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The Judges' Newsletter

on International Child Protection



Special Focus

Second Experts' Meeting on the Continued Nurturing of the 1980 Hague Convention

London, August 2025

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Special Focus

Second Experts' Meeting on the Continued Nurturing of the 1980 Hague Convention

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Foreword

This edition of the Judges' Newsletter on International Child Protection includes several items.

Primarily, this edition covers the second Experts' Meeting on the Continued Nurturing of the 1980 Hague Convention, convened and organised by Professor Marilyn Freeman and Professor Nicola Taylor, which was held at the University of Westminster in London from 4 – 5 August 2025. In this regard, the Newsletter aims to serve as a useful repository for the remarks and contributions of the organisers, chairpersons, as well as the panellists, all of whom have submitted their contributions in writing for the purpose of this Newsletter. The Permanent Bureau, as well as Professors Taylor and Freeman, are extremely grateful to all panellists for having prepared and shared their contributions in writing for this edition of the Judges Newsletter. It is hoped that those who were not able to attend the Experts' Meeting, and those who have an interest in the subject matter, will find this Newsletter interesting and helpful.

This edition of the Newsletter also intends to report on the Fourth Global Meeting of the International Hague Network of Judges (IHNJ), which took place from 19 to 21 May 2025, in Singapore and to share an article co-authored by Brazilian IHNJ Members Guilherme Calmon Nogueira da Gama and Inês Virgínia Prado Soares, reporting on the recent activities of the IHNJ Members in Brazil.

The views expressed by the authors in this Newsletter are their own and should not be attributed to or be understood to reflect the views of the HCCH.

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Italian Case Law on Relocation: An Overview

Professor Costanza Honorati, Professor of Private International Law, University of Milano-Bicocca, Italy

Introduction

Relocation disputes appear to be mostly filed in common law countries, where there is strong debate about when, and on which grounds, relocation should be granted. However, this is still a quite unexplored topic in many civil law countries, Italy being no exception. Greater family mobility, which has also led to a rising number of abductions, should have caused a parallel rise in relocation applications, and hence decisions, in Italy. Instead, surprisingly, this is not the case.

This article first outlines the legislative rule embodied in the Italian Civil Code and the general guidelines provided by the *Corte di Cassazione*[1] (hereafter Supreme Court). It then draws on empirical research undertaken by the author regarding 50 Italian court decisions in relocation cases, both national and international, during 2014-2024. The sample is unfortunately incomplete due to difficulty in obtaining Italian Family Court decisions, but is nevertheless considered to be representative of the general trend.[2]

Legislative Directions: Article 316 Italian Civil Code

Article 316 Italian Civil Code Is the starting point in the law on relocation. It was modified in December 2013 by a more general and far-reaching law on filiation (Legislative decree of 28 December 2013 No 154) and now reads:

> "Both parents have parental responsibility, which is exercised by mutual agreement, taking into account the child's abilities, natural inclinations, and aspirations. Parents mutually agree on the minor's habitual residence and make decisions regarding his or her education and upbringing.

In the event of a dispute over particularly important issues, ***including those relating to the minor's habitual residence*** and schooling, either parent may informally appeal to a judge, indicating the measures they deem most appropriate.

The judge, after consulting the parents and arranging for the minor child to be heard if he or she is at least twelve years of age, or even younger if capable of discernment, ***attempts to reach an agreed-upon solution and, if this is not possible, adopts the solution he or she deems most appropriate for the child's best interests***".[3] (emphasis added)

The inclusion of parents' mutual right to determine the child's habitual residence within the general rule governing parental responsibility is of significance for two reasons. First, it

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1 Supreme Court of Cassation.

2 C. Honorati «Il trasferimento lecito della residenza del minore nella giurisprudenza italiana», forthcoming in *Famiglia e Diritto* 2026.

3 Translation of all official documents, including legal provisions and decisions, is unofficial and made by the author using *DeepL.com (free version)*.

elevates the prohibition of unilateral relocation to the rank of a statutory provision, thereby avoiding any uncertainty. Second, under Italian law, the right to determine the minor's habitual residence is part of parental responsibility rights and disconnected from custody rights.[4]

Shared custody is the common model, as identified by the legislator and currently applied in courts, with both parents having equal responsibilities and duties. Newborns and younger children are usually placed with the mother, except where she is unfit or exceptional reasons advise otherwise. Nonetheless, when one parent is granted sole custody, this does not entail the right to remove the child to another State /part of Italy without the other parent's consent.[5] Even in such circumstances, agreement to relocate from the non-custodial parent is required, or leave to relocate must be sought from a court. Leave to relocate is generally granted more easily in these situations.

The following points should also be emphasised about the rule:

a) it does not distinguish between national and international relocations - these are treated in the same way and assessed on the same criteria;

b) it sets no general presumption in favour of, or against, relocation and is neutral in regard to the opportunity of relocation, leaving this to the parents' agreement or, in its absence, to the court's assessment based on the principle of the child's best interests;

c) it sets no burden of proof - if parents fail to reach agreement, the court assesses each application on a case-by-case analysis.

Italian Supreme Court Case Law and the Guiding Principles

The Supreme Court provides colour to the principle of the child's best interests in relocation cases, as enshrined by the legislator in Article 336 Civil Code. Ten decisions were made in both national and international cases during the 2014-2024 period, thus giving a consistent guideline to Family Courts.

In 2014 – possibly due to the recently adopted Legislative Decree No 154/2013 – the Supreme Court set the legal framework for international relocation cases by affirming the need to strike a balance between the child's right to maintain stable relations with both parents and the constitutional right of each parent to relocate and to enjoy freedom to circulate. In contrast to previous decisions, given under a different legal framework, the Supreme Court focused not only on the principle of continuity and emotional stability of the minor, but also on the fundamental right of each individual – although a parent – to freely determine his or her own

4 A logical consequence of the disconnection between the two concepts is that agreement on placement does not imply agreement to waive the determination to the child's habitual residence. Therefore, if parents have joint custody rights and one agrees on placing the child with the other, this does not imply conferring to the latter the right to move her residence and move the child with her (Supreme Court, 10 August 2022 n. 24651).

5 Bologna Tribunal, 3 May 2022: "As regards children, residence must be decided by mutual agreement, not only in cases of joint custody but also in cases of sole custody by one parent, as this is a matter of greater interest to the children (see Article 337 quater, paragraph 3, Civil Code). It follows that if one parent intends to change residence, he/she cannot take the children with him/her without the consent of the other parent and, in the event of disagreement, the court is called upon to assess whether it is in the best interests of the children to move with the parent who is requesting it or to remain living with the other parent, who in that case would become the custodial parent".

domicile / residence and to pursue "legitimate aspirations, including professional growth".[6] This is an important statement, particularly in regard to women, who are often the minor's primary caretaker and are requesting the minor's relocation in order to pursue a work-life project. The constitutionally guaranteed right of the parent to freely determine their place of domicile is not susceptible to restriction, unless there is an absolute need grounded on the child's best interests in maintaining a balanced and fruitful relationship with the parent who is not the primary custodian.

This principle was confirmed in 2015 in a national relocation case, thus showing the overlapping of arguments in the two types of cases:

> "No court has the power to impose on one or the other of the spouses to renounce a planned transfer, which moreover corresponds to a constitutionally guaranteed fundamental right. ... The judge can only take note of the decisions made in this regard by the interested party and act accordingly in the decision, which is his responsibility, on the custody and placement of minor children. Furthermore, no rule requires depriving the spouse who intends to move, for this sole reason, of custody or placement of the children with him or her; the judge's decision is discretionary and must be inspired [...] by the best interests of the minor children. In other words, faced with the unquestionable choices regarding their residence made by the separated spouses, who do not lose, simply because they intend to transfer their residence away from that of the other spouse, their suitability to be placements for minor children, the judge ***has exclusively the duty to evaluate whether placement with one or the other of the parents is more functional*** to the pre-eminent interests of the offspring, even though this will negatively affect the daily relations with the non-placing parent: this is a consequence, however inevitable, both in the case of placement with the parent who moves and in the case of placement with the parent who remains".[7] (emphasis added).

It follows that while a separated spouse, who intends to transfer their residence away from that of the other spouse, does not thereby lose the right to have custody of minor children, or to be their custodian, the court must exclusively evaluate whether it is more functional to the interests of the children to place them with one or the other parent, "even if this inevitably has a negative impact on the daily relationship with the non-custodial parent".[8]

However, it is also clear that the child's relocation is not neutral, and there is no *right* for the parent to take the children with him/her, as leave to relocate cannot be taken for granted. Any automatism is therefore excluded and, failing an agreement by the parents, it is for courts to establish the best placement regime following the change of residence of one of the parents.[9]

Thus, what is framed as a decision on an application for relocation will, in fact, become a decision on placement: following the change of circumstances, with whom is the child better

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6 Supreme Court, 18 September 2014 n. 19694.

7 Supreme Court, 12 May 2015 n. 9633.

8 Supreme Court, 18 September 2014 n. 19694. This line of argument has been consistently held: Supreme Court, 5 August 2024 n. 21971; 1st July 2022 n. 21054; 14 February 2022 n. 4796; 18 July 2019 n. 19455; 14 September 2016 n. 18087; 12 May 2015 n. 9633.

9 The point was clearly made by Supreme Court, 6 October 2021 n. 27142.

placed? With the relocating parent, with whom the child has always lived and who can provide emotional stability, but who seeks to live in a different place? Or with the non-custodial parent, with whom the child has not yet lived, but who could guarantee stability and continuity in the ordinary day-by-day routine?

This issue is very theoretical – and indeed not framed in these terms by courts – but reveals the logical flow of legal arguments building towards the decision. The parent who is the custodial and principal caregiver – let's suppose, the mother – is free to move, and cannot be withheld. If the other parent – let's suppose, the father – declines consent for the children to relocate, he must propose an alternative plan e.g., to become the custodial parent and have the child/ren placed with him. In such cases, it is for the court to assess whether the child's needs for emotional, scholastic and relational stability are better served by placement with the father or mother.

The reality is more complex and nuanced. A mother who is the primary caregiver and has always lived with the child, will seek relocation *with* the child and, when faced with the risk of losing the child's daily care and placement, will often state that she will not relocate, thus losing (or, at best, weakening) her case. This can be an emotional challenge close to the one faced by abducting mothers in Hague return proceedings, when it becomes clear the court will order the child's return.

Research Overview

In 2025, besides analysis of the abovementioned collection of court decisions, a questionnaire was circulated to 40 international family lawyers across Italy to ascertain their experience with and views on relocation cases. This confirmed that very low numbers of relocation applications are filed in Italian courts. Some lawyers mentioned they rarely file for a relocation because i) this is seldom required by the parties; and ii) it would likely be rejected by the courts.[10]

However, their perception is incorrect, as the analysis of Italian case law found that many relocation applications are actually granted by the courts. Of the 50 decisions that have been analysed between 2014-2024, relocation was granted in 50-55%, in respectively international and national cases. There was no obvious difference between the rate of awarded national and international relocations - the applications are assessed on the same grounds, with only slight differences noted in judicial reasoning.

The large majority of the examined cases follow a plain and ordinary scenario and do not concern borderline situations involving domestic violence, immigration, or other pathological issues. These are just 'normal' parents who separate and want to carry-on with their lives in different States or parts of Italy, while keeping contact to their children.

10 One lawyer based in Milan stated: "Filing a relocation is a loss of time, as courts are biased and rarely grant one. Even when they do, this requires so much time that the only sensible way to proceed is to seek an agreement with the other parent. If you cannot reach one, then you'd better change your family plans".

How the Family Courts Assess the Child's Best Interests in Relocation Cases: Striking a Balance

Unsurprisingly, given that this is the principle codified in the law, all the decisions analysed had their foundation in the principle of the best interests of the child. I now consider how Family Courts assess and balance this principle in relocation cases. They proceed on a case-by-case basis, and eventually review the placement arrangements. Decisions are very varied and use a panoply of different reasoning and factors. The most frequent arguments used in the collected sample fell into two topics: (1) the reasons for the relocation and the plan offered by the primary caregiver; and (2), how to maintain an enduring relationship with the left-behind parent, including the voice of the child.[11]

1. a. The reasons for relocation put forward by the relocating parent

The personal or professional reasons put forward must be substantial and genuine. This is assessed quite strictly. As one court stated:

> "Reasons for moving elsewhere are not determined (only) by more remunerative job opportunities or by a mere 'change of social environment' that offer (the adult and only the adult) a more general security than that offered by the environment in which he or she lived with the child up until the time of the request".[12]

Furthermore, the sole desire to move together with a new companion in a different State (or different part of Italy) is often insufficient to convince the court to grant relocation.[13] The prospect of a more attractive salary, working conditions, or more comfortable surroundings, may also not be enough.[14]

1. b. The relocation plan

The court will assess whether the relocating parent has provided a settled and well-organised plan. The condition seeks to avoid the child being moved away from familiar surroundings on a temporary or provisional basis, without a clearly envisaged life-program. The court also investigates the effect of the proposed relocation on the child. For example, whether the child has previously spent time in the new place; knows the language/culture/surroundings; extended family members are already there; or whether, on the contrary, the prospective new location is totally new and the child will have to start again from the beginning.[15]

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11 See Honorati, note 2, for a more complete analysis.

12 Milan Tribunal, 12 August 2014 (J Olindo).

13 Terni Tribunal, 17 June 2024 (J Velletti) and Verona Tribunal, 8 August 2023 (J Guerra), both decisions involving national relocation cases; Milan Tribunal, 18 December 2013 (J Muscio), refusing an international relocation to Split, Croatia.

14 Como Tribunal, 13 July 2023 (J Manenti).

15 See Como Tribunal, 13 July 2023 (J Manenti) where a relocation was refused because "the life plan lacks the necessary stability and certainty, lacking a concrete long-term plan" and because of "the mother's lack of awareness of the concrete and real interest in her child, as well as the need to put his psychophysical well-being before her own needs".

2. The child's right to maintain a steady and continuous relationship with the non-custodial parent

This is the consideration to which the court will attach the greatest importance and includes such factors as the expectations of the left-behind parent regarding regular contact; the feasibility and costs thereof, to be balanced between both parents; proven (not just offered) ability of the relocating parent to keep the relationship between the other parent and the child warm; previous cooperative or non-cooperative relations between parents; and the distance between the current habitual residence and the proposed new one.

Since primary attention is on maintaining, or reinforcing, the relationship between the non-custodial parent and the child, the existing relationship between the two parents and their co-parenting story will be closely scrutinised and will gain special weight. In general terms, it may be easier to grant relocation in the (few) cases where the parental relationship is cooperative. Problems mostly arise when the relationship has been difficult and uncooperative. For example, relocation was refused in a case where the mother had previously been held responsible for the lack of a child-father relationship, which was now being built under the supervision of social services. The court found that authorisation to relocate could not be based on a comparison of benefits or advantages that the change of environment would entail for the child in terms of social and scholastic life, as the primary interest of the children was to continue the psychotherapeutic process leading to the reconstruction of a relationship with their father.[16]

Another factor considered in light of the aim of favouring the maintenance of contact is the **distance between the current residence and the new relocation**, although this is never the sole reason for refusing or granting relocation. For example, the Supreme Court refused relocation to Romania on the basis that Romania was too distant. The court had, however, previously noted that the parents' relationship was uncooperative, the father/child relationship was being rebuilt via supervised contact through social services, and relocation would have interrupted that process.[17] On the contrary, the Milan Tribunal allowed relocation to Lugano (Switzerland) of a child resident in Milano, because it only involved 1.5 hour's travel.[18] Weight was also given to the fact that the mother had a new companion there with whom she had a new baby; that she had proved stability and a plan-of-life, and was very open and cooperative towards the child's father.

The **age of the child** is also important in assessing whether relocation will affect the existing relationship between the non-moving parent and the child. However, it is challenging to ascertain the impact of the child's age. The general understanding is that newborns and babies should be kept as close as possible to both parents to allow both to establish strong bonds to the child. Hence a very young child should perhaps not be relocated because the bond with the left-behind parent is not yet strong enough. As the Milan Tribunal stated:

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16 Rome Court of Appeal, 23 March 2017.

17 Supreme Court, 11 November 2021 n. 33608. For a similar conclusion in a national relocation case, see Como Tribunal, 13 July 2023 (J Manenti), where relocation from Como (north of Milan) to the middle of Tuscany's countryside (south of Florence) was considered too far away and involved a too different environment. Furthermore, the mother did not show a settled plan and lacked a job there, but wanted to be closer to her husband to deliver the new baby there.

18 Milan Tribunal, 9 January 2024 (J Giannelli).

> "The younger the age, the lower the ease (and the more compromised the probability) of maintaining a significant bond with the non-custodial parent, especially when [...] the age of the offspring has not yet allowed them to develop a significant bond with one or both parents".[19]

However, a prior Supreme Court decision stated that, in the case of a young minor, it is plausible "to value the criterion of so-called maternal preference",[20] in a case where internal relocation was sought by the mother on professional grounds. This 2016 decision could have a different outcome today.

An older, primary school-age child will be integrated in his/her own social environment and is not easily moved. Sometimes courts will grant relocation from the end of school year, but other decisions expressly say that the mother's need to move can be postponed to a later point in life when the child changes order of school (i.e., in the Italian system, around 11-12-years-old). At that point, hearing the child becomes mandatory and their views will make a difference.[21] For example, the relocation from Milan to Turkey of a girl, who the expert report found very fragile and manipulated, was nonetheless granted by the Milan Tribunal because she was 16-years-old and wanted to relocate to Istanbul, where the mother was already living.[22] The court found it could not disregard the wishes of a girl nearly of age, but ordered she be entrusted to Turkish social services for psychological support.

Previous Unilateral Relocation

A previous unilateral relocation of a child by the relocating parent, without asking, or despite the refusal of, the other parent is not considered relevant by the courts. While courts rightly construe this as a violation of the left-behind parent's right, and a case of abduction, they refuse to make the relocation application conditional on this fact. As the Supreme Court made clear in 2021:

> "it is completely irrelevant that the mother moved to another country, taking the child with her without asking for the judge's authorization, given that we are not dealing with a situation in which the rules on international child abduction are in question, but rather a dispute concerning the identification of the best custodian, an identification to be carried out, as already observed, in the exclusive interest of the child, taking into account the strongly highlighted criteria".[23]

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19 Milan Tribunal, 12 August 2014 (J Olindo).

20 Supreme Court, 14 September 2016 n. 18087.

21 Under Italian law, hearing the child is an obligation, and also before 12-years of age if the child is capable of discernment. However, the weight given to the child's voice will largely depend on his/her age and maturity. This is of special importance in relocation cases where the child is asked about their own expectation and desire regarding where to live.

22 Milan Tribunal, May 2024 (J Cattaneo).

23 Supreme Court, 6 October 2021 n. 27142. In similar terms, Terni Tribunal, 2022 (J Velletti), allowing relocation to Germany despite the mother having unilaterally and unlawfully already relocated there, on the basis that she was still the best primary caregiver and should keep placement of the child.

This is consistent with the 1980 Hague Child Abduction Convention as returning the child to the State of habitual residence after an abduction should not lead the court to 'punish' the abducting mother for her previous wrongful act, especially if her parenting abilities have been newly verified.

Conclusion

Overall, Italian courts tend to prioritise the stability of the child, whilst not forgetting the constitutional rights of both parents. Stability is not therefore considered uncritically as if the child was always to stay in the place of habitual residence, nor to always move with the primary caregiver. Rather, this is subject to a delicate and complex assessment on a case-by-case analysis.

Two critical points need to be highlighted for further examination. First, Italian courts seem to pay little attention to the emotional wellbeing of the relocating parent. A few decisions expressly refuse relocation based only on maternal personal views and expectations.[24] While the child's stability clearly comes before the primary carer's wellbeing, the child's emotional wellbeing is closely connected to the primary carer's emotional wellbeing. Disregarding the latter will clearly also affect the former.

Second, while all relocation decisions assess and balance the feasibility and costs of future contact rights with non-custodial parents, no decision seems to consider how these plans will be recognised and enforced in the foreign State when relocation has occurred. This matter is well-addressed by the Brussels II-ter Regulation, providing for a privileged decision when accompanied by an Annex V certificate (Articles 42(1)(a) and 47(1)(a)) and by the 1996 Hague Convention (Article 23), but it is regretful that no reference is made by courts to the after-play of the decision.

[24] See, for example, Rome Tribunal, 18 August 2018 (J Velletti).

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