationship with their father. He believes that the delays were not the fault of the authorities, but were the result of the measures in force within the framework of
the fight against the COVID-19 pandemic, the fact that the first applicant is in detention and the fact that the applicants are part of a witness protection program.

88. As for the elements on which the domestic courts considered
justified in rendering their decisions, the Government considers that the opinions of the experts have been duly taken into consideration.

2. The Court’s assessment

a) Purpose of the case

89. The Court observes first of all that from 2016 the first applicant continually requested the national authorities to organize meetings with the second and third applicants, but that he was unable to do so, his visiting rights only in a very limited way, in the form of a single meeting and a single video call.

90. The Court also notes that the special curator ad litem of B and C, who represents them before it, has constantly asked the domestic courts, in the name of the children's interest in establishing meaningful relationships with their father, to implement implementation of the right of access recognized to the first applicant.

91. In light of the proceedings, the Court considers that in the present case the interests of the first applicant, on the one hand, and those of the children, on the other, are largely consistent. Therefore, there is no need to carry out a separate analysis of the applicants' complaints.

b) General principles

92. The general principles applicable in the present case are well established in the Court's case-law and have been widely set out in the Terna v. Italy (no. 21052/18, January 14, 2021), R.B. and M. v. Italy (no 41382/19,

April 22, 2021), A.T. c. Italy (no. 40910/19, June 24, 2021), and Pini and others, cited above).

(c) Application in the present case of the above-mentioned principles

93. In the present case, the Court considers that, given the circumstances before it and the complaints raised by the applicants, its task consists of determining, firstly, whether the national authorities took all the measures that could be reasonably required of them to enforce the right of access as recognized by judicial decisions and to enable a relationship to be established between the applicants and, secondly, whether, within the framework of the internal procedures, the decision-making process was fair and has duly respected the rights of the applicants as protected by Article 8.

i. On the non-execution of visiting rights

94. The Court notes that following the decision of the Children's Court of 24 March 2017 ordering the authorities concerned to examine whether it was possible to arrange meetings between the applicants (paragraph 22 above), no visits have been made. was organized (paragraph 24 above), due to the fact that the children's court had been informed of the negative opinion of the services social workers, who considered that such meetings were incompatible with the children's condition (paragraphs 35-37 above). It notes that despite this information and although the applicant requested the organization of visits (paragraph 25 above), the children's court did not order any social investigation, and that it was not until February 2021 that a new hearing took place (paragraph 26 above).

95. The Court recalls that it is not up to it to substitute its assessment with that of the competent national authorities as to the measures which should have been taken in the light of the negative opinions of the social services, because these authorities are in principle better placed to carry out such an assessment (see Giorgioni v. Italy, no. 43299/12 , § 73, September 15, 2016, and Piazzi v. Italy, no. 36168/09, § 59, November 2, 2010). However, it considers that it is not acceptable that it took almost four years for the court to make a decision or request an update of the situation, given that such a delay ran the risk of seeing the issue in dispute resolved by a fait accompli (R.B. and M. v. Italy, cited above, § 81).

96. Furthermore, the Court notes that no visit was organized following the decision of the Rome court of 17 August 2020 recognizing a right of visit to the first applicant (paragraph 17 above). It also notes that on several occasions, the witness protection service indicated that it was because of the opposition of the children's mother that such meetings could be organized (paragraph 39 above).

97. In this regard, the Court recognizes that the authorities were faced in the present case with a very difficult situation which resulted in particular from tensions

existing between the children's parents. In particular, the Court notes that the children's mother resolutely opposed visits between the applicants. It nevertheless considers, as it has already said elsewhere, that the lack of cooperation between separated parents cannot exempt the authorities from implementing adequate and sufficient means likely to allow the family bond to be maintained. (see A.T. v. Italy, cited above, § 79, and the references cited therein).

98. The Court also recalls the well-established principle according to which positive obligations are not limited to ensuring that the child can rejoin his parent or have contact with him: they also encompass all the preparatory measures enabling him to achieve to this result (see D'Alconzo v. Italy, no. 64297/12, § 56, February 23, 2017, and the references cited therein, Terna, § 60, R.B. and M. v. Italy, § 65, and A.T. v. Italy, § 66, all three cited above).

99. In the present case, the Court observes that the curator requested the establishment of a preparation program for meetings from January 21, 2020 (paragraph 16 above) and that following the decision of 17 August 2020, social services announced on December 15, 2020 that the children were being monitored for this purpose by a psychologist (paragraph 43 above). However, at the end of January 2021, that is to say at the period when the first meeting was to take place, the social services explained that only one preparation session had been carried out with the children and that it was therefore not possible to quickly organize the meeting in question (paragraph 44 above). It further emerges from the documents submitted by the parties that no psychological course to prepare the first applicant for the visits was planned by the authorities, such a measure having only been ordered in October 2021 by the Court of Appeal of Rome (paragraph 19 above).

100. The Court therefore shares the conclusion of the Court of Appeal of Rome (paragraph 32 above) according to which there were in this case failures in the provision of psychological support intended to facilitate rapprochement between the applicants (see, mutatis mutandis, Nicolò Santilli v. Italy, no. 51930/10, § 74, December 17, 2013).

101. It further notes that the first visit took place nine months after the decision of the Rome Court of August 17, 2020 and three months after the decision of the Rome Children's Court of February 9, 2021, despite the urgency that it was, according to the latter court, to organize such a meeting. It notes that the visit planned for the end of March was canceled due to the COVID-19 pandemic and the measures in force at the time in the prison where the first applicant was detained (paragraph 47 above). However, given that travel motivated by the exercise of a right of visit and accommodation was authorized (A.T. v. Italy, cited above, § 82), it considers that, having regard to the already considerable period of time which had passed since the start of the procedure, a period

additional two months was incompatible with the diligence required in this case.
102. The Court recalls that it has already noted on several occasions (Terna, § 97, and A.T. v. Italy, § 84, both cited above) the existence in Italy of a systemic problem of delays in the implementation of judicially pronounced visiting rights.

103. In the present case, the Court notes that the social services, despite judicial decisions ordering the organization of the meetings, were slow to intervene (paragraphs 35-48 above; see A.T. v. Italy, cited above, § 80, and the references cited therein). It further considers that the national courts, by almost completely delegating the monitoring of the situation to the social services and by failing to control the activities of the latter, have allowed a de facto situation established in defiance of judicial decisions to consolidate (Strumia v. Italy, no. 53377/13, § 122, June 23, 2016, and
A.T. v. Italy, cited above, § 82).

104. Consequently, the Court concludes that the national authorities did not quickly take all the measures that could reasonably be required of them to ensure respect for the right of access recognized to the first applicant by judicial decisions and to allow establishes a relationship between the applicants (R.B. and M. v. Italy, cited above, § 80), and it notes that no control of the activity or lack of action of the authorities concerned was carried out by the national courts (A.T. v. Italy, cited above, § 82).

ii. On the decision-making process

α) Lack of expertise and lack of hearing of children

105. Concerning the nature of the elements on which the authorities relied to reach their decisions, and without losing sight of the fact that it is in principle up to the domestic authorities to decide on the necessity of expert reports (D.M. and N. v. Italy, no. 60083/19, § 84, January 20, 2022), the Court recalls that it has already concluded on several occasions, in cases involving, as in the present case, the important question of the relationship between parents and children, to the unfairness, due to the absence of psychological expertise, of the decision-making process leading to the decisions of the domestic courts. In particular, the Court reached this conclusion in cases where such expertise was necessary in order to assess the relationship between a child and his parents and the question of whether the opinion expressed by a child really corresponded to his wishes (Byćenko v. Lithuania, no. 10477/21, § 116, February 14, 2023, and references therein
cited, and D.M. and N. v. Italy, cited above, § 83).

106. In the present case, the Court notes that the need for an expert psychological opinion of the relationships between the children and their parents, the parental capacities of the latter, and the psychological state of the children was recognized by the court of Rome, which ordered such an expertise on

2 August 2018 (paragraph 13 above). However, when, on May 24, 2019, almost a year after this decision, the expert appointed for this purpose indicated that it was impossible for her to fulfill her mission (paragraph 14 above), no measure was taken by the court.

107. The Court also notes that during the proceedings before the children's court, the social workers of the placement institution objected to the visits (paragraphs 35-41 above) and indicated that the children were divided as to the prospect of a meeting with the first applicant (paragraph 48 above), while the curator, for her part, expressed the children's desire to see their father, as they had indicated to her when she met them (paragraph 16 above).

108. In these conditions, the Court considers that in the absence, on the one hand, of an expert assessment of the children's condition – an essential assessment to enable the authorities to assess the relationship between them and their father and to verify whether the declarations they had made to the curator corresponded to their true wishes – and, on the other hand, an assessment of the parental capacities of the first applicant, the decision-making process, considered as a whole, was unfair .

109. It further considers that such expert opinions were all the more necessary given that when the children had requested, at the start of the procedure, to be able to meet the first applicant (paragraph 15 above), the courts did not not considered useful to hear them, without examining whether it would have been possible to do so and, in particular, whether they were sufficiently capable of discernment for this purpose (see Neves Caratão Pinto v. Portugal, no. 28443/19, § 138, July 13, 2021).

110. In this regard, the Court, while recalling that the will expressed by a child sufficiently capable of discernment is an element to be taken into consideration in any judicial or administrative procedure concerning him (M. and M. v. Croatia, no. 10161 /13, § 181, ECHR 2015 (extracts), E.C. v. Italy (dec.), no. 82314/17, § 58, June 30, 2020, S.N. and M.B.N. v. Switzerland, no. 12937/20, § 112, November 23 2021, and Q and R v. Slovenia, no. 19938/20, § 97, 8 February 2022; see also paragraph 58 above for instruments international courts), accepts that it is in principle up to the national courts to assess the elements gathered by them, including the manner in which the relevant facts were established. The question of whether domestic courts are required to hear a child in court where the visitation rights of a non-custodial parent are at stake depends on the particular circumstances of each case, taking due account of the age and maturity of the child concerned (Sahin v. Germany [GC], no. 30943/96, § 73, ECHR 2003 VIII, and Bycenko, cited above, § 106).

111. In the present case, the Court notes that at the time of the children's court's decision to suspend visiting rights, B was almost twelve years old and C almost ten years old. Therefore, according to domestic law (paragraph 56 above) and the case law of the Court of Cassation (paragraph 57

above), the court should have, at the very least, set out the reasons which led it to consider that the children were not sufficiently capable of discernment to be heard (Iglesias Casarrubios and Cantalapiedra Iglesias v. Spain, no. 23298/ 12, § 42, October 11, 2016; see also, a contrario, Neves Caratão Pinto, cited above, § 138, where, with regard to children aged eight at the time of the conclusion of the domestic proceedings, the Court held that, given the young age of the persons concerned, the domestic authorities could reasonably believe that they were not sufficiently capable of discernment to be heard).

112. In this context, the Court concludes that the first applicant was unduly deprived of his right to have his minor children heard personally by the judge (Iglesias Casarrubios and Cantalapiedra Iglesias, cited above, § 42), and that the second and third applicants were unduly deprived of their right to be personally heard or to have their wishes, as expressed by the curator, duly taken into account by the courts internal.

113. As for the decision of the children's court to suspend visits, the Court notes that it was taken in the interests of the children (see Piazzi, § 59, and Giorgioni, § 73, both cited above), reports indicating that they were traumatized following the visit of 24 May 2021 (paragraphs 49-50 above).

114. Reaffirming, however, the principle according to which effective respect for family life requires that future relations between parent and child be regulated solely on the basis of all the relevant elements, and not by the simple passage of time (see Barnea and Caldararu v. Italy, no. 37931/15, § 86, June 20, 2017, and the references cited therein), and recalling that domestic courts and authorities must take all appropriate measures to create the conditions necessary for the full realization right of access (Endrizzi v. Italy, no. 71660/14, § 61, 23 March 2017), the Court cannot fail to take into account the fact that the difficulties encountered by the applicants during the meeting in question resulted from a failure of the national authorities, who had not previously organized any visit (paragraphs 94-97 above) and had not put in place any psychological support capable of enabling rapprochement between the applicants and to prepare the first applicant for such meetings (paragraphs 98-100 above).

115. However, the Court recalls in this regard that a delay in the procedure always risks, in such a case, resolving the problem in dispute by a fait accompli. It further considers that with regard to the adoption of a decision affecting the rights guaranteed by Article 8 of the Convention, additional diligence and speed are required. Given the stakes of the procedure for the applicant, emergency treatment was required, as the passage of time could have irremediable consequences on the relationship between a child and the parent from whom he or she lives separated. The Court in fact recalls that the severance of contacts with a

very young child can lead to an increasing alteration of his relationship with his parent (R.B. and M. v. Italy, §§ 81-82, Strumia, §§ 122-123, and Nicolò Santilli, §§ 74-75, all three aforementioned).

β) Other procedural failures

116. The Court notes first of all that the enforcement of access rights was the subject of two parallel proceedings, in which the domestic courts adopted partially discordant decisions (paragraphs 17, 19 and 29-30 above).

117. It then notes that, contrary to the case law of the Court of Cassation (paragraph 55 above), it was not until February 24, 2021, that is to say almost four years after the opening of the procedure, that the guardian for the children was appointed by the children's court (see paragraph 27 above). The Court considers that such a failure seriously compromises the fairness of the decision-making process (C. v. Croatia, cited above, § 81; see also, a contrario, R.B. and M. v. Italy, cited above, § 83, where the decision not appointing a curator was compatible with national rules and did not prevent the interests of the child from being duly taken into account).

118. Furthermore, the Court notes that the decision of the children's court to suspend visiting rights was adopted without the first applicant nor the curator having had access to the social services report of the meeting of May 24, 2021, and, therefore, without the interested parties being able to submit their observations to the court (paragraph 33 above).

119. While it is true that these deficiencies were corrected by the judgment of the Rome Court of Appeal of 9 December 2021 annulling the proceedings before the Children's Court (paragraph 34 above), the Court wishes to repeat that in matters affecting family life, the passage of time can have irremediable consequences on the relationship between the child and the parent from whom he or she lives apart. Therefore, it considers that the non-compliance by the children's court with the rules of procedure due to the long delay which was necessary to correct the procedural failures, had direct consequences on the exercise by the persons concerned of their right to life family (Moretti and Benedetti, cited above, § 70).

d) Conclusions

120. In the opinion of the Court, the non-execution of the applicant's visiting rights is mainly attributable to the de facto tolerance shown by the courts towards the constant opposition of the mother and social services , the absence of measures capable of allowing the establishment of effective contacts, as well as several procedural failures noted by it (Zavřel v. Czech Republic, no. 14044/05, § 47, January 18, 2007).

121. The Court takes note of the Government's argument that the delays of the domestic authorities involved in the present case are the

consequence of the fact that the applicants are part of a program of protection of witnesses and, therefore, would be justified by the requirement to protect the life and physical integrity of children. Even if the Court understands that such a situation could cause difficulties in the execution of access rights, it considers that the failures noted above (paragraphs 104, 108, 112, 114 and 116-119 above) are not not obviously related to the circumstance in question.

122. In light of the above, after an in-depth analysis of the parties' observations and the relevant case law, and while taking into account the margin of appreciation of the respondent State in the matter and the additional complexity conferred to the present case the fact that the applicants benefit from a witness protection program, the Court considers that the national authorities did not make adequate efforts and sufficient to enforce visiting rights and ensure his right to co-parenting and that they disregarded the right of all the applicants to respect for their family life and, in particular, the right for them to establish a family relationship between them .

123. There has therefore been a violation of Article 8 of the Convention.

II. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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, if applicable, a just satisfaction. »

A. DAMMAGE

125. The first applicant requests 50,000 euros (EUR) under the moral damage that he considers he has suffered.

126. The second and third applicants request EUR 100,000 each for the moral damage they believe they have suffered.

127. The Government disputes these claims.

128. Having regard to the circumstances of the case, the Court considers that the applicants suffered moral damage which cannot be compensated by the sole finding of a violation of Article 8 of the Convention. It considers that the inability of the first applicant to maintain meaningful contact with his children was a cause of frustration and suffering for him and prevented him from developing relationships with them over a period of several years. Consequently, it awards EUR 8,000 to the first applicant and EUR 8,000 to each of the second and third applicants. Regarding the latter, the amount will be kept in

trust by the curator (see, mutatis mutandis, R.B. and M. v. Italy, cited above, § 88).

B. Fees and expenses

129. The first applicant requests EUR 50 for costs and expenses incurred before the Court.

130. The curator of the second and third applicants requests EUR 5,168 for costs and expenses incurred before the Court.

131. The Government disputes these claims.

132. Having regard to the documents in its possession and its case-law, the Court considers it reasonable to award the first applicant the sum of EUR 50 for the proceedings before it, plus any amount that may be due on this sum as tax. .

133. As for the curator, the Court considers it reasonable to award her the sum of EUR 5,000 for the proceedings conducted before her, plus any amount that may be due on this sum as tax.

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. Holds

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

i. EUR 8,000 (eight thousand euros) to the first applicant, plus everything amount that may be due on this sum as tax, for moral damage;

ii. 8,000 EUR (eight thousand euros) to each of the second and third applicants (amount intended to be held in trust by their curator), plus any amount that may be due on this sum as tax, for moral damage;

iii. 50 EUR (fifty euros) to the first applicant, plus any amount that may be due on this sum as tax, for costs and expenses;

iv. 5,000 EUR (five thousand euros) to the curator, plus any amount that may be due on this sum as tax, for costs and costs;

b) that from the expiration of the said period and until payment, these amounts will be increased by simple interest at a rate equal to that of

the marginal lending facility of the European Central Bank applicable during this period, increased by three points of percentage ;

4. Rejects the remaining claim for just satisfaction.

Done in French, then communicated in writing on September 7, 2023, in application of article 77 §§ 2 and 3 of the regulation.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President