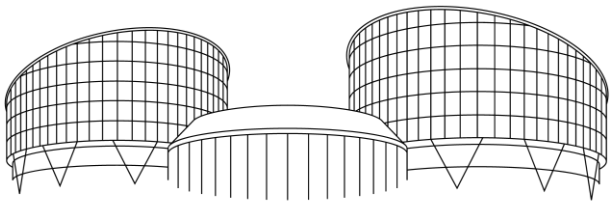

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ANGHEL v. ITALY

(Application no. 5968/09)

JUDGMENT

STRASBOURG

25 June 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Anghel v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Danutė Jočienė, *President,*
Guido Raimondi,
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 4 June 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 5968/09) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Aurelian Anghel ("the applicant"), on 24 January 2009.

2. The applicant was represented by Mr G. Klein Kiriţescu, a lawyer practising in Bucharest. The Italian Government ("the Government") were represented by their Co-Agent, Mrs P. Accardo.

3. The applicant alleged that Hague Convention proceedings in respect of his son had been unfair and that the court dealing with the matter had failed to take into account the best interests of the son. Moreover, he had been denied access to an appeal against the first-instance decision. He considered that there had been a violation of Articles 6 and 8 of the Convention.

4. On 14 December 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The Government of Romania, who had been notified by the Registrar of their right to intervene in the proceedings (Article 48 (b) of the Convention and Rule 33 § 3 (b)), did not indicate that they intended to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and currently lives in Qatar. He was married to M. and they had a son, A., born in March 2003 in Bucharest, Romania.

A. Background

7. Following A.'s birth, M. occasionally worked in Italy for short periods of time, in order to ensure an income for the family. In 2005, after M. had obtained a regular job, the applicant agreed for A. to travel to Italy with his mother. A formal notarial deed of 26 April 2005, submitted to the Court, states that Mr Anghel Aurelian, residing in Bucharest, gave his consent that his under-age son, Anghel A., born in March 2003, residing at the above-mentioned address, travel to the Republic of Moldova and Italy, in the course of the year 2005, accompanied by his mother, Anghel M. The applicant submitted that such agreement had only been given for a limited period of time in order to allow ongoing contact with M. The case file shows that M. challenged this statement, alleging that she had taken the child with her because of the adverse effect that living with his father was having on A.'s development.

8. In January 2006 the applicant travelled to Italy in order to bring A. back to Romania. He claimed that he had found the child living in very poor conditions. M. had resisted the applicant's requests to take the child back to Romania or alternatively for all of them to move to Qatar, where he had found a job.

9. Once the applicant had returned to Romania, he filed a criminal complaint under Article 301 of the Romanian Criminal Code, alleging that his wife was detaining A. in Italy without his consent.

10. On an unspecified date, the applicant moved to Qatar. On 6 December 2006 he travelled to Italy to visit his son. He alleged that A.'s health and social conditions had worsened. On 13 December 2006 father and son travelled together to Romania. On 8 January 2007 M. joined them. On 15 January 2007 they all travelled to Moldova to pay a visit to M.'s family. On 20 January 2007, M. and A. "disappeared". The applicant eventually found out that they had returned to Italy.

11. On 9 February 2007, the Romanian Prosecutor General's Office decided not to institute criminal proceedings against M., as there was insufficient evidence to establish a punishable offence. The applicant contested the afore-mentioned decision on 28 December 2007. It appears that a district court dismissed the challenge as unfounded on 31 March

2008. The applicant filed an appeal with a higher court. No further information has been provided in relation to these proceedings.

B. The petition for return of the child under the Hague Convention and the decision of the Bologna Youth Court

12. On 2 April 2007 the applicant applied to the Minister of Justice, designated by Romania as the Central Authority responsible for discharging the duties imposed on Romania by the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). He asked the Minister to assist him in securing the return of his son, whom the child's mother had, he alleged, wrongfully removed to Italy on 20 January 2007.

13. Following the steps undertaken by the Romanian and Italian authorities in accordance with the provisions of the Hague Convention, the Bologna Prosecutor's Office initiated return proceedings before the Bologna Youth Court (*Tribunale per i minorenni*).

14. On 18 June 2007 a hearing took place in the applicant's presence.

The following appears from the hand-written *procès-verbal* submitted by the Government.

Following statements by the applicant and M., the president of the court noted the existence of divorce proceedings brought by M. in Romania, together with an application for custody of the child (objected to by the applicant), which were still pending. He further noted that while the couple had cohabited from 2004 until the end of 2006, the applicant had often been absent during 2006 as he had been working in Qatar.

M. submitted that until the end of 2006 the parents had been in agreement on the whereabouts of the child, particularly in view of her employment in Italy and the fact that the child had obtained a residence permit there, started attending school and was being seen by the social and community health services. M. argued that according to changes in Romanian law she had not needed to extend the [validity of the] notarial deed (mentioned above) to subsequent years. She claimed that the child had previously had health problems and that his father had always known where they were. M. asked the court to admit in evidence a psychologist's report on the child's conditions and submitted written pleadings accompanied by evidence substantiating her claim.

The applicant submitted that the notarial deed between him and M. had only given consent to A. travelling to Italy for tourist purposes for the period May-December 2005 and thus he had not consented to the child's removal after that. In the absence of a custody decision the child could have lived with him in Qatar, instead of in Italy with his mother without his consent. However, M. had failed to consent to this, despite the fact that he could give the child a better standard of living. He explained that he had

tried to reach a friendly settlement, but when this had appeared impossible he had pressed charges against M. and those proceedings were still pending. Only at the end of 2006 had M. agreed to take the child back to Romania following a medical visit, which the applicant had insisted upon and which had found that the child was in poor health.

The Public Prosecutor asked the court to accept the return application, noting that the child had possibly been in Italy for more than a year and making reference to Article 17 (*sic*) of the Hague Convention. He further asked the court to order a report on the child's psychological condition.

15. On 5 July 2007 the applicant wrote to the Romanian Minister of Justice, informing him of the conduct of the hearing. The applicant explained that he had not been given the opportunity to challenge the statements made by his wife's attorney, in particular regarding: (i) the time it had taken the applicant to institute proceedings after the date of the wrongful removal or retention of the child, which according to the applicant had been 20 January 2007 and not – as the court had assumed – January 2006; the result of the court using the latter date was that Article 12 of the Hague Convention came into play, to the effect that after a period of one year a child may not be returned if he has integrated into society; (ii) the contention that the child's health and psychological problems were imputable to the time he had spent with his father before moving to Italy, which finding had been based on medical documents to which the applicant had had no access; (iii) the allegation that M. had had his consent up to 1 January 2007, the date on which such consent was no longer necessary (Romania having joined the European Union), thus ignoring the notarial deed, which had stated a specific period of consent; and (iv) the fact that M. had changed their son's residence without his father's consent, as required by law. The applicant further explained that the Bologna Youth Court was considering custody issues in violation of its competence under the Hague Convention, custody issues being within the exclusive competence of the courts of the country of domicile, Romania. It would, moreover, not decide the case until the Romanian courts had made a decision in the divorce and custody proceedings. He further contested the evaluation of the potential harm for the child in the event of his return to Romania which had been made by the social services, stating that it had only made reference to the biased account of the child's mother, without any direct evaluation of the relationship between father and son and of the social environment if A. were to live in Romania. The applicant asked the Minister to forward his letter to the competent authority in Italy and to the Bologna Youth Court.

16. By a decision of 6 July 2007, filed with the court registry on 9 July 2007, the Bologna Youth Court refused the application for return. It noted that divorce and custody proceedings were still pending in Romania; that M. had claimed that she and the child had lived in Italy since 2006; and that since June 2006 A. had been known to the Infant Neuropsychiatric

Services ("NPI") of the Parma Local Health Agency ("AUSL"). Moreover, it noted that M. had claimed to have had the required permission from her husband to keep the child in Italy in accordance with a notarial deed of 2005 and that the applicant had contested this on the basis that he had only given permission for A. to travel to Italy for tourist purposes, and that, albeit he had moved to Qatar in 2006, he wanted the child to be with him. In that light, the court considered that there were no grounds for returning A. and that, in view of the relevant international law, it could not be held that the mother had arbitrarily taken A. away from his father as legitimate custodian of the child. The Bologna Youth Court noted that the Romanian authorities had not yet taken a decision on custody, thus the parents had joint custody, and therefore the applicant did not have exclusive custody rights. Moreover, the applicant had consented to A.'s transfer to Italy and had eventually moved to Qatar. Furthermore, the Bologna Youth Court observed that the child had been in Italy for more than a year and was integrated into Italian society, albeit with some problems. In this light, the court considered that psychological harm would ensue as a result of his return. Thus it was not obliged, according to Article 13 of the Hague Convention, to order his return. Indeed, from the social services report ordered by the court, it appeared that A. had arrived at the NPI's premises, accompanied by his mother, on the advice of his general practitioner and that since then A. had been subject to psychotherapy which included joint interviews with his mother. The doctor entrusted with the report had noted that the need for A.'s psychotherapeutic treatment was due to early and prolonged periods of separation from his parents, frequent changes of residence, and continuous parental conflict. It was therefore necessary to give A. reference points and daily routines. Overall, his psychological condition had been improving, save for a worrying regression following his return from Romania and Moldova in January 2007, from which he had recovered.

The decision was notified to the Public Prosecutor on 13 August 2007.

C. The steps taken by the applicant to contest the decision

17. On 25 July 2007 the Italian authorities informed the Romanian authorities about the Bologna Youth Court's decision of 6 July 2007, filed with the court registry on 9 July 2007.

18. On 30 July 2007 the Romanian Ministry of Justice informed the applicant of the decision and told him that it had also requested information from the Italian Ministry of Justice about the available remedies with which to challenge the decision.

19. By letter of 6 August 2007, the Italian Ministry of Justice informed the Romanian Ministry of Justice that the decision could be appealed against through an appeal on points of law to the Court of Cassation, to be lodged within sixty days of the date of the decision – if such rejection was

pronounced during a hearing at which the requesting party was present (according to Law no. 64 of 1994) – through an advocate qualified to plead before that court. Alternatively, he could bring an action in accordance with Article 11 of EC Regulation 2201/2003 ("Brussels II bis").

20. The following day, the Romanian Ministry of Justice informed the applicant of the above and that it had requested further information on the final date to lodge the appeal on points of law and on the applicant's ability to obtain legal aid.

21. The applicant repeatedly contacted the Romanian Ministry of Justice to obtain the response to those queries, together with the documents which would have allowed him to appeal.

22. On 13 September 2007 the Romanian Ministry of Justice forwarded to its Italian counterpart the applicant's application for legal aid in order to file an appeal on points of law. The application for legal aid was filed on 25 October 2007.

23. On 29 October 2007 the Council of the Bologna Bar Association granted the applicant legal aid to file an appeal, indicating the Bologna Court of Appeal as the competent court and not the Court of Cassation. It further noted that it was not sure that an appeal was still possible – it being unknown whether the decision had been served, the relevant time-limit could not be calculated. On 30 October 2007 the decision was sent to the Italian Ministry of Justice.

24. By letter of 8 November 2007, the applicant was informed by the Italian authorities that his application had been received on 16 October 2007 and forwarded to the Council of the Bologna Bar Association. No mention was made of the decision of 29 October 2007.

25. According to the documents produced, on 22 November 2007 the decision granting the applicant legal aid was forwarded to the Romanian Ministry of Justice, together with an invitation to inform the applicant, as well as to adduce proof that he had received the decision. It is unknown whether this notification ever reached the Romanian Ministry of Justice, and the information was not transferred to the applicant.

26. On 13 December 2007 upon the applicant's complaint that he had not been informed of any decision on his application, the Romanian Ministry of Justice urged the Italian authorities to provide an answer.

27. In the absence of a reply, on 3 January 2008 the applicant sent an e-mail to the Romanian Consulate in Rome asking for support in obtaining information on the matter. By letter of 17 January 2008, the General Division of Consular Affairs of the Romanian Ministry of Foreign Affairs informed the applicant that a favourable decision on his application had been taken on 29 October 2007 and that it had been communicated to the Romanian Ministry of Justice on 22 November 2007.

28. On 27 January the applicant wrote to the Romanian Consulate again confirming that to date he had not received a copy of the decision and

asking it to ascertain who had sent it on behalf of Italy and who had received it at the Romanian Ministry. On 28 January 2008 the Division of Consular Relations forwarded a copy of the correspondence pertaining to his file to the applicant.

29. On 15 February 2008 the Italian Ministry of Justice asked the Council of the Bologna Bar Association to provide, urgently, a list of the advocates qualified to plead the applicant's appeal within the legal aid scheme. On 19 March 2008 such a list was sent by the Italian authorities to the Romanian Ministry of Justice, which forwarded it to the applicant on 24 April 2008. On 6 May 2008 the applicant wrote to the Italian Ministry of Justice and to the Council of the Bologna Bar Association indicating his choice.

30. On 16 June 2008 the appointed legal aid lawyer (MCA) made a request to the registry of the Bologna Youth Court to view the relevant files. By letter dated 23 June 2008, addressed to the applicant and the Italian and Romanian authorities (apparently faxed on 2 or 8 July 2008 to the Italian authorities, receipt date for all recipients unknown), MCA indicated that she was not in a position to represent the applicant as she was not qualified to plead before the Court of Cassation and, contrary to the indication given by the Council of the Bologna Bar Association, the only available remedy was an appeal to the Court of Cassation under Article 7 of Law no. 64 of 15 January 1994, such appeal to be lodged within sixty days of notification. She also mentioned that, as it did not appear that the applicant had been notified of the impugned decision, the time-limit to appeal in his case would expire one year and forty-five days after the date of the lodging of the decision with the court registry and, therefore, she advised the applicant to appoint an advocate qualified to plead before the Court of Cassation as soon as possible in order to be able to file the appeal.

31. On 15 July 2008, the applicant wrote to the Council of the Bologna Bar Association asking for a list of advocates qualified to plead in cassation proceedings. On 23 July 2008, the applicant received such a list by e-mail and replied indicating the name of his chosen lawyer.

32. On 12 August 2008, the applicant wrote again to the Council of the Bologna Bar Association requesting further contact details (telephone numbers and e-mail address) for his chosen lawyer. He alleged that the information contained in the list was inaccurate and that he had not been able to establish any contact with the lawyer. No reply was received.

33. The applicant eventually obtained the relevant information from personal contacts and on 23 September 2008, he wrote an e-mail to the lawyer, explaining the situation, and asking whether she had been informed of her appointment. The same day, the lawyer replied stating that she had not been informed and requesting the case documents and a copy of the decision granting legal aid, in order for her to decide whether to take up the

appointment. The day after, the applicant reached the lawyer by phone and replied to her by e-mail, giving the information and documents requested.

34. On 25 September 2008 the lawyer informed the applicant that the time-limit of one year and forty-five days to appeal against the decision of 6 July 2007 had expired and that, consequently, she was not in a position to assist him.

II. RELEVANT DOMESTIC LAW

A. Notification and time-limits

35. According to Article 7 of Law no. 64 of 1994, an appeal against a decree of a Youth Court regarding the repatriation of a minor is to be lodged with the Court of Cassation.

36. According to Article 325 of the Code of Civil Procedure ("CCP"), as applicable at the time of the facts of the present case, an appeal to the Court of Cassation was to be lodged within sixty days of notification. In so far as relevant, according to Article 326 of the CCP the time-limit mentioned in Article 325 starts to run from the day on which the decision is served/notified. According to Article 327 of the CCP, as applicable at the time of the present case, in the event that the decision was not served/notified, the appeal is required to be introduced not later than a year from the filing of the decision in the relevant court registry.

37. Article 1 of Law no. 742 of 7 October 1969 regarding the suspension of time-limits during holiday periods reads as follows:

> "Time-limits for ordinary and administrative proceedings are legally suspended from 1 August to 15 September of every year and start to run again at the end of the suspension period. Where the time-limit is to start to run during a holiday period, the relevant time-limit shall start to run from the end of that holiday period."

38. According to Italian jurisprudence (see for example Court of Cassation judgment no. 25702 of 9 December 2009), when, after a first suspension, the original term has not entirely come to an end before the start of a new holiday period, a double computation of the suspension is applied.

Article 3 of Law no. 742 of 7 October 1969 reads as follows:

> "In civil matters, Article 1 does not apply to causes and proceedings mentioned in Article 92 of Law no. 12 (1941) on the judicial system and controversies arising under Article 409 *(labour cases)* and 442 *(welfare benefits)* of the Code of Civil Procedure."

Article 92 of Law no. 12 (1941) reads as follows:

> "During the holiday period courts of appeal and ordinary courts deal with cases regarding alimony/maintenance, labour law, interim measures, adoptions, temporary interdiction, interdiction, incapacitation, restraining orders for protection against a family member, eviction and oppositions to enforcement, bankruptcy, and other cases in respect of which a delay could cause prejudice to the parties in the proceedings. In

the latter case, a declaration of urgency is made by the president at the bottom of the application, by final decree, and for causes already being heard by order of a judge."

According to Court of Cassation judgments no. 28 of 5 January 1996 and no. 2946 of 20 March 1998, the suspension of time-limits for holiday periods applies to both adoption and paternity proceedings before a Youth Court.

B. Legal aid

39. Legal aid is provided for by Law no. 115 of 30 May 2002. The relevant Articles read as follows:

Article 75

"(2) Free legal assistance is also available in respect of civil, administrative, fiscal and tax proceedings, as well as matters related to voluntary jurisdiction, for the defence of a poor citizen when the claims at issue are not manifestly ill-founded."

Article 124

"An application [for legal aid] must be submitted to the Council of the Bar Association by the applicant or his lawyer, by means of a registered letter.

The competent Council of the Bar Association is that of the place within which the magistrate of the pending case has his or her seat. If the proceedings are not pending, it is that of the place holding the seat of the magistrate competent to hear the case on the merits. In the event that it relates to the Court of Cassation, the Supreme Administrative Court, or (...) the Court of Auditors, the competent Council of the Bar Association is that of the seat of the magistrate who has delivered the impugned decision."

C. International instruments and domestic law relevant to the circumstances of the case

40. The relevant articles of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, ratified by Romania and Italy, read as follows:

Article 3

"The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

Article 4

"The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

Article 6

"A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. [..]"

Article 7

"Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective State to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures – [...]

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access; [...]"

Article 8

"Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child. [...]."

Article 9

"If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be."

Article 12

"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child."

Article 13

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

Article 17

"The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention."

Article 29

"This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention."

41. The provisions of the Hague Convention are enforceable in the Italian courts by virtue of Law no. 64 of 15 January 1994.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

42. The applicant complained that his right to appeal against the decision of the Bologna Youth Court had been impaired by the delays in granting him legal aid, denying him an effective remedy as required by Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

43. The Government contested that argument.

44. The Court reiterates that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 § 1 (see, for example, *Société Anonyme Thaleia Karydi Axte v. Greece*, no. 44769/07, § 29, 5 November 2009). In this light, the Court will examine this complaint under Article 6 § 1 of the Convention, which in so far as relevant reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

45. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The applicant submitted that at the relevant time he had not had concrete information about the whereabouts of his son and the child's mother or enough knowledge of Italian law to institute proceedings under Article 29 of the Hague Convention. In this light, he had availed himself of the procedure established by Articles 7-9 of the Hague Convention, whereby proceedings could be brought through the relevant Central Authority. In those proceedings, he had been the aggrieved party – despite the fact that it had been the Prosecutor's Office which had brought the proceedings, as required by the Hague Convention. However, the faults in the legal aid system in his case had denied him the right to appeal against the decision of the Youth Court by which it had refused to order the return of his son.

47. He highlighted that he had only been made aware that he had been granted legal aid in February 2008, with the help of the Romanian authorities and after incessant requests for information on his part. He further noted that while it was true that MCA (who had been included in the list of lawyers proposed by the Government) had obtained copies of the file on 16 June 2008, she had informed him on 2 July 2008 that she was unable to represent him, as she was not qualified to plead before the Court of Cassation. Indeed, because of the Italian authorities' delays and errors, he had not actually managed to obtain representation until July 2008. The

applicant further complained of contradictory and incomplete information having been given to him throughout, which had ultimately denied him access to an appeal process.

48. The Government noted that the proceedings at issue had been instituted by the Prosecutor's Office under Article 7 of the Hague Convention, and not by the applicant, who could have brought proceedings himself under Article 29 of the Convention. Thus, the relevant decision had only been notified to the parties to the proceedings, namely the Prosecutor's Office. Given that the applicant had not been notified, the time-limit for him to lodge an appeal had been longer, namely one year from its publication and an additional ninety days as a result of holiday suspension periods. In this light, the Government confirmed that the time-limit for appealing against the decision of 6 July 2007, filed with the court's registry on 9 July 2007, had been 9 October 2008.

49. They further submitted that the Romanian authorities had been informed of the Bologna Youth Court's decision promptly, namely on 25 July 2007, as confirmed by a fax (submitted to the Court) of 30 July 2007 from the Romanian authorities making reference to the receipt of that information and another fax of 6 August 2007. Moreover, a decision on the applicant's legal aid application (submitted on 25 October 2007) had been taken on 29 October 2007 and by 16 June 2008 MCA had been appointed legal aid lawyer and had made a request to the registry of the Bologna Youth Court to view the relevant files. The Government submitted that given that the applicant had been informed promptly, he had had ample time to find a lawyer and despite any misunderstanding about the relevant remedy and competent court, he had had the opportunity to challenge the decision at issue, and it could not be said that he had been denied the opportunity to appeal.

2. The Court's assessment

(a) General principles

50. The Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal. However, where such courts do exist, the requirements of Article 6 must be complied with, so as for instance to guarantee to litigants an effective right of access to court for the determination of their "civil rights and obligations". The "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very

essence of the right is impaired (see *Mikulová v. Slovakia*, no. 64001/00, § 52, 6 December 2005).

51. There is no obligation under the Convention to make legal aid available for all disputes (*contestations*) in civil proceedings, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance on certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (see *Del Sol v. France*, no. 46800/99, § 21, ECHR 2002-II). However, despite the absence of a similar clause for civil litigation, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable to effective access to court, either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). In discharging its obligation to provide parties to civil proceedings with legal aid, when it is provided by domestic law, the State must display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (see, *inter alia*, *Staroszczyk v. Poland*, no. 59519/00, § 129, 22 March 2007; *Siałkowska v. Poland*, no. 8932/05, § 107, 22 March 2007; and *Bąkowska v. Poland*, no. 33539/02, § 46, 12 January 2010). An adequate institutional framework should be in place so as to ensure effective legal representation for entitled persons and a sufficient level of protection of their interests (ibid § 47). There may be occasions when the State should act and not remain passive when problems of legal representation are brought to the attention of the competent authorities. It will depend on the circumstances of the case whether the relevant authorities should take action and whether, taking the proceedings as a whole, the legal representation may be regarded as "practical and effective". Assigning counsel to represent a party to the proceedings does not in itself ensure the effectiveness of the assistance (see, for example, *Siałkowska*, cited above, § 100). It is also essential for the legal aid system to offer individuals substantial guarantees to protect those having recourse to it from arbitrariness (*Gnahoré v. France*, no. 40031/98, § 38, ECHR 2000-IX).

52. However, a State cannot be considered responsible for every shortcoming of a lawyer (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168). Given the independence of the legal profession from the State, the conduct of the case is essentially a matter between the defendant and his or her counsel, whether counsel be appointed under a legal aid scheme or be privately financed, and, as such, cannot, other than in special circumstances, incur the State's liability under the Convention (see *Artico v. Italy*, 30 May 1980, § 36, Series A no. 37; *Rutkowski v. Poland*

(dec.), no. 45995/99, ECHR 2000-XI; and *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002).

(b) Application to the present case

53. The Court firstly notes that the procedure under Article 29 of the Hague Convention is not at issue in the present case in so far as the applicant, who was free to so do, chose to avail himself of proceedings under Article 7 of the said Convention. In the latter proceedings, instituted by the Prosecutor's Office, the applicant had the role of interested party and was vested with a right to appeal. As to the relevant appeal procedure, the Court points out that, as confirmed by the Government, the relevant remedy in the circumstances of the case was an appeal to the Court of Cassation, which in the present case had to be filed by a lawyer competent to plead before that court by 9 October 2008.

54. The Court further notes that the requirement that an appellant be represented by a qualified lawyer before the Court of Cassation, such as applicable in the present case, cannot, in itself, be seen as contrary to Article 6. This requirement is clearly compatible with the characteristics of a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe (see, for instance, *Gillow v. the United Kingdom*, § 69, 24 November 1986, Series A no. 109; and *Vacher v. France*, §§ 24 and 28, 17 December 1996, *Reports* 1996-VI). Indeed, in the present case a lawyer was required for the purposes of the relevant proceedings and in this light legal aid was granted to the applicant. The Court must, however, determine whether that grant sufficed to safeguard the applicant's right to have access to a court secured in a "concrete and effective manner" (see, *inter alia*, *Sialkowska*, cited above § 116, and *Korgul v. Poland*, no. 35916/08, § 29, 17 April 2012).

55. In view of the general principles mentioned above, the Court must therefore examine whether in the context of these civil proceedings, the State displayed diligence so as to secure to the applicant the genuine and effective enjoyment of his right to appeal under Article 6 and whether the errors, as a consequence of which the applicant's appeal was never lodged, were manifest and imputable to the legal aid lawyers and if necessary whether they were a result of a deficient framework.

56. The Court refers to the facts of the case as outlined above (paragraphs 17-34). It notes that two matters of concern transpire from those facts, namely the delays on the part of the Italian authorities and the information to the applicant. In the interests of clarity, the Court emphasises that in the present case, directed against the Italian Government, the Italian authorities cannot be held accountable for any delays which occurred in the transfer of information from the Romanian authorities to the applicant.

57. In identifying the delays attributable to the Italian authorities the Court notes that it took the Italian authorities more than two weeks to

inform the Romanian authorities about the Youth Court's decision of 6 July 2007. It then took them at least another week to submit information about the available avenue for appeal, which had been requested by the Romanian Ministry of Justice. Later on, once the information on legal aid had been obtained by the Romanian authorities and sent on to the applicant, the legal aid application sent to the Italian authorities on 13 September 2007 was only filed in court six weeks later, on 25 October 2007. Subsequently, while the decision to grant the applicant legal aid was taken promptly (on 29 October 2007), notice of this decision was only given to the Romanian authorities four weeks later, on 22 November 2007. The relevant information only reached the applicant on 28 January 2008. The Court notes in respect of this latter delay that there appears to have been some fault on the part of the Romanian authorities. However, it also notes that the Italian authorities, who had requested an acknowledgment of receipt by the applicant, did not take any action in the two months during which this acknowledgment was not forthcoming.

Following a request by the Italian Ministry of Justice of 15 February 2008, it took more than a month for the Council of the Bar Association to provide a list of lawyers qualified to plead the applicant's case. The applicant then made his choice on 6 May 2008. However, the appointed legal aid lawyer only requested the case file six weeks later, on 16 June 2008 and two weeks later she informed the applicant that she was not competent to plead his case. Thus, on 15 July 2008 the applicant requested a new list which the authorities provided to him a week later, on 23 July 2008. However, the information contained therein, concerning his chosen lawyer, had not been correct and requests to the Council of the Bar Association for fresh information remained unanswered. As a result, the applicant only managed to contact a new lawyer through his own efforts on 23 September 2008, two months after the original list was sent.

58. Turning to the guidance supplied and the quality of the information submitted by the Italian authorities, the Court notes that the information provided by the Ministry of Justice on 6 August 2007 contained no proper guidance as to time-limits. The information given subsequently by the Council of the Bar Association on 29 October 2007 contradicted the previous instruction and was erroneous, in so far as it indicated the wrong competent court, and again this information failed to give any guidance as to the applicable time-limits to appeal. In this light, the list of lawyers provided to the applicant also turned out to be inappropriate, as MCA, the lawyer whom the applicant chose from that list, did not take up the appointment as she was not qualified to plead before the Court of Cassation. Despite the fact that at that point it was not yet critical, MCA also erred in informing the applicant that the expiry of the time-limit was one year and forty-five days from the date of the lodging of the decision. Indeed, as mentioned above, given the relevant dates in the present case, two

suspension periods were applicable to the one year time-limit to appeal, and therefore the deadline was in fact one year and ninety days from the lodging of the impugned decision. Lastly, when the applicant managed to contact another lawyer (who was competent to plead before the Court of Cassation), after having seen the file the latter also informed him that she was not in a position to assist him on the basis that the time-limit to appeal had already expired. The Court notes that, in reality and as explained above, on that date the applicant still had two weeks, namely until 9 October 2008, to lodge his appeal. Therefore, this refusal by the lawyer was based on an erroneous premise.

59. As to the delays attributable to the Italian authorities discussed above, while it finds it unjustifiable that the provision of certain simple pieces of information required up to and sometimes more than a month, the Court considers that given the generous time-limits applicable in the present case it cannot be said that those delays alone, albeit regrettable, undermined the very essence of the applicant's right of access to court in order to lodge his appeal.

60. However, the information supplied by the authorities and the legal aid lawyers raises serious concern. Indeed, in the present case, the applicant was repeatedly given incomplete or misleading information about the appeal procedure. The Court considers that the deficient and contradictory information given by two players in the legal aid system, namely the Council of the Bar Association and the Ministry of Justice, as to which remedy was available and which time-limit was applicable contributed substantially to the applicant's unsuccessful attempt to appeal.

61. As to the advice given by the appointed legal aid lawyers, the Court considers that knowledge of simple procedural formalities falls within the ambit of a legal representative's competencies just as much as knowledge of substantive legal issues. It is indeed also the lack of such knowledge which makes it necessary for a lay person to be represented by counsel. Therefore, the Court is of the view that such errors may, when critical to a person's access to court, and when incurable in so far as they are not made good by actions of the authorities or the courts themselves, result in a lack of practical and effective representation which incurs the State's liability under the Convention. In the present case, the advice of the two appointed legal aid lawyers, both of whom gave erroneous information regarding the applicable time-limit, and one of whom informed the applicant that he could no longer appeal, cannot but amount to a manifest error, which in the present case was fatal to the applicant's chances of appealing.

62. The Court considers that, given MCA's previous advice, the applicant could not have imagined that both lawyers were incorrectly applying the calculation of the time-limit and thus had no reason to seek further assistance. Moreover, there does not appear to be any further step he could have taken within the Italian legal framework to ensure that his case

had not been dismissed arbitrarily or, even assuming the lawyer had acted in good faith, as a result of wrong advice. Thus, as a consequence of failings in the system itself, namely in the way the relevant bodies directed the applicant and particularly the failings of the appointed lawyers, the applicant lost all possibility of pursuing an appeal against the impugned decision. Thus, in the Court's view these failings amounted to ineffective representation in special circumstances which incur the State's liability under the Convention.

63. The Court recalls that it is incumbent on an interested party to display special diligence in the defence of his interests (see *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001, and *Sukhorubchenko v. Russia*, no. 69315/01, §§ 41-43, 10 February 2005). In this respect it notes that in the light of the facts as presented above, the applicant persistently pursued his case and contacted the relevant authorities to obtain pertinent information. When he was required to act, such as by making his legal aid application or supplying lawyers with the relevant documentation, the time he took to proceed with those actions does not appear excessive. It follows that in the present case the applicant showed the required diligence by following his case conscientiously and maintaining effective contact with his nominated representatives (see, *a contrario, Muscat v. Malta*, no. 24197/10, § 59, 17 July 2012).

64. In the light of the above, the Court is of the view that the applicant was put in a position in which his efforts to exercise his right of access to court in a "concrete and effective manner" by way of legal representation appointed under the legal aid system failed. In conclusion, the Court considers that in the present case the delay by the Italian authorities in providing relevant and correct guidance, coupled with the lack of practical and effective representation, impaired the very essence of the applicant's right of access to court in order to appeal against the judgment of the Bologna Youth Court.

65. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

66. The applicant complained that in taking the decision, the Bologna Youth Court had exceeded its jurisdiction and competence under the Hague Convention and accordingly had interfered with his right to respect for his private and family life – an interference which had neither been justified nor necessary under Article 8 of the Convention. The applicant further complained of a violation of Article 6, in so far as he had not been given the opportunity to challenge the statements made by his wife's attorney at the hearing on 18 June 2007 and the expert report ordered by the Bologna

Youth Court, and in as much as his subsequent submissions had not been taken into account. Moreover, he had not been able to fully participate in the hearing as the relevant documents had only been made available at the hearing and only in the Italian language. Article 8, in so far as relevant, read as follows:

> "1. Everyone has the right to respect for his ... family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

67. The Government contested that argument.

68. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case (see *Guerra and Others*, cited above, § 44). While Article 6 affords a procedural safeguard, namely the "right to court" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, family life. In this light, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see *Iosub Caras v. Romania*, no. 7198/04, § 48, 27 July 2006, and *Moretti and Benedetti v. Italy*, no. 16318/07, § 27, 27 April 2010).

69. In the instant case, the Court considers that this complaint, raised by the applicant under Article 6, is closely linked to his complaint under Article 8, and may accordingly be examined as part of the latter complaint.

A. Admissibility

70. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

71. The applicant submitted that the impugned decision had had no legitimate aim and had been disproportionate. Moreover, it had not been in accordance with the law, as the Italian court had gone beyond its competence according to Articles 13-15 of the Hague Convention by interpreting the notarial deed and making assessments as to parental rights. By refusing his return application, the court had automatically given M. custody rights over the child, a matter which had fallen within the

jurisdiction of the Romanian authorities. He submitted that the court's decision had also not been in accordance with the Hague Convention, as the parents had had joint parental rights and their son had not been allowed to leave Romania with one parent without the consent of the other parent, a consent which had been missing in the present case. He reiterated that his ex-wife and son had moved to Italy on 20 January 2007 without his consent. After he had repeatedly complained to the local authorities, he had turned to the authority responsible for matters involving international kidnapping. Thus, it could not be said that he had acted with delay, and in any event, even assuming that the removal of the child had happened in 2006, the domestic court had been obliged to apply the second paragraph of Article 12 of the Hague Convention and assess whether it would nevertheless have been in the best interests of the child to order his return. In this light, the decision of the Bologna Youth Court had not been in accordance with the Hague Convention and had totally disregarded the best interests of the child.

72. Indeed, the Bologna Youth Court had failed to assess whether, according to Romanian law, the child had been taken away and detained and whether by ordering his return to Romania the child would be faced with a serious risk of being exposed to physical or psychological harm.

73. With reference to the hearing of 18 June 2007 the applicant complained that he had been denied the right to cross-examine witnesses and that the court had disregarded any elements he had put forward relevant to his claims. While it was true that there had been cross-examination in respect of aspects related to their divorce and parental rights, the applicant had not been given access to the medical documents or other evidence referred to by his ex-wife in the proceedings, nor had he been allowed to make arguments challenging that evidence. Requests made by the applicant for the court to obtain further information had been rejected by the court, contrary to the equality of arms principle. The *procès-verbal* submitted by the Government also showed that the court had not examined the reasons why he deemed the child should be returned and there had been no reference to the invocation of his procedural rights under Article 6 of the Convention. The applicant noted that the situation had been exacerbated by the fact that the public prosecutor had only been entrusted with the case on the day of the hearing, and had not been familiar with the facts of the case and the Hague Convention. Moreover, she had not rebutted any of his ex-wife's arguments. According to the applicant, the court's neglect had also been evident in its decision, which had contained factual errors and omissions. Lastly, the applicant argued that his participation had been limited because of the poor quality of the interpretation provided by the interpreter, who had only been able to interpret the proceedings summarily given the speed of the proceedings in the Italian language.

74. The Government submitted that the Youth Court's decision had been in accordance with the law and the Hague Convention. Even assuming that

the applicant's consent to A. travelling to Italy had been limited to 2005 and that his son's presence in Italy had therefore become unlawful from 1 January 2006, the applicant had instituted proceedings too late for the purposes of the Hague Convention criteria. In any event, the impugned decision had been based on the pleadings made before the court at the hearing on 18 June 2007 and had had the aim of safeguarding the best interests of the child. Moreover, the applicant had been present and had been assisted by an interpreter during the hearing leading to the impugned decision and had given his views freely.

2. The Court's assessment

(a) General principles

75. The Court first notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and is protected under Article 8 of the Convention (see *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005, and *Iosub Caras*, cited above, §§ 28-29).

76. In the sensitive area of family relations, the State is not only bound to refrain from taking measures which would hinder the effective enjoyment of family life, but, depending on the circumstances of each case, should take positive action in order to ensure the effective exercise of such rights. Thus, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action. However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken (see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I).

77. In the area of positive obligations, the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – was struck, within the margin of appreciation afforded to States in such matters (see *Maumousseau and Washington v. France*, no. 39388/05, § 62, 6 December 2007), bearing in mind, however, that the child's best interests must be the primary consideration (see *Gnahoré*, cited above, § 59).

78. Notwithstanding the State's margin of appreciation, the Court is called to examine whether the decision-making process leading to an interference was fair and afforded due respect to the interests safeguarded by Article 8 (see *Ignaccolo-Zenide*, cited above, § 99, with further references, and *Tiemann v. France and Germany* (dec.), nos. 47457/99 and 47458/99, ECHR 2000-IV). To that end, the Court must ascertain whether the domestic courts have made, within a reasonable time, an adequate

examination of the concrete implications which the return of the child would have had (see *B. v. Belgium*, no. 4320/11, § 63, 10 July 2012).

79. Furthermore, the States' obligations under Article 8 of the Convention are to be interpreted in harmony with the general principles of international law, and, in the area of international child abduction, particular account is to be given to the provisions of the Hague Convention (see *Golder v. the United Kingdom*, 21 February 1975, § 29, Series A no. 18, and *Karrer v. Romania*, no. 16965/10, § 41, 21 February 2012). A child's return cannot be ordered automatically or mechanically when the Hague Convention is applicable, as is indicated by the recognition in that instrument of a number of exceptions to the obligation to return the child (see, in particular, Articles 12, 13 and 20), based on considerations concerning the actual person of the child and his environment, thus showing that it is for the court hearing the case to adopt an *in concreto* approach to it (see *Maumousseau and Washington*, cited above, § 72). The child's best interests, from a personal development perspective, will depend on a variety of individual circumstances, in particular his age and level of maturity, the presence or absence of his parents and his environment and experiences (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 138, 6 July 2010).

80. The task to assess those best interests in each individual case is thus primarily one for the domestic authorities, which often have the benefit of direct contact with the persons concerned. To that end they enjoy a certain margin of appreciation, which remains subject, however, to European supervision whereby the Court reviews under the Convention the decisions that those authorities have taken in the exercise of that power (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Kutzner v. Germany*, no. 46544/99, §§ 65-66, ECHR 2002-I; *Bianchi v. Switzerland*, no. 7548/04, § 92, 22 June 2006; and *Carlson v. Switzerland*, no. 49492/06, § 69, 6 November 2008). The Court is thus competent to review the procedure followed by the domestic courts, in particular to ascertain whether those courts, in applying and interpreting the provisions of the Hague Convention, have secured the guarantees of the Convention and especially those of Article 8 (see, to that effect, *Bianchi*, cited above, § 92; *Carlson*, cited above, § 73; and *Neulinger and Shuruk*, cited above, § 141).

(b) Application in the present case

i. Substantive aspect

81. The Court has previously found that an interference occurs where domestic measures hinder the mutual enjoyment by a parent and a child of each other's company (see, for example, *Raban v. Romania*, no. 25437/08, § 31, 26 October 2010, and *Carlson*, cited above, § 69). Accordingly, the

Bologna Youth Court's decision not to return A. constituted an interference with the applicant's right to respect for his family life.

82. Turning to the question of whether the interference complained of was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention, the Court observes that the relevant provisions of the Hague Convention were sufficiently clear that in order to ascertain whether the removal was wrongful within the meaning of Article 3 of the Hague Convention, the Italian courts had to decide whether it had been carried out in breach of the rights of custody in the State in which the child was habitually resident immediately before his removal. Moreover, even where removal has been wrongful, Article 13 provides for exceptions where the court is not bound to order the return of the child. In the light of the applicant's submissions, it must be recalled that it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Moreover, the national courts are entrusted to resolve problems of interpretation and application of domestic legislation as well as rules of general international law or international agreement (see *Maumousseau and Washington*, cited above, § 79). It follows that for the purposes of the lawfulness requirement, the Court is satisfied that the Bologna Youth Court decision had its basis in the provisions of The Hague Convention coupled with Law no. 15 of 1994.

83. The Court also accepts that the interference pursued the legitimate aim of protecting the interests of others.

84. The Court must however determine whether the interference in question was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention, interpreted in the light of the above-mentioned international instruments, and whether when striking the balance between the competing interests at stake – those of the child and of the two parents – appropriate account was given to the child's best interests, within the margin of appreciation afforded to States in such matters (see *Karrer*, cited above, § 44).

85. As mentioned above, the task to assess those best interests in each individual case is thus primarily one for the domestic authorities, which have the benefit of direct contact with the persons concerned.

86. The Court notes that in the present case the Bologna Youth Court considered that the child had not been wrongfully removed. While the Court fails to see the relevance of the emphasis placed on the fact that the applicant did not have exclusive custody rights, given that the same procedure applies in cases of joint custody (see, *mutatis mutandis*, *Monory*, cited above, § 76), it notes that this factor did not constitute the sole basis of the decision that the removal was not wrongful. The domestic court further considered that the applicant had consented to A.'s transfer, presumably on

the basis of M.'s testimony and the deed submitted by her, which the domestic court must have found to be more credible *vis-à-vis* the applicant's assertion. The Court observes that this is essentially a matter of assessment of evidence falling within the exclusive competence of the national authorities. The Court further observes that despite its decision that the removal was not wrongful the Bologna Youth Court further assessed the implications return would have had for the child, and considered that psychological harm would ensue given that he was integrated into Italian society, albeit with some problems.

87. Having regard to the State's margin of appreciation in this sphere, and having considered the case as a whole, the Court accepts that the Bologna Court's decision struck a fair balance between the competing interests at stake giving appropriate account to the child's best interests.

88. Accordingly, the Court finds that there is no substantive violation of Article 8.

ii. Procedural aspect

89. The Court notes that the applicant also complained that he had been denied access to medical documents and other evidence referred to by his ex-wife in the proceedings, and that he had not been allowed to make arguments challenging that evidence, contrary to the equality of arms principle.

90. In this respect, the Court reiterates that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" (see, among other authorities, *Airey*, cited above, § 24). As regards litigation involving opposing private interests, equality of arms implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. It is left to the national authorities to ensure in each individual case that the requirements of a "fair hearing" are met (*Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

91. In view of its findings under Article 6 in relation to the proceedings at issue (see paragraphs 64-65 above), the Court considers that it is not necessary to examine this part of the complaint.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 12 TO THE CONVENTION

92. The applicant further complained under Article 14 of the Convention and Article 1 of Protocol No. 12 that he had been discriminated against as a father by the Bologna Youth Court, as his statements, arguments and evidence had not been given the same weight as his wife's. He submitted

that his submissions and supporting evidence had been totally disregarded by the courts, as opposed to M.'s unsubstantiated statements.

93. The Government submitted that both the pleadings of the applicant and those of the child's mother had been considered by the domestic court and therefore no discriminatory treatment had been meted out.

94. In so far as the complaint was lodged under Article 1 of Protocol No. 12 to the Convention, the Court finds that, as Protocol No. 12 has only been signed but not ratified by the respondent State, the applicant's complaint in this regard is incompatible *ratione personae* with the Convention, and must therefore be rejected pursuant to Article 35 §§ 3 and 4 of the Convention (*Maggio and Others v. Italy*, (dec.), nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 8 June 2010).

95. In so far as the complaint was lodged under Article 14, presumably in conjunction with Articles 6 and 8 of the Convention, there are no elements in the case-file which enable the Court to find that the decision of the domestic court was motivated by discriminatory considerations (see *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, § 70, 22 April 2010).

96. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF PROTOCOL No. 7 TO THE CONVENTION

97. Relying upon Article 5 of Protocol No. 7, the applicant further complained that the impugned decision, in practice, had given his wife more rights *vis-à-vis* their child. He noted that his submissions and supporting evidence had been totally disregarded by the courts, as opposed to M.'s unsubstantiated statements, and no regard had been given to the best interests of the child.

98. The Government submitted that both the pleadings of the applicant and those of the child's mother had been considered by the domestic court and therefore no difference in treatment had occurred.

99. The Court recalls that it has previously decided that Article 5 of Protocol No. 7 essentially imposes a positive obligation on States to provide a satisfactory legal framework under which spouses have equal rights and obligations concerning such matters as their relations with their children (see *Cernecki v. Austria*, (dec.), no. 31061/96, 11 July 2000, and *Iosub Caras*, cited above, § 56).

100. In the present case, the applicant does not question the legislative framework, his complaint being solely directed at the assessment of the domestic court.

101. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

103. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage suffered due to the loss of his parental rights and the effect this had had on his son, and due to the anxiety and distress he had experienced on account of the domestic proceedings.

104. The Government considered that no non-pecuniary damage had been suffered since, in their view, the applicant had not been a victim of a violation.

105. The Court considers that the applicant must have suffered distress as a result of the violation found. In the light of the circumstances of the case, and making an assessment on an equitable basis, the Court awards the applicant EUR 14,000 in respect of non-pecuniary damage.

B. Costs and expenses

106. The applicant also claimed EUR 3,500 for costs and expenses incurred before the Court. He submitted a lawyer's bill for EUR 3,000 and various bills for different amounts related to photocopying, translations and postage fees in conjunction with the proceedings before the Court.

107. The Government submitted that no costs and expenses were due since, in their view, the applicant had not been a victim of a violation. In addition, they noted that the documentary evidence submitted had related to the proceedings in Romania.

108. The Court notes that all the documentation submitted by the applicant relates to the proceedings before this Court, including the bill (in Romanian) related to his lawyer's fees dated 2012 which clearly states that it is in respect of representation before the European Court of Human Rights. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, together with the fact that a number of complaints were unsuccessful; the Court considers it reasonable to award the sum of EUR 3,000 covering costs for the proceedings before the Court.

C. Default interest

109. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints brought under Articles 6 and 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention in so far as the applicant was denied access to court in order to appeal against the judgment of the Bologna Youth Court;

3. *Holds* that there has not been a violation of the substantive aspect of Article 8 and that it is not necessary to examine the procedural aspect of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 14,000 (fourteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Danutė Jočienė President