



Removal of a 28-month-old girl from her family for seven years without good reason: violation of the right to respect for the applicants' family life

In today's **Chamber** judgment¹ in the case of [Barnea and Caldararu v. Italy](#) (application no. 37931/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the **removal of a 28-month-old girl (C.) from her birth family for a period of seven years** and her placement in a foster family with a view to her adoption.

The Court found, in particular, that the **Italian authorities had failed to undertake appropriate and sufficient efforts to secure the applicants' right to live with their child (C.)** between June 2009 and November 2016.

The Court found, firstly, that the **reasons** given by the court for refusing to return C. to her family and for declaring her available for adoption **did not amount to "very exceptional" circumstances that would justify a severing of the family ties.**

The Court found, secondly, that the Italian authorities had incorrectly executed the Court of Appeal's 2012 judgment, which provided for the child's return to her birth family. Thus, **the passage of time – a consequence of the social services' inertia in putting in place a programme for reuniting the family – and the grounds put forward by the court for extending the child's temporary placement had been decisive factors in preventing the applicants' reunion with C.,** which ought to have occurred in 2012.

Principal facts

The applicants, Versavia Catinca Barnea, Viorel Barnea, Elvis Mauroius Caldararu and Sergiu Andrei Caldararu, M.S. Caldararu and C., are six Romanian nationals who were born in 1977, 1975, 1993, 1995, 2004 and 2007 respectively. The first five applicants are, respectively, the mother, father, two brothers and sister of C. They arrived in Italy in 2007 and settled in a Roma camp. They currently live in Caselle Torinese (Italy).

Between 2007 and 2009 Ms Barnea applied unsuccessfully to the social services for financial assistance. She then met E.M., who offered to help her. Ms Barnea subsequently authorised E.M. to spend time with her daughter C. in her flat. On 20 June 2009 E.M. was arrested on a charge of fraud while C. was with her. The police had also received an anonymous complaint alleging that E.M. was with a child who was not hers. C. was immediately placed in an institution and the authorities suspected her parents of having sold her to E.M. in exchange for a flat. However, no investigation was opened.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In December 2010 a court ordered that the child be placed in a foster family with a view to her adoption. Mr and Ms Barnea lodged an appeal. On 26 October 2012 the Court of Appeal found that there existed a strong bond between the child and her parents and that it was in the child's interests that she be returned to her birth family. In consequence, it ordered that a programme be put in place for gradually reuniting C. and her birth family, so that the child could be returned to her biological parents in the six months following its decision. However, the social services did not comply with these instructions. The prosecutor asked the children's court not to execute the Court of Appeal's decision and to extend C.'s placement with the foster family.

In November 2014 the court found that there were several obstacles to C.'s return to her birth family, and that the parents were living in a vulnerable situation. It ordered that meetings be held in a supervised environment, at a rate of four meetings per year. In January 2015 the Court of Appeal considered that, six years after being removed from her family, the child had integrated well into the foster family and that a return to her birth family was no longer to be envisaged. It ordered that meetings be held between the child and her birth parents every two weeks, and granted them access and staying access. The child continued to live with her foster family and to meet with her parents at various intervals.

In August 2016 the children's court ordered that C. be returned to her birth family, noting that her placement in the foster family was provisional and that she was entitled to live with her biological parents. C. returned to live with her parents in September 2016, but this move proved particularly difficult for her. In November 2009 the Court of Appeal upheld that decision.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained about the child's removal and placement in care by the Italian authorities in 2009; about the social services' failure to execute the Court of Appeal's judgment of 2012; about the child's placement in a foster family and the reduction in the number of meetings between the child and the members of her birth family.

The application was lodged with the European Court of Human Rights on 25 July 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Court held that the Italian authorities had failed to undertake appropriate and sufficient efforts between June 2009 and November 2016 to secure the applicants' right to live with C., in that they had ordered that the child be placed in care with a view to her adoption and had then incorrectly executed the Court of Appeal's 2012 judgment providing for the child's return to her birth family, thus breaching the applicants' right to respect for their family life.

The Court held that there had been a **violation of Article 8 of the Convention** for the following reasons:

C.'s placement in care

C. had been placed in an institution on 10 June 2009. 10 days later, the court opened a procedure to have the child declared available for adoption. The main criticisms of the parents were that they were unable to provide the child with adequate material conditions and that they had handed her over to another person.

The Court considered that before placing C. in care and opening proceedings to make her available for adoption, the authorities ought to have taken tangible measures to enable the child to live with her birth family. It reiterated that the role of the social welfare authorities was precisely to help persons in difficulty who were not sufficiently familiar with the system, to provide them with guidance and to advise them on matters such as the different types of benefits available, the possibility of obtaining social housing and other means of overcoming their difficulties. In the case of people in a vulnerable position, the authorities had to show particular vigilance and afford increased protection. Moreover, at no stage in the proceedings had allegations been made of violence or ill-treatment against the children. Nor did the courts note a lack of emotional development or any worrying health problems on the part of the child, or psychological instability on the part of the parents. On the contrary, it appeared that the ties between the applicants and the child were particularly strong. In consequence, the Court found that the reasons given by the court for refusing to return C. to her family and for declaring her available for adoption did not amount to “very exceptional” circumstances that would justify the severing of family ties.

Non-execution of the Court of Appeal's judgment providing for the child's return

Following the appeal court's judgment of 26 October 2012 setting aside the lower court's ruling on making the child available for adoption, the decision to return C. to her family ought to have been implemented within six months. However, the meetings were not scheduled in an appropriate manner, no plan for rebuilding the family ties was put in place, and the placement with the foster family was extended. In acting as they did, the courts mainly based their decisions on the following grounds: the applicants' physical living conditions, C.'s potential difficulties in reintegrating into her birth family, the strong ties that she had allegedly formed with the foster family, and the passage of time.

The Court reiterated its case-law to the effect that the fact that a child could be placed in an environment more beneficial for his or her upbringing cannot on its own justify a compulsory measure of removal from the care of the biological parents. One of the decisive arguments used by the domestic courts in dismissing the first two applicants' request for the child's return was the affection that had developed between C. and the foster family over the intervening years. The domestic courts had thus considered that it was in C.'s best interests that she continued to live on a temporary basis in the environment in which she had resided for several years and in which she was integrated. Such an argument was understandable, given a child's capacity to adapt and the fact that C. had been placed in the foster family from a very young age. However, **the Court considered that an effective respect for family life required that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere passing of time.** In the present case, the reasons given by the authorities for refusing to return C. to her birth family did not amount to “very exceptional” circumstances which could justify severing the family ties. Furthermore, the passage of time – a consequence of the social services' inertia in beginning the process of reuniting the family – and the grounds put forward by the court for extending the child's temporary placement had been decisive factors in preventing the applicants' reunion with C., which ought to have occurred in 2012.

Article 41 (just satisfaction)

The Court held that Italy was to pay the applicants, jointly, 40 000 euros (EUR) in respect of non-pecuniary damage and EUR 15,175 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.