

Grandparents' Access Rights, Juridical Interest and the Limits of EU Family Law Instruments:

A Case Note on Cosimo Marziano and Rosanna Bruzzese vs. Silvia Marziano and Michael Magri

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1. Introduction

The judgment of the Honourable Court of Appeal of Malta in the names *Cosimo Marziano and Rosanna Bruzzese v Silvia Marziano and Michael Magri* delivered on the 28th January 2021 constitutes an important contribution to Maltese jurisprudence on grandparents' access rights and the interaction between domestic family law, European Union instruments, and the European Convention on Human Rights (ECHR). The decision arose from a preliminary appeal concerning whether grandparents possess *locus standi* to seek court-mandated visitation rights in the absence of an express statutory provision granting such rights under Maltese law.

The case raised four principal legal issues: (i) whether earlier Italian proceedings barred the Maltese action on grounds of *res judicata*; (ii) whether grandparents possess the necessary juridical interest and *locus standi* under Maltese law to institute such type of proceedings; (iii) whether recognising such juridical interest would go against principles of Maltese public order; and (iv) whether allowing the proceedings to continue would constitute undue interference with parental authority.

The Court of Appeal ultimately dismissed the appeal filed by the parents and confirmed that grandparents possess sufficient juridical interest to request access before the Civil Court (Family Section), although such access ultimately remained subject to a merits-based determination guided by the best interests of the child. The judgment is particularly significant for clarifying the limited function of Regulation (EC) No 2201/2003 (*Brussels IIa*) and for delineating the boundaries between procedural admissibility and substantive entitlement.

2. Factual and Procedural Background

The applicants, maternal grandparents residing in Italy, had previously enjoyed regular contact with their granddaughter. prior to the relocation of the child and her parents to Malta in 2017. Relations between the applicants and their daughter, as well as her husband (the defendants to these proceedings) deteriorated and contact between the applicants and the minor granddaughter ceased.

In August 2019, the grandparents instituted proceedings before the Maltese Civil Court (Family Section), requesting that visitation rights be established. Their application made reference to Article 8 ECHR, which seeks to protect private and family life, and made reference to European jurisprudence recognising the importance of extended family ties. They further referred to developments in EU law interpreting “rights of access” broadly within cross-border contexts.

The parents raised four preliminary pleas. First, they argued that an earlier decision of the Italian *Tribunale per i Minorenni del Piemonte e Valle d’Aosta* barred the action on grounds of *res judicata*, meaning that the case had been effectively determined in a definitive basis already by an Italian Court, rendering the duplication of the proceedings instituted before the Maltese courts impossible. Secondly, they contended that Maltese law does not provide grandparents with a right of access and that therefore the applicants lacked the necessary *locus standi*. Thirdly, they submitted that recognising such claims would undermine public order and open the door to excessive litigation by extended family members. Finally, they argued that granting grandparents standing would constitute interference with parental authority.

The First Hall of the Civil Court, in a judgment delivered on the 28th January 2020, had rejected all preliminary pleas, prompting an appeal to the Court of Appeal limited to these procedural questions.

3. The Preliminary Pleas raised by the Defendants

3.1. Res Judicata and the Italian Proceedings

The doctrine of *res judicata* requires identity of subject matter (*eadem res*), parties (*eadem personae*), and cause of action (*eadem causa petendi*)⁷⁵. The appellants argued that the Italian *Tribunale per i Minorenni del Piemonte e Valle d’Aosta* had already decided the merits of the dispute.

The Court of Appeal carefully analysed the Italian judgment and concluded that the Italian tribunal had declined to exercise any jurisdiction over the merits of the proceedings, because the child’s habitual residence had shifted to Malta. Although the Italian Tribunal made

⁷⁵ See Andrew Dickinson and others (eds), *Dicey, Morris & Collins on the Conflict of Laws* (15th edn., Sweet & Maxwell 2012) para 14-003.

observations concerning the dysfunctional dynamics within the extended family, these remarks were characterised as *obiter dicta* rather than binding findings on the merits.

The Court of Appeal therefore held that the essential requirements for *res judicata* were not satisfied. A foreign court's refusal of jurisdiction does not amount to a substantive adjudication capable of barring subsequent proceedings in the appropriate forum. This reasoning aligns with established private international law principles distinguishing jurisdictional rulings from determinations on the merits.⁷⁶

3.2. Locus Standi and the Limits of EC Regulation 2201/2003 (Brussels IIa)

A second issue which was discussed in these proceedings concerned whether grandparents possessed *locus standi* under Maltese law to seek court-ordered access.

Maltese law does not contain an express provision granting grandparents the right to institute such type of proceedings. It is for this reason, that the applicants invoked Article 8 ECHR, arguing that family life extends beyond the nuclear family. The European Court of Human Rights has indeed recognised that ties between grandparents and grandchildren may fall within "family life"⁷⁷. In *Marckx v Belgium*⁷⁸, the Court affirmed that family life includes ties between near relatives such as grandparents and grandchildren. Subsequent jurisprudence has maintained this approach⁷⁹. Nevertheless, the Strasbourg Court has also emphasised that contact between grandparents and grandchildren typically occurs with parental consent and that access by grandparents remains largely at the discretion of parents unless exceptional circumstances justify intervention⁸⁰.

The Maltese Court of Appeal acknowledged the relevance of Article 8 ECHR jurisprudence but stopped short of deriving an autonomous substantive right of access directly from the Convention. Instead, it focused on whether domestic law provides a juridical interest sufficient to ground standing.

This cautious approach reflects the established principle that Article 8 ECHR does not automatically entitle grandparents to contact but rather requires a proportionality assessment where state interference is alleged.⁸¹

The judgment also made reference to Regulation (EC) No 2201/2003 (Brussels IIa)⁸², particularly in light of the judgment of the Court of Justice of the European Union in *Valcheva*

⁷⁶ Adrian Briggs, *Civil Jurisdiction and Judgments* (6th edn, Informa 2015) 29–31.

⁷⁷ European Court of Human Rights jurisprudence under art 8 ECHR.

⁷⁸ *Marckx v Belgium* (1979) 2 EHRR 330

⁷⁹ eg *Manuello and Nevi v Italy* App no 107/10 (20 January 2015).

⁸⁰ *Kruškić v Croatia* App no 10140/13 (25 November 2014) [111]–[112].

⁸¹ Jonathan Herring, *Family Law* (9th edn, Pearson 2022) 415–417.

⁸² Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility [2003] OJ L338/1.

v Babanarakis⁸³. In *Valcheva*, the European Court of Justice interpreted the notion of “rights of access” within the Regulation as including access sought by grandparents.

However, the Maltese Court of Appeal clarified a critical distinction: Brussels IIa regulates jurisdiction and the recognition and enforcement of judgments, not the creation of substantive rights. In *Valcheva*, the grandmother’s claim was grounded in Bulgarian domestic law (Article 128 of the Bulgarian Family Code), whereas the Regulation merely determined which Member State’s courts possessed jurisdiction.

The Court of Appeal therefore rejected the notion that the Regulation independently confers visitation rights on grandparents. This reasoning reflects the principle of conferral under Articles 4–6 TFEU, whereby family law in its substantive dimension largely remains within Member State competence⁸⁴.

Although Maltese legislation does not expressly grant grandparents access rights, the Court of Appeal examined broader provisions of the Civil Code (Chapter 16 of the Laws of Malta).

Article 7(2) of the Civil Code⁸⁵ imposes maintenance obligations on ascendants in default of parents. Article 8 ECHR imposes reciprocal obligations upon descendants. These provisions, the Court reasoned, demonstrate legislative recognition of a legally significant relationship between grandparents and grandchildren.

Most significantly, Article 149 of the Civil Code empowers the Civil Court (Family Section), upon good cause being shown, to give directions concerning the person of a minor in the child’s best interests.

Taken together, these provisions were deemed sufficient to establish juridical interest. The Court held that grandparents, as ascendants recognised within the legal structure of family obligations, possess standing to request that the court consider whether contact is in the child’s best interests.

Importantly, the Court distinguished between (i) a right to request judicial consideration and (ii) an automatic right to access. The former was recognised; the latter was explicitly denied.

3.3. Public Order and the “Floodgates” Argument

The appellants argued that recognising standing for grandparents would expose children to excessive litigation from various relatives, potentially undermining stability and public order. The Court rejected this argument, and emphasised that the best interests of the child remain the overriding principle, enshrined in Article 3(1) of the UN Convention on the Rights of the Child

⁸³ *Valcheva v Babanarakis* EU:C:2018:359.

⁸⁴ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 arts 4–6.

⁸⁵ Chapter 16 of the Laws of Malta.

(CRC)⁸⁶ and reflected under EU law through Article 24(2) of the Charter of Fundamental Rights⁸⁷.

The Court of Appeal was clear in its judgment that procedural standing does not equate to automatic entitlement. The fact that the Courts recognised that grandparents have a juridical interest to institute such type of proceedings does not mean that grandparents have the right to have access to the grandchildren. Rather, the Court affirmed the important principle that each case must be assessed individually, and courts retain discretion to refuse applications that are manifestly contrary to the child's welfare. Therefore, the best interests of the children remain the ultimate consideration that needs to be undertaken by a court when faced with a lawsuit instituted by grandparents (or, potentially, other relatives) requesting visitation rights to the minor grandchildren.

The Court of Appeal made it clear that the recognition of standing does not destabilise public order but rather allows judicial scrutiny under established welfare principles.

3.4. Parental Authority and State Intervention

The final ground of appeal concerned limitations or otherwise on the notion of parental authority. The parents argued that decisions regarding a child's associations form an intrinsic component of parental authority and that state interference should be strictly limited. The Court reaffirmed that parental authority remains vested in the parents. However, parental authority is not absolute. Maltese law — particularly Article 149 of the Civil Code — provides for judicial intervention where necessary in the child's best interests.

This approach aligns with comparative jurisprudence recognising that parental autonomy may be subject to proportional limitations where required to safeguard a child's welfare.⁸⁸

4. Legal Consequences and Broader Significance

The judgment has several important implications to the Maltese legal systems:

- a. **Clarification of EU Law Limits** – It confirms that Brussels IIa (now replaced by Regulation (EU) 2019/1111, Brussels IIb)⁸⁹ does not create substantive rights but governs jurisdiction and recognition.
- b. **Recognition of Juridical Interest** – It establishes that grandparents possess standing grounded in domestic law, even absent explicit statutory visitation rights.
- c. **Affirmation of the Best Interests Principle** – It reinforces the primacy of the child's welfare as the decisive standard.

⁸⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 3(1).

⁸⁷ Charter of Fundamental Rights of the European Union [2012] OJ C326/391 art 24(2).

⁸⁸ Herring (n 16) 420.

⁸⁹ Council Regulation (EU) 2019/1111 (Brussels IIb) [2019] OJ L178/1.

- d. **Procedural–Substantive Distinction** – It draws a clear boundary between the right to bring proceedings and the right to obtain the remedy sought.

Several European jurisdictions explicitly regulate grandparents’ access rights⁹⁰. In fact, Article 317 of the Italian Civil Code, introduced by Legislative Decree n. 154 of the 28th December 2013, provides that ascendants have a right to maintain significant rapport with the minor grandchildren, and that an ascendant whose right is impeded may have recourse to the Courts in order to request that they be granted access rights should the Court determine that it is in the best interests of the child. Article 337 of the said Code then provides that minor children have the right to retain a fair and continued rapport with other relatives, beyond parents.

It remains to be seen whether legislative amendments will be introduced to Maltese law as a consequence to the *Marziano* judgment⁹¹ as Maltese jurisprudence currently relies upon general provisions and judicial interpretation. Lawsuits instituted following the *Marziano* preliminary judgment have generally relied on the same principles enunciated by the Court of Appeal in *Marziano*.

The practical impact of the Court of Appeal’s judgment has been significant within the Maltese legal landscape. By confirming that grandparents possess juridical interest to institute proceedings seeking access to their grandchildren, the Court effectively clarified an area that had previously been uncertain. In the period following the judgment, numerous other proceedings were instituted by grandparents invoking the same reasoning to seek judicial regulation of contact with minor grandchildren. This development has contributed to a gradual consolidation of Maltese jurisprudence in favour of recognising the admissibility of such claims, while simultaneously reinforcing the principle that the ultimate determination remains subject to the best interests of the child. The decision has therefore had both doctrinal and practical consequences, shaping litigation patterns in family law and prompting greater judicial engagement with the role of extended family relationships in the upbringing of minors.

The decision of the Court of Appeal of Malta represents a nuanced and doctrinally careful development in Maltese family law. It avoids the over-constitutionalisation of grandparents’ rights while simultaneously rejecting an unduly restrictive view of juridical interest. By clarifying that EU instruments such as Brussels IIa regulate jurisdiction rather than substantive rights, the Court preserved the constitutional balance between EU competence and national autonomy. At the same time, by recognising standing grounded in domestic legal relationships and maintenance obligations, it acknowledged the evolving realities of extended family structures.

Ultimately, the judgment confirms that grandparents may seek judicial evaluation of access, but the decisive criterion remains — and must remain — the best interests of the child.

⁹⁰ See eg Bulgarian Family Code art 128 (as referenced in *Valcheva* (n 9)).

⁹¹ A reform of the local Family Courts has been announced to be tabled in Parliament, which may include *ad hoc* legislation providing for grandparents access to minor grandchildren.

The *Marziano* lawsuit on the merits is still ongoing before the Honourable First Hall of the Civil Court (Family Section).