



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

FIRST SECTION

**CASE OF T.C. v. ITALY**

*(Application no. 54032/18)*

JUDGMENT

Art 14 (+ Art 8 read in light of Art 9) • Discrimination • Family life • Manifest religion or belief • Order prohibiting a Jehovah's Witness from actively involving his young child, brought up in Catholicism, in his religious practice • No difference in treatment *vis-à-vis* child's mother • No restrictions on applicant's custody and visiting rights or on use of educational principles • Measure in child's best interests and aimed solely at preserving its freedom of choice • Order revocable and reviewable

STRASBOURG

19 May 2022

**FINAL**

**19/08/2022**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of T.C. v. Italy,**

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

Péter Paczolay, *President*,  
Alena Poláčková,  
Gilberto Felici,  
Erik Wennerström,  
Raffaele Sabato,  
Lorraine Schembri Orland,  
Ksenija Turković, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 54032/18) 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 an Italian national, Mr T.C. (“the applicant”), on 12 November 2018;

the decision to give notice to the Italian Government (“the Government”) of the complaints concerning Articles 8, 9, 14 of the Convention and 5 of Protocol No. 7 to the Convention;

the decision to grant the applicant anonymity *ex officio* (Rule 47 § 4 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 14 December 2021 and 5 April 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

## INTRODUCTION

1. The case concerns the domestic courts’ order to the applicant, a Jehovah’s Witness, to refrain from actively involving his daughter in his religious practice. It raises an issue under Article 8 of the Convention and Article 14 combined with Article 8, read in the light of Article 9.

## THE FACTS

2. The applicant was born in 1973 and lives in F. He was represented by Mr L. Marsella, a lawyer practising in Rome, and Mr O. Nardi, a lawyer practising in Castelfidardo.

3. The Government were represented by their Agent, Mr L. D’Ascia, State Attorney.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. In 2004 the applicant started a relationship with S.G. A child, E., was born from that relationship on 15 September 2006. The applicant and S.G. cohabitated out of wedlock.

6. The applicant and S.G. broke up in 2008.

7. In 2009, the applicant started to attend meetings of the Jehovah's Witnesses at the F. Kingdom Hall. In July 2011, he was baptised and became a member of that religion. At that time, the applicant used to bring E. with him to the services, two or three times per month.

8. In 2012 the applicant married E.B., who was also a Jehovah's Witness and the mother of a child, S. A child was born of their marriage.

9. In September 2013 S.G. commenced non contentious proceedings (see § 20 below) before the Livorno District Court, following disagreements between her and the applicant regarding E.'s custody and visiting arrangements. S.G. argued that the applicant, without S.G.'s agreement, took E. to Jehovah's Witness religious services, prevented the daughter from attending ballet classes and took her along to distribute religious magazines in the street.

The applicant emphasised that "E. did not grow up in a Roman Catholic environment, she did not receive any Catholic education, nor did she receive any kind of example or teaching from her mother, who has herself never been a practising Catholic". S.G. confirmed that their approach had been confined to allowing the girl to attend a private Roman Catholic kindergarten, attend other children's birthday parties and Carnival parties and ballet school, as well as attending catechism classes with a view to any future first communion.

10. On 3 February 2014 E. was heard by the District Court. Before the court, she voiced discomfort about her father bringing her to the Kingdom Hall on Saturdays and expressed a wish to spend more time playing with him. At the same time, she affirmed that she was perfectly aware of the fact that S.G. did not agree with the applicant taking her to the Kingdom Hall, and that she felt irritated and disturbed by her mother's comments on the applicant's religious activities. She also said that that she has been to Mass twice (once for Christmas and once to check the dates for starting catechism classes).

11. On 11 March 2014, the Livorno District Court settled all matters pending between the applicant and S.G. apart from the religion issue. In particular, the applicant and S.G. were granted joint custody of E., and they agreed that the latter should reside at S.G.'s home and that the applicant would spend at least 12 days per month with the daughter. The trial court invited the social services to assess the influence which the religious activities of both parties were having on E. from the psychological and behavioural points of view.

12. At a hearing of 27 May 2014, the applicant finally agreed that as of 7 June 2014 the girl could participate in the ballet show.

13. On 22 July 2014 the applicant also agreed that E. could in future take the “sacraments” (first communion) in the Roman Catholic Church and requested that she also attend the Kingdom Hall. S.G. requested that the latter be ruled out. In view of the social services’ inertia, the Livorno District Court appointed an expert, P.C., to evaluate the influence of E.’s parents’ religious activities on her behaviour.

14. P.C. submitted her technical expert report on 30 December 2014. She concluded that it was not detrimental to E. to know that the parents had different religious beliefs. However, P.C. pointed out that the means which the applicant had been employing, such as concealing from S.G., and asking E. also to conceal, her attendance at the meetings in the Kingdom Hall, were harmful. P.C. added that forcing E. to actively participate in specific religious activities and to change her habits, without an agreement with S.G., was detrimental.

15. P.C. concluded that it would have been appropriate for both parents to refrain from actively involving E. in religious activities and to respect E.’s choices not to be actively involved in such activities. However, given the social context in which the child was being raised (her school activities and her participation in birthday or Carnival parties) it would have been prejudicial to her if she had not been allowed to take part in Catholic-oriented activities. P.C. referred to the fact that E. had been baptised in the Roman Catholic Church and that all her friends belonged to that religion.

16. On 20 January 2015, following the expert’s conclusions, the Livorno District Court issued a decision ordering the applicant to refrain from involving his daughter E. in his religion (“*inibisce allo stato al ricorrente il coinvolgimento della figlia nella propria scelta religiosa*”). The District Court stated that it would not have been in the child’s interests to be involved in a religion other than Roman Catholicism (she was used to the Catholic Church by reason of the familial and social context in which she had been raised and was living), and that E.’s situation was distressing because of her attendance at the Kingdom Hall, as shown by her personal statements. The District Court stated in the reasoning of the above order what follows:

“the court-appointed expert’s report and the examination of the child lead this court to consider that the child’s interests take precedence over the practice of a religion differing from Catholicism, in which both parents had brought her up since her birth ... (the applicant having started attending the Kingdom Hall after his separation);

considering that, indeed, the child’s young age (eight years old), lacking mature discernment, prevents her from autonomously choosing a religion, and that, therefore, a religion that differs from the one adopted by the family and the social environment in which she is growing up would appear detrimental to her, by virtue of the principle of continuity governing the child’s religious education, in order to shield her from disturbance and confusion at a time when she is seeking and developing her own identity (see, in this regard, Court of Cassation rulings nos. 24683/13 and 9546/12);

considering that in the present case a distressing situation emerged caused by the child’s father’s religion and by her attendance at the Kingdom Hall, the child having

been heard by both the court and the afore-mentioned court-appointed expert, whose report highlighted that practising two different religions may cause confusion and tension for the child in the family context in which she lives;

considering that, as concerns the Catholic religion practised by the child, there is no dispute between the parties, in the light of the declarations made by Mr T.C. at the hearing dated 22 July 2014”.

17. On 17 July 2015 the applicant appealed against that judgment. On 23 February 2016 the Florence Court of Appeal dismissed the applicant’s appeal. Nevertheless, it clarified the operative part of the first-instance judgment and interpreted it as meaning that the applicant must refrain from actively involving E. in his religious activities but not from communicating his beliefs to her.

18. The applicant appealed to the Court of Cassation on 4 May 2016. On 29 May 2017 he further filed a motion with the latter requesting that his appeal be decided on an expedited basis in view of the detrimental effects which the lower courts’ judgments had had on his relationship with his daughter.

19. The Court of Cassation ultimately dismissed the applicant’s claims on 24 May 2018.

## RELEVANT LEGAL FRAMEWORK

### DOMESTIC LAW AND PRACTICE

#### A. The Italian Constitution

20. The relevant provisions of the Italian Constitution read as follows:

##### **Article 3**

“All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. ...”

##### **Article 19**

“Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality.”

##### **Article 30**

“It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock. ...”

## **B. The Italian Civil Code**

21. The Italian Civil Code (CC), in its relevant parts, reads as follows:

### **Article 316**

“Both parents have parental responsibility that is exercised by mutual agreement, taking into account the abilities, natural inclinations and aspirations of the child. ...

...

In the event of conflict on matters of particular importance each of the parents can turn to the judge without any formality, indicating the measures he considers most appropriate.

The judge, having heard the parents and arranged to hear the minor ... suggests the decisions that he considers most useful in the interests of the child and the family unit ...”

### **Article 337-bis**

“In the event of separation ... and in proceedings concerning children born out of wedlock, the provisions of this chapter apply.”

### **Article 337-ter**

“The minor child has the right to maintain a balanced and continuous relationship with both parents, to receive care, education, instruction and moral assistance from both ...

To carry out the purpose indicated in the first paragraph, in the proceedings referred to in Article 337 *bis*, the judge adopts the provisions relating to the children with exclusive reference to their moral and material interest.

...

He adopts any other provision relating to the offspring ...

Parental responsibility is exercised by both parents. The decisions of greatest interest to the children regarding education, upbringing, health and the choice of the child’s habitual place of residence are made by mutual agreement, taking into account the abilities, natural inclination and aspirations of the children. In case of disagreement the decision is left to the judge. Within the limits of decisions on matters of ordinary administration, the judge may decide that the parents exercise parental responsibility separately ...”

Decisions made in accordance with Articles 330, 333 and 337 of the Civil Code are rendered in non-contentious proceedings (*volontaria giurisdizione*). They are not final and can therefore be revoked at any time. Either party concerned may lodge an application (*reclamo*) with the Court of Appeal for a review of the decision.

RELEVANT INTERNATIONAL INSTRUMENTS

**United Nations**

22. The relevant provision of the United Nations Convention on the Rights of the Child, signed in New York on 20 November 1989, reads as follows:

**Article 14**

“1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

23. The relevant parts of the interim report of the Special Rapporteur on freedom of religion or belief on the elimination of all forms of religious intolerance, presented at the 70<sup>th</sup> Session of the General Assembly (UN Doc. A/70/286, 5 August 2015), read as follows:

“...

22. Given the child’s dependency on an enabling family environment, albeit with recognition of the variety of family forms, parents have the primary responsibility for supporting the child in the exercise of his or her human rights. According to article 5 of the Convention on the Rights of the Child, they should provide “appropriate guidance and direction” to the child in that regard. That specific responsibility entrusted to the parents also constitutes a parental right that the State must respect and protect. Article 14, paragraph 2, of the Convention further specifies that general understanding by enshrining due respect for the rights and duties of the parents “to provide direction to the child in the exercise of his or her right” to freedom of religion or belief.

...

31. ... [T]here can be no doubt that the erosion of parental rights by undue State interference is a serious problem and a source of grave violations of freedom of religion or belief. That problem requires systematic attention. ...

...

36. Freedom of religion ... does not presuppose a right of the child to grow up in a religiously “neutral” family environment, let alone a right possibly enforced by the State against parents. The principle of “neutrality” can meaningfully be invoked only against States in order to remind them of their obligation to exercise fairness, impartiality and inclusivity and in this specific sense “neutrality”, when dealing with diversity of religion or belief. By contrast, parents cannot be obliged by the State to remain religiously “neutral” when raising their children.

...



64. In cases in which the two parents follow different religions or beliefs, such a difference cannot in itself serve as an argument for treating parents differently ... Discrimination against parents on the grounds of their religion or belief may simultaneously amount to a serious violation of the rights of t

he child in their care. ...

...

76. The rights of children and parental rights in the area of freedom of religion or belief ... should generally be interpreted as being positively interrelated. ... While State interventions may sometimes be necessary, ... unjustified State interference with parental rights in the area of freedom of religion or belief will in many cases simultaneously amount to violations of the rights of the child.

...”

## COMPLAINTS

24. The applicant complains of a violation of his right to respect for his family life and his freedom of religion, alleging a disproportionate and unnecessary difference in treatment between him and his previous partner, based on his religious beliefs. Finally, he complains that the overall length of the proceedings adversely affected his relationship with his daughter. he claimed a violation of Articles 8 and 9 of the Convention, alone and in conjunction with Article 14 and Article 5 of Protocol No. 7 to the Convention.

## THE LAW

### ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION READ IN THE LIGHT OF ARTICLE 9

25. The applicant complained that the domestic courts’ decisions ordering him to refrain from actively involving his daughter in his religion had disproportionately interfered with his right to family life and his freedom of religion. He further claimed that such treatment had been based on his adherence to the Jehovah’s Witnesses religion and, as such, it had amounted to a differential treatment in respect of the enjoyment of his Convention rights. In this regard, he claimed a violation of Articles 8 and 9 of the Convention, alone and in conjunction with Article 14. He further submitted that the domestic courts’ decisions had violated the equality of rights between him and S.G. in their relations with their child, as protected by Article 5 of Protocol No. 7 to the Convention.

26. Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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.”

27. Article 9 reads as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

28. Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

29. Article 5 of Protocol No. 7 to the Convention reads as follows:

“Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.”

30. The Court, having regard to the particular circumstances of the case and being master of the characterisation to be given in law to the facts of the case (*Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018), considers that the applicant’s complaints fall to be examined under Article 14 in conjunction with Article 8 of the Convention which must however, be interpreted and applied in the light of Article 9 of the Convention (see *Abdi Ibrahim v. Norway* [GC], no. 15379/16, §§ 141-142, 10 December 2021 and, *mutatis mutandis*, *Vojnity v. Hungary*, no. 29617/07, 12 February 2013). The Court considers that for a parent to bring his or her child up in line with one’s own religious or philosophical convictions may be regarded as a way to “manifest his religion or belief, in teaching, practice and observance”. It is clear that when the child lives with his or her parent, the latter may exercise Article 9 rights in everyday life through the manner of enjoyment of his or her Article 8 rights (*Abdi Ibrahim*, cited above, § 140).

## **A. Admissibility**

31. The Court notes that that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' arguments*

#### **(a) The Government**

32. The Government stated at the outset that the Court was not a court of fourth instance, whereas the applicant had asked the Court to re-examine the facts of the case and to find a violation of domestic law, which task did not lie within the Court's competence.

33. The Government further contended that the applicant's rights *vis-à-vis* the enjoyment of his family life had not been restricted in any way. He had in fact never been prevented from sharing his religious thoughts with E., as confirmed by the Florence Court of Appeal decision (see paragraph 17 above).

34. In any case, the Government argued that the balancing exercise conducted by the domestic courts between the applicant's rights under Articles 8 and 9 of the Convention and the child's best interests had been perfectly consistent with the Court's case-law. They submitted that adherence to the habits, activities and practices of one religious denomination was incompatible with adherence to the activities and practices of another denomination. This was why, in the event of disagreement between the parents as to the religious education to be given to their child, the domestic courts were empowered and required to act to protect the best interests of the child and to ensure the equal dignity of both parents.

35. In the present case, the domestic courts had completely refrained from grounding their decisions on an abstract reasoning linked to the applicant's religion. On the contrary, they had mainly motivated the domestic courts' decision with reference to the applicant's behaviour in concealing E.'s involvement in the Jehovah's Witnesses' activities from S.G.

#### **(b) The applicant**

36. The applicant argued that the domestic courts' decisions ordering him to refrain from actively involving his daughter E. in his religion, had disproportionately interfered with his right to private and family life. In this regard he claimed that there had been no evidence at all of a risk of actual harm to E. in his religious practices.

37. The applicant further claimed that the interference had been unforeseeable by reason of its vagueness. He alleged that he was unable to

distinguish between the actions which were allowed and those which were prohibited.

38. Finally, he contended that all the decisions taken by the domestic courts had been tainted by a discriminatory bias against his religion. This had created in E.'s mind the discriminatory impression that, as compared with the Roman Catholic Church, his religion was dangerous and should be avoided.

39. In this regard, the applicant maintained that the domestic courts had only investigated his beliefs and practices, and not those of S.G., with the consequence that only he, and not S.G., had been ordered to refrain from actively involving E. in religious activities. The applicant challenged the domestic courts' decisions endorsing P.C.'s conclusions as being discriminatory inasmuch as they had affirmed that E. should be encouraged to take part in Catholic activities in order to ensure her "healthy social growth" and to prevent her being "different from her peers". He further challenged the domestic courts' decisions affirming that it would be "prejudicial to E.'s interests to be involved in a religion that differs from Catholicism".

## 2. *The Court's assessment*

40. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.

41. The Court notes at the outset that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention, even if the relationship between the parents has broken down (see *Ilya Lyapin v. Russia*, no. 70879/11, § 44, 30 June 2020). In the present case, the applicant's relationship with his daughter was limited by the decisions of the domestic authorities. Therefore, the latter constituted an interference with the applicant's right to respect for family life under Article 8 of the Convention.

42. The Court pointed out that the practical arrangements for exercising parental authority over children defined by the domestic courts could not, as such, infringe an applicant's freedom to manifest his or her religion (*Deschomets v. France* (dec.), no. 31956/02, 16 May 2006). It also emphasised the priority aim of taking account of the best interests of children, which involved reconciling the educational choices of each parent and attempting to strike a satisfactory balance between the parents' individual conceptions, precluding any value judgments and, where necessary, laying

down minimum rules on personal religious practices (*F.L. v. France* (dec.), no. 61162/00, 3 November 2005).

43. For the purposes of Article 14, a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background (see, among many authorities, *Molla Sali v. Greece* [GC], no. 20452/14, §§ 135-136, 19 December 2018, *Vojnity v. Hungary*, cited above, and *Palau-Martinez v. France*, no. 64927/01, § 39, ECHR 2003-XII).

44. The Court must therefore first examine whether the applicant can claim to have received different treatment. It observes that in the present case the domestic courts, in their decisions ordering the applicant to refrain from involving his daughter in his religious practices, had regard above all to the child’s interests. The child’s interests lay primarily in the need to maintain and promote her development in an open and peaceful environment, reconciling as far as possible the rights and convictions of each of her parents.

45. At the same time, the Court notes that both P.C.’s report and the domestic courts’ decisions referred to the fact that involving E. in the applicant’s religious practices would destabilise her in that she would be induced to abandon her Roman Catholic religious habits. Moreover, P.C. and the domestic authorities also mentioned the applicant’s behaviour and the means he was using to involve E. in his religious practices, in particular his concealment from S.G. of E.’s involvement in the Jehovah’s Witnesses’ activities (see paragraph 14 above).

46. Even assuming that the applicant and S.G. could be considered to be in comparable situations, the Court observes that the contested measure had little influence on the applicant’s religious practices and was in any event aimed solely at resolving the conflict arising from the opposition between the two parents’ educational concepts, with a view to safeguarding the child’s best interests.

47. The Court further notes that no measure had been adopted to prevent the applicant from using the educational principles he has opted for in relation to E. Nor does it appear from the decisions contested by the applicant that he was prevented from taking part in the activities of the Jehovah’s Witnesses in a personal capacity. Rather, in the Court’s view, the national authorities attempted to reconcile the rights of each party, which was demonstrated by the attenuated nature of the contested measure.

48. The fact that the domestic courts ordered the applicant to refrain from actively involving his daughter in his religious activities did not severely circumscribe his relationship with her. In particular, he suffered no

restrictions on his custody and visiting rights. The reasons given by the domestic courts show that they focused solely on the child's interests, having decided to protect her from the purported stress exerted by the applicant's intensive efforts to involve her in his religious activities. In that context, the Court notes that E. attended Jehovah's Witnesses religious services from 2009 to 2015 (from the age of 3 until the age of 8, when the decision of the Livorno District Court ordered the applicant to refrain from actively involving her), and at the same time participated in religious discussions and prayers at the applicant's home. Following P.C.'s report, the domestic courts concluded that the applicant's attempts to involve E. in his religious activities more intensely would be harmful for her.

49. In this respect the Court observes that the present case does indeed differ from *Palau-Martinez v. France* (cited above), in which a violation of Article 8 in conjunction with Article 14 was found on account of the fact that residence rights had been determined on the basis of the applicants' religious beliefs (see also, *a contrario*, *Cosac v. Romania* (dec.), no. 28129/05, 23 September 2014; *Deschomets v. France* (dec.), cited above; and *F.L. v. France* (dec.), cited above) and from *Vojnity v. Hungary*, cited above, where the Court found that there had been no reasonable relationship of proportionality between a total ban on the applicant's access rights on the basis of his religious convictions and the aim pursued, namely the protection of the best interests of the child.

50. In the present case, the sole purpose of the contested measure was to preserve the child's freedom of choice by taking into account her father's educational views. Also, since circumstances may change over time and given that domestic decisions are not final and can therefore be revoked at any time, the applicant may reapply to the Livorno District Court for a review of the decision issued on 20 January 2015.

51. In view of the foregoing, the fact that the domestic courts ordered the applicant to refrain from actively involving the daughter in his religious practice cannot be seen as constituting a difference in treatment between him and the mother of the child based on religion.

52. The Court finds that there has accordingly been no violation of Article 14 of the Convention taken in conjunction with Article 8.

#### ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. The applicant complained under Article 6 of the Convention that he had been denied a fair trial in that the domestic courts had failed to decide on his appeal as a matter of urgency. He recalled that the proceedings had lasted a total of 4 years, 8 months and 6 days, and that such a period of time had had irreparable consequences on his relationship with his daughter.

54. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], cited above,

§ 124), considers that the applicant's complaints fall to be examined under the procedural limb of Article 8, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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.”

55. The Government argued that the proceedings in issue had been complex and required specific technical investigation. At all events, they concluded that the overall length of time had not violated the applicant's procedural rights under Article 8 of the Convention and had been perfectly in line with the Court's case-law.

56. The Government further pointed out that the applicant had not suffered any restrictions in his custody rights *vis-à-vis* E., as the decision imposed by the domestic courts had solely concerned the child's active involvement in the activities and religious services of the Jehovah's Witnesses Community.

57. The Court recalls that although Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8 (see *W. v. the United Kingdom* judgment of 8 July 1987, Series A no. 121, p. 29, § 64, and *Cincimino v. Italy*, no. 68884/13, § 64, 28 April 2016). In this connection, the Court may have regard to the length of the local authority's decision-making process and any related judicial proceedings (see *W. v. the United Kingdom*, cited above, § 65). Effective respect for family life requires that future relations between a parent and child be determined solely in the light of all the relevant considerations, and not by the mere passage of time (see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 102, ECHR 2000 I; *D'Alconzo v. Italy*, no. 64297/12, § 64, 23 February 2017; and *Barnea and Caldararu v. Italy*, no. 37931/15, § 86, 22 June 2017). Otherwise, there will be a failure to respect their family life, and the interference resulting from the decision cannot be regarded as “necessary” within the meaning of Article 8.

58. In this connection, the Court has further clarified that in cases concerning a parent's relationship with his or her child, there is a duty to act swiftly and exercise exceptional diligence, in view of the risk that the passage of time may result in a *de facto* determination of the matter (see, *mutatis mutandis*, *Kautzor v. Germany*, no. 23338/09, § 81, 22 March 2012 and, in the context of contact rights, *Endrizzi v. Italy*, no. 71660/14, § 48, 23 March 2017, and *Improta v. Italy*, no. 66396/14, § 45, 4 May 2017).

59. Turning to the circumstances of the present case, the Court notes that the proceedings concerning E.'s custody began in September 2013. E. was

heard without delay in February 2014. On 11 March 2014 the District Court invited the social services to assess the influence which the religious activities of both parties were having on E. from the psychological and behavioural points of view. Due to the latter's inertia, the domestic courts promptly appointed an expert on 22 July 2014 (see paragraph 13 above). The latter submitted her technical expert report on 30 December 2014, and the Livorno District Court took its decision on 20 January 2015. Having regard to the sensitivity of the issues at stake and to the proactive approach of the Livorno District Court in dealing with the proceedings, the Court does not consider the length of the first instance proceedings to have been excessive.

60. Concerning the alleged length of the appeal proceedings, the Court notes that the Florence Court of Appeal took seven months to deal with the case, whereas the Court of Cassation took 24 months.

61. In this regard the Court notes, as the Government pointed out, that during this time the applicant sustained no restrictions on his custody and visiting rights. Moreover, he has not at all demonstrated how the length of the proceedings before the Florence Court of Appeal and the Court of Cassation could have had irremediable consequences on his relationship with his daughter.

62. In those circumstances, the Court finds that the applicant's complaint is manifestly ill-founded and should therefore be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

#### FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Article 14 in conjunction with Article 8 admissible and the remainder of the application inadmissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 14 in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 19 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Registrar

Péter Paczolay  
President



T.C. v. ITALY JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Paczolay, Felici and Sabato are annexed to this judgment.

P.P.C.  
R.D.

## CONCURRING OPINION OF JUDGE SABATO

### I. Introduction

1. In a situation in which, pursuant to the criteria of Article 35 § 3 (a) of the European Convention on Human Rights (“the Convention”), a decision of inadmissibility would normally have been pronounced on the grounds that the application is manifestly ill-founded, in the present case I have given my agreement – along with that of the other colleagues of the majority – that a judgment finding no violation should instead be delivered, in accordance with a practice established by the Court in order to allow, in some instances, dissenting judges to express their views, since Article 45 § 2 of the Convention envisages separate opinions only for judgments.

2. The use of this practice is not an obstacle, however, to the fact that, in the future, an application similar to the one under scrutiny must nonetheless be declared inadmissible.

3. At the same time, this practice also allows me, having agreed in substance with the result of the examination of the case, to express my views, partly additional to and partly different from those of the majority, and in any event different from those of the dissenting judges.

### II. A few remarks on the facts and the legal context of the case

4. First, I should like to restate some of the essential facts of the case, as well as the domestic legal context, in a manner that will better permit me to develop the reasons that I shall set out below.

5. From a factual point of view, it is to be noted that neither of the parents - T.C. (hereafter “the father” or “the applicant”) and S.G. (“the mother”) - of the little girl E. (“the little girl”) was, when their out-of-wedlock relationship came to an end in 2008, practicing any religion. This is clearly acknowledged by the applicant himself (see paragraph 9 of the judgment). The parents’ approach, in accordance with a custom which is widespread in many secularised countries, was not to engage in any religious activity, but rather to agree with some of the social (non-religious) behaviours accepted (or non-proscribed) by a religious group (in the present case, Catholicism, hereinafter “the first religious group”); when these social behaviours were connected to a religious activity, such as a rite or ceremony, the activity was not considered to be a value in itself, but a social event (see below).

6. Accordingly, by a joint decision of the parents, the young girl was enrolled in a private kindergarten that was operated in accordance with the values of the first religious group. The inevitable consequences ensued, in particular the child’s socialisation with peers whose families had made a similar choice, including through freedom to participate in birthday parties and ballet school, as well as carnival parties on occasion.

7. The father then started an intense involvement with the Jehovah’s Witnesses (“the second religious group”). In addition to telling the little girl about his new beliefs and showing her – at home – corresponding educational material, he began taking her to services (in the Kingdom Hall - see paragraph 7 of the judgment). Such attendance having not been agreed to by the mother, the father convinced the little girl to conceal from her mother her participation in the services (and this was something which irritated the girl – see paragraphs 10 and 14 of the judgment).

8. When the father – who in the meantime had married another member of the second religious group (see paragraph 8 of the judgment) – ceased taking his daughter to ballet school and birthday parties, and objected to her participation in carnival parties, these activities being proscribed by his new beliefs, the mother became aware of several problems. These included the fact that her daughter had been present at the second religious group’s services on numerous occasions, whereas she had been allowed to attend the first religious group’s services only twice, by mutual agreement of the parents (see the reference to “Mass” in paragraph 10 of the judgment), and only with a view to attending catechism classes and a future first communion (consistent with the fact that, aside from being a “sacrament” – see paragraphs 9 and 12 of the judgment – this is a social rite of passage, through which the boy or girl is viewed as more mature by society – see paragraphs 5-6 of this opinion).

9. As for the domestic legal context, it provides that where there is no agreement on issues of particular importance involving the exercise of parental responsibility, each parent can turn to the judge. This is done without any formality, as such an application does not start contentious proceedings, but proceedings qualified as “*volontaria giurisdizione*” (*iurisdictio inter volentes* – see paragraphs 9 and 21 of the judgment). This institution is a feature of many continental jurisdictions, whereas common-law countries have a similar, but not identical, institutional approach in relation to “private law proceedings”.<sup>1</sup> When domestic law resorts to such *iurisdictio inter*

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<sup>1</sup> As for the relevance of this type of proceedings under the common law, see *Re G (Children)*, [2012] EWCA Civ 1233 (<http://www.bailii.org/ew/cases/EWCA/Civ/2012/1233.html>), a judgment in which the UK domestic court included a “postscript” to clarify what follows:

“91. This is not a case where the State – the court – is seeking to intrude uninvited into the private sphere of this particular family or of the community or communities of which they are part. These are not care proceedings, what family lawyers call public law proceedings, ...; they are what family lawyers call private law proceedings, ... The court – the State – is involved in the present case only because the parents have been unable to resolve their family difficulties themselves, whether with or without the assistance, formal or informal, of their community, and because one of the parents... has therefore sought the assistance of the court.”

The case was one of many in UK case-law, in which the domestic courts took responsibility to prevent exposure of children to what was believed to be a new religious conduct not shared by both parents. The judgment relies, *inter alia*, on *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, a rather famous case within common-law jurisdictions. A full review of

*volentes*, the State collaborates with private individuals to achieve a particular purpose (in my case, choices in the area of a child’s religious upbringing) that is generally reached by agreement, failing which the judge has the role of a neutral intermediary who is called upon to resolve a crisis of cooperation between the disagreeing parents, both of whom are entitled, with the child, to a legal resolution that they are incapable of reaching on their own. This is very different from contentious proceedings, in which the judge exercises actual jurisdiction, as an authority, resolving a conflict of interests and establishing which of the parties is entitled to legal protection.<sup>2</sup> Thus, Article 316 of the Italian Civil Code conforms to the above tradition, stating that the judge, after hearing the parents and the child, “suggests the decisions that he or she considers most useful in the interests of the child and the family unit” (see paragraph 21 of the judgment).

10. Having clarified the context in which the domestic judges exercised their role, it seems to me appropriate to emphasise that the court’s particular involvement due to a lack of parental consent entails that the nature of the “order” – referred to in paragraph 16 of the judgment, as clarified in the subsequent paragraph 17 – was, as specified by the aforesaid Article 316, a “suggestion”. Indeed, this kind of order – having no value of *res judicata* – retains its binding force in so far as – and only if – the parents do not reach an agreement, even subsequent to delivery of the order. Agreement overrules a “suggestion”.

11. In the above context of the court’s exercise of a peculiar role, I applaud the fact that, despite the parents’ initial disagreement on several points, court mediation resulted in the father’s consent to the renewed possibility of the little girl’s participation in preparing for first communion and in various social activities that had originally been allowed (and then unilaterally restricted), and in particular for the one that was least acceptable to the father due to the prohibition imposed by the second religious group, namely, participation in ballet performances (see paragraphs 12 and 13 of the judgment). However, disagreement remained as to the child’s participation in

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the position of English law concerning parental disputes about the religious upbringing of children is Sylvie Langlaude, “Parental disputes, religious upbringing and welfare in English law and the ECHR”, in John Eekelaar (Ed.), *Family Rights and Religion*, Routledge, 2017, pp. 71 et seq.

<sup>2</sup> It is interesting to note that the French Ministry of Justice in 2013 entrusted a research team with the task of carrying out a study on the evolution of the role of the judge; among the several judicial roles that the final report identifies as remaining needed in societies in the 21st century, one of them – termed as “*office tutélaire*” (protective role) – includes *iurisdictio inter volentes*, as well as, in general, protection of vulnerable persons. It also important to emphasise the title of the report, underlining the subdivision between the “prudential” and “authoritative” tasks of the judge: Antoine Garapon, Sylvie Perriolle and Boris Bernabé, *La prudence et l'autorité*, Odile Jacob, 2014. The report, in a slightly different text, can also be downloaded in its official format from the website “Vie Publique”: <https://www.vie-publique.fr/rapport/33725-la-prudence-et-lautorite-loffice-du-juge-au-xxie-siecle>.

the services of the second religious group. Thus, attendance at services (“active involv[ement] in religious activities”) was the only subject of the “refraining order”, as elucidated by the Court of Appeal (see paragraph 17 of the judgment), which also clearly stated that the father remained free to communicate his beliefs personally to the young girl, and to instruct her in them (*ibid.*).

### **III. The need to clearly characterise the case also under Article 9 of the Convention**

12. Having thus clarified the circumstances of the case in addition to what is set out in the judgment, I shall now turn to certain points where my views differ from those of the majority in relation to the characterisation of the case.

13. The majority (in paragraph 30 of the judgment) choose to examine the applicant’s complaints – lodged under several Articles of the Convention (see paragraph 25) – essentially under Articles 14 and 8 of the Convention, albeit read “in the light of Article 9”. Although they recognise that the religious upbringing of children is a way to “manifest ... religion or belief, in teaching, practice and observance”, they consider that they can lessen consideration of Article 9 in relation to Article 8 because “when the child lives with his or her parents, the latter may exercise Article 9 rights in everyday life through the manner of enjoyment of his or her Article 8 rights”. In doing so, the majority rely essentially on *Abdi Ibrahim v. Norway* [GC] (no. 15379/16, §§ 140-142, especially § 140, 10 December 2021).

14. I consider, on the contrary, that although the Grand Chamber in *Abdi Ibrahim* did make the above statement (by way of an *obiter dictum*), the same judgment did not find it necessary “to determine the scope of Article 9 and its applicability to the matters complained of” (*ibid.*, § 140), since the applicant parent’s complaint was not related to a situation in which she lived with the child or exercised visiting rights, but to a situation where the child was taken to a foster home. In this context, the complaint concerned the applicant parent’s wish that the child be brought up, by the foster parents, in line with that parent’s faith.

15. In order to characterise the case as falling mainly under Article 8, the majority (again in paragraph 30 of the judgment) also rely on *Vojnity v. Hungary* (no. 29617/07, 12 February 2013). In my humble view, that case also provides no precedent to support the decision to demote the role of Article 9 in the case now under scrutiny by the Court. Indeed, in *Vojnity* the complaint concerned the total removal of the applicant parent’s access rights on account of his attempts to transmit his religious beliefs to his child, which the Court found to be discriminatory in relation to the protection of Article 8. The prevailing role of Article 8, as in *Abdi Ibrahim*, was obvious.

16. In the present case, however, it is not disputed that both parents exercised without restriction their parental rights regarding contact with the

little girl and were also free to instruct her on religious matters, which they had previously decided not to do; the only restriction imposed on the father, after the court's order, was that he could not have his daughter participate in the second religious group's services. It is therefore quite clear that there was no general situation of interference with private life in this case, in contrast to *Abdi Ibrahim* and *Vojnity*, where the relevant parents were totally prevented from having contact, both for the purpose of religious upbringing and with regard to all other forms of personal relationships with the children. Unlike in those precedents, the interference in the present case translates only into a necessity for the father to make arrangements to attend services alone, which cannot in any way be said to affect his private and family life significantly in terms of his relations with his daughter. The interference created by the court's order influenced, to use the majority's own word, mainly (or only) the way of manifesting one's religion or belief. This supports, in my view, the idea that the applicability of Article 9 should have substantially prevailed over (or at least co-existed with) all other overlapping Convention rules. Thus, the case should have been examined with Article 9 as the basis (or one of the bases, in parallel with Article 8) of the complaint.

17. There are now very many judgments and decisions in which the Court has considered the question of children and religion, so it is possible to identify those closest to the present case. Those which seem to me most relevant, in which Article 9 was held to be applicable in parallel with Article 8, are indeed cited by the majority (see paragraph 42 of the judgment) but their role is not emphasised as, in my modest view, it should have been:

- In *F.L. v. France* ((dec.), no. 61162/00, 3 November 2005), a mother, who was a member of a religious group and was separated from her partner but exercised joint parental authority, complained about a court order prohibiting her from bringing her children into contact with members of the movement (apart from herself and her new partner) and taking them to religious rituals; the children's father disagreed with their attendance. The Court considered that such interference, which was prescribed by law and pursued a legitimate aim (protection of the rights of the children and their father), was also "necessary in a democratic society". The applicant was able to continue to practise her religion personally and without restriction and could even do so in her children's presence, provided that they were not brought into contact with other members. The Court also emphasised the priority aim of taking account of the best interests of children, which involved reconciling the educational choices of each parent and attempting to strike a satisfactory balance between the parents' individual conceptions, precluding any value judgments and, where necessary, laying down minimum rules on personal religious practices. On similar grounds, the Court found no appearance of discrimination as prohibited by Article 14. As follows clearly from the

above summary, this case is a genuine authority for the case at hand, given the similarity of context; it also is striking to note the almost identical terms in the order issued by the French court in this precedent (restraining the parent from “*impliquer*” (involv[ing]) the child in services) and the order issued by the Italian court in the case under scrutiny.

- In a different context, *Deschomets v. France* ((dec.), no. 31956/02, 16 May 2006) may also be considered a relevant precedent. Both *Deschomets* and *F.L.* dealt with Article 9 issues separately from Article 8, in situations comparable with the one before us here<sup>3</sup>.

#### **IV. The role of parents’ agreement in religious choices concerning their children in view of the fact that children have their own “right to freedom of religion”**

18. In my humble view, the fact that the majority were not prepared to ascribe a central role to Article 9 in addressing the issue of the religious upbringing of children has prevented them from grasping the opportunity offered by the present case to develop the Court’s case-law on the role of parents’ agreement in religious choices concerning those same children.

19. A new understanding of this role should, in my opinion, be based on Article 14 of the Convention on the Rights of the Child (CRC), cited in the majority’s judgment (see paragraphs 22-23) without, however, it being referred to clearly in the reasoning. As is well known, the European Convention on Human Rights cannot be interpreted in a vacuum and must be construed in harmony with the general principles of international law; account should be taken, as indicated in Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties, of “any relevant rules of international law applicable in relations between the parties”, and in particular of the rules concerning the international protection of human rights (see, among many other authorities, *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 76, ECHR 2014, where reference was made to an ILO Convention and the European Social Charter). Although it is not the Court’s “task to review governments’ compliance with instruments other than the European Convention on Human Rights and its Protocols”,

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<sup>3</sup> On this decision, see Renata Uitz, “Rethinking *Deschomets v. France*: reinforcing the protection of religious liberty through personal autonomy in custody disputes”, in Eva Brems (Ed.), *Diversity and European Human Rights - Rewriting Judgments of the ECHR*, Cambridge University Press, 2012, pp. 173 et seq., an essay in which the author proposes a specific approach. Leaving aside any consideration regarding the given approach, it is worth noting that the essay criticises the fact that, relying mainly on Article 8, the Court lost sight of “the kernel of the dispute: the religious freedom (Article 9) of the parent (and child)”. I should also note that, in reality, as I mentioned in the text, in *Deschomets* the Court examined, if only briefly and with reference to the conclusions reached under Article 8, the complaint under Article 9.

other international law instruments “provide it with a source of inspiration” (see, for instance, with reference to the European Social Charter, *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V). Thus, in my view, Article 14 CRC should inspire the Court’s reading of Article 9 of the Convention.<sup>4</sup>

20. While the role of religion *vis-à-vis* family law and the plurality of family types in Europe has been widely investigated in recent years from a comparative perspective, including sociological aspects,<sup>5</sup> one strand of research has addressed the issue – very relevant in my view – of the child’s own “right to religious freedom” in international law.

21. The four guiding principles of the CRC – non-discrimination, best interest of the child, right to life and development, and right to be heard – are, together with the panoply of individual children’s rights and freedoms recognised in that convention, in obvious tension with parents’ rights, a tension which reaches an acme in the area of freedom of thought, conscience, and religion: in fact, this is the area which is usually viewed as the subject of parents’ educational role.

22. Recognising an independent right or freedom for the child (especially when the right is related to freedom of thought, conscience, and religion) might involve taking away – at least in part and in some circumstances – the corresponding right or freedom from parents, whose educational role is still viewed as the vehicle to exercise their own rights or freedoms.

23. As noted above, where the exercise of the parents’ rights or freedoms concerns the religious upbringing of the children (including the freedom not to impart any religious education, or to impart an atheistic or agnostic approach to life), this is traditionally seen as a way for parents to manifest their own religious beliefs.<sup>6</sup>

24. How far can this be taken, now that Article 14 CRC recognises children’s own freedom of religion? Furthermore, while agreement between parents is an obvious pre-requisite for the exercise of the right to provide religious upbringing for one’s children (see paragraph 9 of this opinion with regard to the role of the courts to substitute for a lack of such agreement), is

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<sup>4</sup> See, for example, Ursula Kilkelly, “The Best of Both Worlds for Children’s Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child”, in *Human Rights Quarterly*, Johns Hopkins University Press, Vol. 23, No. 2 (May 2001), pp. 308-326.

<sup>5</sup> See, for example, Jane Mair and Esin Örüçü (Eds.), *The Place of Religion in Family Law: A Comparative Search*, Intersentia, 2011; Prakash Shah and Marie-Claire Foblets (Eds.), *Family, Religion and Law: Cultural Encounters in Europe*, Ashgate, 2016; and John Eekelaar (Ed.), *Family Rights and Religion*, Routledge, 2017.

<sup>6</sup> See, *inter alia*, on the basis of Article 18 of the International Covenant on Civil and Political Rights, CCPR General Comment No. 22, adopted by the Human Rights Committee on 30 July 1993 on “Article 18 (Freedom of Thought, Conscience or Religion), paragraph 6, which clearly states “the liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions”.



there a place for the child’s choice? In other areas of children’s rights, a principle has been developed – the so-called principle of “evolving capacities” – to the effect that parents have the responsibility to adjust continually the levels of support and guidance they offer to a child, and parental guidance should decrease in a manner corresponding to the extent to which, as the child grows, his or her autonomy increases. This has led some authors<sup>7</sup> to apply the same standard – as formulated in general terms by the Committee on the Rights of the Child (CtRC)<sup>8</sup> – to religious freedom. In recent times, under such a growing international attention to the topic, the CtRC has then itself clearly applied the same standard to religious freedom,

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<sup>7</sup> The specific proposal is by Ursula Kilkelly, “The Child’s Right to Religious Freedom in International Law: The Search for Meaning”, in John Eekelaar (Ed.), *Family Rights and Religion*, cited above, pp. 123-148, esp. pp. 129-132. For a similar approach, providing an interesting analysis of the Court’s case-law, Sylvie Langlaude Doné, “The Child’s Religious Freedom, Religious Upbringing and the Prevention of Coercion in International and English Law”, in *Annuaire Droit et Religions*, 2012-2013, pp. 643-661, available in English at SSRN: <https://ssrn.com/abstract=2445972>. From an adoption perspective very close to the *Abdi Ibrahim* context, see Anat Scolnicov, “The Child’s Right to Religious Freedom and Formation of Identity”, in John Eekelaar (Ed.), op. cit., pp. 149 et seq. See also, by the same author, the chapter devoted to children’s rights in Anat Scolnicov, *The Right to Religious Freedom in International Law, Between Group Rights and Individual Rights*, Routledge, 2012.

<sup>8</sup> See Committee on the Rights of the Child, General Comment No. 7 (2005), Implementing Child Rights in Early Childhood, Fortieth Session, Geneva, 12-30 September 2005. The CtRC refers in particular to Article 5 of the CRC and the concept of “evolving capacities as an enabling principle”, that is:

“... processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children’s evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children’s physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child’s interests and wishes as well as the child’s capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more guidance than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations”.

In general, on the concept of “evolving capacities” see Sheila Varadan, “The Principle of Evolving Capacities under the United Nations (UN) Convention on the Rights of the Child”, *The International Journal of Children’s Rights*, 27(2), 2019, pp. 306-338, <https://doi.org/10.1163/15718182-02702006>.

if only in adolescence<sup>9</sup>. Some countries have also set by law an age for teenagers to decide on religion without parental consent.<sup>10</sup>

25. The Court’s case-law, and the co-existing Council of Europe instruments, have already elaborated on some aspects of the religious freedom of children. However, in most cases this has taken place in contexts in which – so to speak – the parents’ and children’s choices were aligned, and the conflict was with State policies.<sup>11</sup> Of course there has been some limited elaboration also, as attested by the precedents cited in the judgment, on disagreement between parents, especially in situations of separation or divorce. What I argue here is that discussion on the role of the child’s choices *vis-à-vis* the parents’ (and guardians’) role has started to be treated only recently.<sup>12</sup>

26. As I stated above, the present case could have offered the Court, had the majority attached more importance to the complaint under Article 9 of the Convention, the opportunity to read this Article in the light of Article 14 CRC, which highlights the right of the child to freedom of religion and therefore, in my modest view, emphasises the duty of parents to exercise their guidance in a manner consistent with the child’s evolving capacities and ability to make choices.

27. To reason hypothetically, in accordance with the above line of thought – and even though the little girl is not a party to the case under scrutiny – the Court could have assessed whether the domestic courts had duly considered the child’s own preferences. In my opinion, they did: with a view to this assessment, the domestic court heard the little girl in person, and then asked

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<sup>9</sup> Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 6 December 2016, § 43, which reads as follows:

“The Committee urges States parties to withdraw any reservations to article 14 of the Convention, which highlights the right of the child to freedom of religion and recognizes the rights and duties of parents and guardians to provide direction to the child in a manner consistent with his or her evolving capacities (see also art. 5). In other words, it is the child who exercises the right to freedom of religion, not the parent, and the parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence.”

<sup>10</sup> See, for example, the survey carried out by the European Union Fundamental Right Agency, “Change of religion”, in <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/change-religion>

<sup>11</sup> See, for example, the two chapters on “Freedom of thought, conscience and religion” and “Parents’ rights and the freedom of religion of their children”, in European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to the rights of the child*, 2022, pp. 37-41.

<sup>12</sup> See, for example, Nuala Mole and Blandine Mallevaey, *Feasibility study of a legal instrument on the protection of the best interests of the child in situations of parental separation*, Council of Europe, 2021, esp. p. 71.

the court-appointed expert to hear her. The replies – a point to which I will return below (see paragraph 31 of this opinion) – were clear.

28. Let us now concede, for a moment, that the child was so young that she could not (or should not) be heard. The approach in support of the view that parents' freedom of religion in terms of imparting (or not imparting) religious beliefs to children has necessarily to develop into mere guidance, consistent with their age and capacities as they grow and start possibly diverse social relationships, also has several consequences if the child is young. I will focus only on whether recognition of the child's own freedom of religion also imposes a new understanding of the other parent's approach, especially if it differs from that of the first parent. If it is the child who, even at a young age, is entitled to his or her own freedom of religion, and not each parent (or both parents) in his or her place, then the second parent's divergent voice – until the point at which the child's voice can be heard directly – must be considered as a (perhaps imperfect, but nonetheless important) intermediary of the child's voice.

29. Reading Article 9 of the Convention in the light of Article 14 CRC could thus have led the Court – to continue with the hypothetical reasoning I envisage for a scenario where the girl was too young to be heard – to consider that the mother, rather than being a mere "owner" of custody rights (including, incredibly, the management of the child's freedoms) to be balanced against those of the father (with the domestic court to decide in case of conflict), was one of the child's representatives, speaking and choosing on the latter's behalf. This is the only perspective, in my view, compatible with the doctrine of evolving capacities; otherwise, only children of a certain age would be entitled to rights and freedoms under the CRC and the Convention. If the mother spoke for the child, and her voice had at least the same importance as the father's voice, just as in the other hypothesis in which dissent is expressed by a child having sufficient discernment, a delicate dialogue would have to be entered into by a father wishing to make a new religious choice that would affect the child, reducing that choice – to use the vocabulary of the CtRC - to mere "support and guidance" for the child.

30. It is thus not surprising to note that, although the girl was heard in the case in hand, in view of the parents' disagreement the domestic courts, in their vicarious role, followed precisely the above standard of mere "support and guidance", by permitting the father to instruct the little girl, and restricting only his taking her to services.

31. Whether the child is young or old enough to express views, from the above perspective – and this is my main point – the child's own right or freedom, manifested directly and/or through the other parent, is one of the "rights of others" that, under Article 9 § 2 (but also under Article 8 § 2), may justify restrictions on one parent's freedom of religion (and of respect to private life). There is no need for the child to be a party to the case for the

Court to start adopting this approach in future. The literature which has developed the relevant conceptual framework will prove useful.

32. My reasoning would be incomplete if I do not return to the facts of the present case: the little girl, who was very young at the start of the events, was heard by the domestic court at the hearing of 3 February 2014, at the age of seven and a half years, and later also by the court-appointed expert. She very clearly expressed her views concerning the embarrassment she had felt in concealing from her mother the fact that she was being taken every week by her father to services of the second religious group. She mentioned her preference not to attend, and her choices as to relationships with peers. As evidence of the genuine nature of the statements made by the little girl, one can consider that she did not exempt her mother from criticism, in that the mother reproached the father too harshly for his behaviour! The dissenting judges appear to misunderstand that the domestic courts' "suggestion" was specifically based on the perception that the same child had of her needs (as confirmed by the court-appointed expert). They build from this misunderstanding an assumption that there was even some discriminatory intent.<sup>13</sup> For my part, I find, on the contrary, that the approach taken was very positive.

#### **V. The principle of continuity or "status quo"**

33. There is one additional perspective based on which the majority should have chosen, in my view, to further endorse the attitude taken by the domestic courts.

34. When ordering the father, in the absence of agreement by the mother (and by the same daughter) to involve the small girl excessively in the second religious group's services, the domestic courts have essentially decided in the present case to give priority to the approach initially agreed by both parents regarding the little girl's exposure to religious activity. This agreement, as I mentioned, was in a way also an indirect expression of the child's voice (see paragraph 28 of this opinion), at an age when she could not speak for herself in religious matters.

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<sup>13</sup> It is indeed difficult to trace any possible discriminatory intent in a court order that, as I have clarified, did not at all prevent religious education about his beliefs by the father, with the exclusion of only one type of religious activity. Also, no comparison seems to me possible between attendance at the services of the first and the second religious groups, in which the first group's activities were allowed and the second group's restricted, as the dissenting judges seem to assume: in reality, the mother was not a practising affiliate of the first religious group, and the girl would not attend any service of the latter group (with the only limited exception, agreed upon by the parents, of what was necessary toward the socially relevant rite of taking first communion).

35. This test refers to “previous agreed practice”<sup>14</sup>: no relevance can then be given to the circumstance that the girl had been *de facto* taken to ceremonies, on occasion or also with some continuity, and that this was concealed from the mother. The dissenting judges, instead, give importance to the circumstance that this *de facto* continued presence at services allegedly did no harm to the girl, an assumption from which they construe an absence of any danger in, or even the desirability of, her exposure to diverse religious activities. I, along with the majority, respectfully disagree on this approach taken by my distinguished colleagues in the minority: here the Court is confronted with an issue of the exercise of freedom of religion, which includes the freedom not to practice a particular (or any) religious activity. It is not a matter of deciding whether the conduct is harmful, but whether it is wanted. Again, a perspective based only on Article 8 does not help, whereas consideration under Article 9 would have made this point clearer.

36. The decision by the domestic courts not to allow the father full exercise of his freedom to impart religious education, by restricting the mere attendance of the minor at services, meant in practice that they prevented new unilateral religious choices (again, it is impossible to attach any relevance to the *fait accompli* of previous concealed participation). Indeed, new religious activities would have been such as to bring about a relevant change in the substantially passive attitude with respect to religion previously taken by the two parents, with the sole acceptance of certain social behaviours and no active religious activity at all.

37. In essence, the national courts have applied the test described as one of “continuity” or “status quo”. The concept of “continuity” is stated explicitly in one of the domestic decisions (see paragraph 16 of the judgment).

38. The majority’s judgment has failed to grasp the opportunity, in endorsing this test of “continuity” or “status quo”, to clarify that – as the literature shows – it corresponds to a widespread practice by family courts throughout Europe when dealing with parents who disagree on new religious choices taken by one parent who wishes to involve children in the same choice.<sup>15</sup> It may be worth remembering that the principle has foundations in

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<sup>14</sup> This test, also referred to as of “continuity” or “status quo” (see paragraph 37 of this opinion), is also termed as a “contract” test in the scholarly categorisation by Mumford, referred to below.

<sup>15</sup> See Géraldine Maugain, “Le juge, le droit de la famille et la religion”, *La Semaine Juridique*, 31(1-2), LexisNexis, 14 January 2019. This report, based on interviews with judges, after recognising the prerogatives of parents, underlines clearly that judges, when consent is impossible, prefer to order a return to the *status quo ante* since it is the French Civil Code that suggests consideration of the practice that parents have previously agreed upon. This attitude of judges has been attested by the empirical research on which the report is based, where the judges interviewed expressed the concept that it is better to limit the freedom of conscience of one parent based on a previously existing agreement, rather than to restrict the freedom of the other parent and bring about a situation on which agreement has never existed (“*il vaut mieux restreindre la liberté de conscience d’un parent au profit d’un*

international law (Article 20 CRC) in so far as it concerns the different situation of children “temporarily or permanently deprived of [their] family environment, or in whose own best interests cannot be allowed to remain in that environment”. In these cases, “when considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ... religious... background”.<sup>16</sup>

39. This test, too, could inspire the Court’s construction of Article 9 in similar cases in the future.

40. Of course, consideration of the other existing tests in this area is necessary. Certain other tests exist which deserve equal attention and may be appropriate, “in keeping with [the] shared belief that religious freedom is an important principle which itself carries a presumption of respect”, although “some form of judgment ... is inevitable”.<sup>17</sup> The domestic courts are best

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*consensus ancien, plutôt que de contraindre celle de l’autre pour parvenir à une situation qui n’a jamais fait consensus*” – p. 31). The approach, in my view, has some basis in the principles inspiring “Emile, or On Education” (*Émile, ou De l’éducation*), the famous treatise on the nature of education and, in the end, on the nature of man written by Jean-Jacques Rousseau, who advocated that children should be led by educators to discover by their own means only “natural” religion (i.e. non-confessional general religious principles), whereas “civil” religious education should be imparted only to adults.

<sup>16</sup> See, *inter alia*, the Interim Report of the UN Special Rapporteur on freedom of religion or belief, submitted to the General Assembly on 5 August 2015, A/70/286, § 66.

<sup>17</sup> This is the conclusion to which a very interesting study of existing tests comes, based mainly on common-law experiences: S.E. Mumford, “The Judicial Resolution of Disputes Involving Children and Religion”, *International and Comparative Law Quarterly*, 1998, vol. 47, pp. 117-148. The author notes that, after the decline of the “traditional maxim” *religio sequitur patrem* which however was not applied in certain cases (the poet Shelley lost custody of children in 1817 because of his atheistic views – *ibid.*, p. 120), the general “best interest test” has started to be the paramount consideration, but it is “essentially unqualified”, leaving a broad scope for judicial interpretation (p. 121). The essay goes on to study judicial attitudes and, after noticing some judicial tendency to favour certain mainstream religions (p. 127), it classifies some judicial responses accepting limited degrees and intensity of belief and practice over deep religious affiliations (p. 128), or including the religious elements in consideration of the “causation” of the family conflict (p. 130). Some judges, also, tend to assert that they do not rule on religious choices, but only assess the “secular effects” of affiliations (p. 131). Going back to the concepts of freedom of religion and the “best interest” approach, the author develops on the concept of freedom of religion of children along with that of the parents (p. 135) and clarifies that best interest in the area of religious choices is usually framed within the several models of parent-child “contacts”, balanced against the arm that the child would be at risk of suffering (pp. 141 et seq.): among the types of harm that should be avoided, religiously motivated continuing parental conflict after divorce (especially p. 144, but also, for example, p. 147, where the psychological impact of such conflict is discussed). In the final discussion, the study examines – among other criteria, including the “contract” test I mentioned in a previous footnote – the two-stage test developed by some American courts: first, assessing potential harm; if this exists, the second step for the court is “to rule in order to achieve the manner of preventing harm that is least restrictive of the parental right of freedom of religion”, which “might involve a prohibition of certain limited aspects of religious practice”; “rarely would it countenance a complete ban on discussion of a religious nature” (pp. 147-148). The latter test resembles very closely the one

suited to assess the delicate interests involved, and the Court must exercise its supervision in true subsidiarity.

## **VI. Conclusion**

41. As I mentioned above, my additional and/or differing views with respect to those of the majority have merely required me to make the above remarks, and do not prevent my full agreement with the outcome of the case (subject to the clarification given in the introduction to this opinion).

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adopted, in addition to the principle of “continuity”, by the Italian court in the case at hand, as well as by the French court in the case of *F.L. v. France*, cited above.

DISSENTING OPINION OF JUDGES PACZOLAY  
AND FELICI

1. We respectfully disagree with the majority’s reasoning in finding no violation of Article 14 of the Convention read in conjunction with Article 8.

2. In our opinion, the applicant’s religious convictions and his way of expressing them had a direct bearing on the outcome of the domestic courts’ decisions, and the measure ordered by the domestic courts was not proportionate, although it pursued the legitimate aim of protecting the best interests of his daughter. Thus, a violation of Article 14, in combination with Article 8, should have been found.

3. Firstly, we cannot subscribe to the majority’s conclusion that the applicant was not subject to a difference in treatment based on his religious beliefs. It appears from the domestic courts’ decisions that the applicant’s religion was of decisive importance in the outcome of the case.

4. As stated in the District Court of Livorno’s decision:

*“la espletata ctu e l’audizione della minore, inducono a ritenere pregiudizievole all’interesse della stessa, allo stato attuale, una pratica religiosa diversa da quella cattolica. [...] [A]ppare pregiudizievole per la bambina una pratica religiosa diversa da quella vissuta nell’ambiente familiare e sociale dove la stessa è inserita, in virtù del principio di continuità che deve presiedere l’educazione religiosa del minore, al fine di evitare allo stesso turbamenti e confusioni in una fase di ricerca e sviluppo della propria identità. [...] [S]ia dalla audizione della [minore] che dalla espletata ctu [...] viene evidenziato che la pratica di due credi religiosi diversi sarebbe occasione di confusione e di tensione per la bambina.”*

“... the court-appointed expert’s report and the examination of the child lead to the conclusion that a religious practice other than Catholicism is currently prejudicial to the child’s interests. ... A religious practice that differs from the one adopted by the family and the social environment in which she is growing up appears detrimental to her, by virtue of the principle of continuity governing the child’s religious education, in order to shield her from disturbance and confusion in a phase of research and development of her identity. ... It emerges both from the examination of the [child] and from the court-appointed expert’s report ... that practicing two different religions would cause confusion and tension for the child”.

5. In so finding, the domestic courts ignored the fact that E. had been attending religious events and participating in religious activities with her father since the age of three. In this regard, it should also be mentioned that, in the meantime, the applicant had married E.B., a Jehovah’s Witness, and a child had been born from that union. According to the material before the Court, E. got along well with her step-family and met them regularly. As a result, E.’s social environment was equally linked to the Jehovah’s Witnesses, quite apart from the fact that her father is just as much “family” as her mother. Moreover, we cannot share the Government’s view that one’s adherence to the habits and practices of a religion automatically excludes participation in the activities of a different denomination (see paragraph 34 of the judgment),



especially in the case of a young child, who has still to develop fully her critical thinking as regards religion.

6. In finding that it would not have been in the child’s interests to be involved in a religion other than Roman Catholicism, on the grounds that she was used to the Catholic Church by reason of the familial and social context in which she had been raised and was living, the domestic decisions seem to display prejudice against the applicant’s religion, resulting in a discriminatory difference in treatment.

7. It is worth adding that what in fact created confusion and tension for the child was the conflict between her parents. Indeed, E. voiced discomfort about her father bringing her to the Kingdom Hall and wished to spend more time playing with him; at the same time, however, E. was aware that her mother did not agree with the applicant taking her to Kingdom Hall and she felt irritated and disturbed by her mother’s comments about the applicant’s religious activities. In her report, the expert stated that *these conflicts* between the two parents resulted in E.’s tension and discomfort, so that it would have been appropriate for *both* parents to refrain from involving E. in their religious activities. Although acknowledging this, the Court of Appeal concluded:

“... it is advisable for [the child] to be able to continue to attend festivities traditionally linked to the Catholic religious calendar, ... without her father making her feel inadequate, and this not because of an ideological choice in favour of Catholicism but because E.’s world is permeated by occasions in this sense and the removal of such events would make her feel different from her peers”.

In this respect, it should be noted that the applicant had already accepted that his daughter could continue to follow Roman Catholic precepts, if she wanted. Among other concessions, the applicant did not object to E. attending the national curriculum’s religious-education classes in primary school. Given the applicant’s attitude of compromise, authorisation to involve E. in his religious activities would not have had an impact on E.’s integration into society; at least, the domestic courts did not provide evidence supporting such a conclusion. The domestic courts merely relied on P.C.’s expert report, and endorsed her finding that participation in Catholic activities and celebrations would ensure E.’s “healthy social growth”, so that she would not be “different from her peers”. Does that mean that practicing a religion other than Catholicism renders people “different”? And in any event, how is “being different” harmful?

8. Although the issues at stake were different, the Court has already emphasised that exposing young persons to the ideas of diversity, equality and tolerance can only be conducive to social cohesion (see *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, § 82, 20 June 2017). Likewise, it has argued that pluralism is also built on genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs and artistic, literary and socio-economic ideas and concepts.

The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. Respect for religious diversity undoubtedly represents one of the most important challenges to be faced today; for that reason, the authorities must perceive religious diversity not as a threat but as a source of enrichment (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, 20 April 2016, § 109, and the references therein).

9. For the above-mentioned reasons, we find that there was a difference in treatment between the applicant and S.G., based on his religion.

10. According to the Court’s case-law, a difference in treatment is only discriminatory in the absence of an “objective and reasonable justification”, that is, if it is not justified by a “legitimate aim” and there is no “reasonable relationship of proportionality” between the means employed and the aim sought to be realised (see paragraph 43 of the judgment). Hence, we will first consider whether the domestic courts’ measure pursued a legitimate aim and, in the affirmative, we will discuss the proportionality of that measure.

11. With regard to the *legitimate aim*, the Court has repeatedly held that the interests of the child are of paramount importance and must be the primary consideration (see *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX) and may, depending on their nature and seriousness, override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII).

12. The rights to respect for family life and religious freedom, as enshrined in Articles 8 and 9 of the Convention, together with the right to respect for parents’ philosophical and religious convictions in the educational sphere, as provided for in Article 2 of Protocol No. 1 to the Convention, bestow on parents the right to communicate and promote their religious convictions in bringing up their children. This would be an uncontested right in the case of two married parents sharing the same religious ideas or worldview and promoting them to their child, even in an insistent or overbearing manner, unless this exposes the latter to dangerous practices or to physical or psychological harm (see *Tlapak and Others v. Germany*, nos. 11308/16 and 11344/16, 22 March 2018, § 79), and the Court found no reason why the position of a separated or divorced parent who does not have custody of his or her child should be different *per se* (see *Vojnity v. Hungary*, no. 29617/07, 12 February 2013, § 37).

13. While it is important for children’s views to be taken into account, those views are not necessarily immutable and their objections, which must be given due weight, are not necessarily sufficient to override the parents’ interests. The right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered and an examination being carried out to determine their best interests (see, *mutatis mutandis*, *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). Here, we depart from the majority’s view that the sole purpose of the domestic courts was to preserve

the child's freedom of choice by taking into account her father's educational views (see paragraph 50 of the judgment). The domestic courts themselves, relying on the expert's report, noted that E. lacked mature discernment at the time of the proceedings, which prevented her from autonomously choosing a religion (see paragraph 16), and they have reviewed the measure in the light of the changing circumstances since it was adopted.

14. In this regard, in declaring the application in *F.L. v. France* (no. 61162/00, 3 November 2005) inadmissible, the Court held that the young age of the children at the point when the domestic courts issued their decision was relevant. It noted that young children are eminently susceptible to being influenced, in particular by the family in which they are primarily resident. The Court pointed out that the [particular] child's interests lay primarily in the need to maintain and promote her development in an open and peaceful environment, reconciling as far as possible the rights and convictions of each of her parents. In that case, the applicant, a member of the Raëlian movement, claimed, *inter alia*, a violation of Articles 8 and 9, alone and in conjunction with Article 14, since the domestic courts had ordered her to refrain from bringing her children into contact with other members of the movement. In concluding that the interference in the applicant's rights was justified by a legitimate aim, the Court noted that the applicant had joint custody of her children, who resided with her, and that she was not prevented from participating in religious activities in her personal capacity. Moreover, the applicant was able to continue to practice her religion in her children's presence, provided that they were not brought into contact with other members. For these reasons, the Court found the application to be manifestly ill-founded.

15. The above case differs from the present one, in which the domestic courts ordered the applicant to refrain from "actively" (whatever that means) involving E. in his religious activities, that is, essentially to refrain from sharing and promoting his religious convictions while raising her since, even as clarified by the Court of Appeal, the applicant could only "let her know, on an informative level, his experience" (a literal translation of the Court of Appeal's decision). We thus consider that the domestic authorities failed to give due consideration to the applicant's requests and to reconcile his rights with those of the other parties involved, while pursuing the overriding objective of defending the best interests of the child.

16. In other words, it cannot be claimed in the present case that the domestic courts tried to maintain and promote E.'s development in an open and peaceful environment, or to reconcile the rights and convictions of the parents in order to strike a satisfactory balance between their individual worldviews, without any value judgments. Hence, they did not pursue the child's primary interest.

17. This does not mean that the protection of a child's best interests is not a legitimate aim to pursue, even by means of a difference in treatment

between the parents. In order not to be discriminatory, however, such a difference in treatment also needs to be proportionate.

18. With regard to *proportionality*, the Government claim that the domestic courts sought to pursue the child’s best interests and to protect E. from the purported stress caused by the applicant’s intensive efforts to involve her in his religious activities. While it can be accepted that the domestic authorities may have shown legitimate concern in this respect, we have reservations as to whether this consideration qualifies as a very weighty reason allowing for differential treatment.

19. Specifically, there is *no evidence* that the applicant’s religious convictions involved dangerous practices or exposed his daughter to physical or psychological harm. Whilst P.C. considered that E.’s involvement in the applicant’s religious activities had been harmful, no convincing evidence was presented to substantiate a *risk of actual harm*, as opposed to the mere unease, discomfort or embarrassment which the child may have experienced on account of her father’s attempts to transmit his religious beliefs (see, *mutatis mutandis*, *Vojnity v. Hungary*, cited above, § 38).

20. If, in the event of disagreement between the parents about their child’s religious education, the domestic courts are empowered and required to act to protect the child’s best interests (see paragraph 34), the State has a duty of neutrality and impartiality, which is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see, *mutatis mutandis*, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 81, ECHR 2013 (extracts)).

21. We regret that the majority did not follow the same approach as in *Vojnity v. Hungary* (cited above) in examining whether the interference with the applicant’s family life was proportionate.

22. In *Vojnity*, the Court found that the applicant had been subjected to a difference in treatment compared to other parents in an analogous situation, on the basis of his religious convictions which had been decisive in the removal of his visitation rights. The Court did not find “very weighty reasons” to justify such a different in treatment and the absolute ban on the applicant’s rights amounted to a complete disregard of the principle of proportionality: no consideration was given to whether any other less severe measures could have been adopted to allow the child to regain his emotional balance (see *Vojnity*, cited above, § 42). Moreover, several elements indicated that the expert reports and the courts’ decisions were actually motivated by prejudice (for instance, they considered the applicant’s worldview to be irrational), without explaining what real harm the applicant’s religious convictions could cause to the child (*ibid.*, § 38).

23. The majority distinguished the present case from *Vojnity* merely because the applicant’s visiting rights in the latter case were subject to a total ban, while the present applicant’s custody and visiting rights were not affected. However, the present case requires that the Court follow *Vojnity*

because of its *ratio decidendi*, irrespective of the different *enjeux* that were at issue for the applicant. What is in fact at issue is whether the domestic courts based their decisions on a value judgment of the applicant's religious beliefs. In other words, it does not matter whether custody and visiting rights are heavily and directly affected; a difference in treatment is discriminatory when it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

24. It is worth noting that while all the cases cited by the Court concern an alleged difference in treatment in child custody proceedings based on one parent's religion, in the majority of these cases the applicants claimed a violation of Article 8 in conjunction of Article 14 of the Convention. In the present case, however, the majority agreed to reclassify the complaints as falling under Article 14 read in conjunction with Article 8 of the Convention (see paragraph 30 of the judgment). As a result, the focus of the present case is no longer whether the measure taken by the domestic courts infringed on the applicant's custody rights on account of his religious beliefs, which would logically have been examined under Article 8 read in conjunction with Article 14. Thus, the fact that the applicant suffered no restrictions on his custody and visiting rights should not be decisive (see paragraph 48).

25. In any event, the measure adopted by the domestic courts was not only radical, but immediately effective (and, at the same time, probably the easiest one), and it can be argued that the measure had a direct impact on the content and quality of the applicant's visiting rights and disrupted the relationships that previously prevailed within the paternal family unit.

26. In fact, the domestic courts could have envisaged other less stringent measures, rather than immediately imposing a complete ban on the applicant involving his daughter in his religious activities. For example, according to the expert, one of the main concerns seemed to be the applicant's method of communicating with his daughter, and specifically the fact that, during the period when the applicant was considering whether to join the Jehovah's Witnesses, he asked E. not to tell her mother that he had brought her to meetings of the Jehovah's Witnesses. Thus, the domestic courts could, for instance, have considered arranging a monitoring period, during which both parents would be asked to adopt new communication measures when discussing religion with E. It should be noted that S.G.'s communication methods were also considered inappropriate by the expert – although she did not investigate them further – since E. admitted to being annoyed by her mother's comments about the applicant's religious activities. The proposed measure is merely one example of a more balanced and proportionate approach. A more proportionate measure would also have taken into consideration the fact that the expert's report itself – which was the main determinant in the decisions – suggested that it would have been appropriate

for both parents to refrain from actively involving E. in their religious activities.

27. In this respect, it is worth mentioning *Deschomets v. France* ((dec), no. 31956/02, 16 May 2006), used as an *a contrario* case by the majority. In that case, the Court was correct in concluding that the application was manifestly ill-founded as the interference with the applicant’s right to respect for her family life was not disproportionate in relation to the rights of others. Specifically, the applicant complained that the domestic courts’ decisions on child custody were based solely on her religious affiliation to the Brethren movement and that the change in the residence of her children interfered with her right to respect for family life. However, the Court held that the domestic courts had carefully considered the children’s interests, taking into account different and multiple evidence of the effective consequences of their mother’s lifestyle on them. In the Court’s opinion, the domestic courts had given their disputed rulings without any theoretical discussion, and therefore any value judgments, as to the applicant’s worldview and ideological practices. In fact, they had succeeded in striking a balance between the conflicting rights in trusting the applicant “*not to allow the Brethren to put pressure on the children to ‘make them change their minds’ ... [and] [s]hould she fail to do so, it would be for V. to request the appropriate court to change the right of visiting and staying contact granted to the mother*”. The Italian courts could have considered a similar approach.

28. The foregoing considerations are sufficient to conclude that there was *no reasonable relationship of proportionality* between the domestic courts’ decision to immediately prohibit the applicant from actively involving his daughter in his religion and the aim pursued, namely the protection of the best interests of the child. In imposing this measure, the domestic courts essentially ruled *in abstracto*, without establishing a link between the child’s living conditions with her father and her real interests (see *Palau-Martinez v. France*, no. 64927/01, § 42, ECHR 2003-XII) nor the effective consequences of the applicant’s religious practices on E. (see *Deschomets*, cited above). Consequently, the applicant suffered discrimination based on his religious convictions in the exercise of his right to respect for family life. There has accordingly been a violation of Article 14 in conjunction with Article 8 of the Convention.