

ECHR Upholds Abolition of Exequatur

On 18 June 2013, the European Court of Human Rights delivered its judgment in *Povse v. Austria*.

Readers will recall that the Court of Justice of the European Union had also delivered a judgment in the same case in 2010. Marta Requejo had reported on the case and summarized the facts [here](#).

The case was concerned with a dispute relating to the custody of a child under the Brussels IIa Regulation. A return order had been issued by an Italian court. As the Brussels IIa Regulation has abolished exequatur with respect to return orders, the issue was whether an Austrian court was compelled to enforce an Italian order despite the allegation that the Italian court might have violated human rights.

The Strasbourg court held that the return order could be challenged before the court of origin, and that it would always be possible to bring proceedings against Italy should such challenge fail. The abolition of exequatur, therefore, was not dysfunctional from the perspective of the European Court of Human Rights.

86. The Court is therefore not convinced by the applicants' argument that to accept that the Austrian courts must enforce the return order of 23 November 2011 without any scrutiny as to its merits would deprive them of any protection of their Convention rights. On the contrary, it follows from the considerations set out above that it is open to the applicants to rely on their Convention rights before the Italian Courts. They have thus far failed to do so, as they did not appeal against the Venice Youth Court's judgment of 23 November 2011. Nor did they request the competent Italian court to stay the enforcement of that return order. However, it is clear from the Italian Government's submissions that it is still open to the applicants to raise the question of any changed circumstances in a request for review of the return order under Article 742 of the Italian Code of Civil Procedure, and that legal aid is in principle available. Should any action before the Italian courts fail, the applicants would ultimately be in a position to lodge an application with the Court against Italy (see, for

instance neersone and Kampanella v. Italy, no. 14737/09, 12 July 2011, concerning complaints under Article 8 of the Convention in respect of a return order issued by the Italian courts under the Brussels IIa Regulation).

87. In sum, the Court cannot find any dysfunction in the control mechanisms for the observance of Convention rights. Consequently, the presumption that Austria, which did no more in the present case than fulfil its obligations as an EU member State under the Brussels IIa Regulation, has complied with the Convention has not been rebutted.

H/T: Maja Brkan