



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

Information Note on the Court's case-law 203

January 2017

Paradiso and Campanelli v. Italy [GC] - 25358/12

Judgment 24.1.2017 [GC]

Article 8

Article 8-1

Respect for private life

Removal of a child born abroad as a result of a surrogacy arrangement entered into by a couple later found to have no biological link with the child: *no violation*

Facts – The applicants were a married couple. In 2006 they obtained official authorisation to adopt a child. After having attempting unsuccessfully to have a child through *in vitro* fertilisation, they decided to resort to surrogacy in order to become parents. To that end, they contacted a Moscow-based clinic which specialised in assisted reproduction technology and entered into a gestational surrogacy agreement with a Russian company. After a successful *in vitro* fertilisation in May 2010 – purportedly carried out using the second applicant's sperm – two embryos "belonging to them" were implanted in the womb of a surrogate mother. A child was born in February 2011. The surrogate mother gave her written consent to the child being registered as the applicants' son. In accordance with Russian law, the applicants were registered as the baby's parents. The Russian birth certificate, which contained no reference to the gestational surrogacy, was certified in accordance with the provisions of the [Hague Convention of 5 October 1961](#) Abolishing the Requirement of Legalisation for Foreign Public Documents.

In May 2011, after they had requested that the Italian authorities register the birth certificate, the applicants were placed under investigation for "misrepresentation of civil status" and violation of the adoption legislation, in that they had brought the child into the country in breach of the law and of the authorisation to adopt, which had ruled out the adoption of such a young child. On the same date the public prosecutor requested the opening of proceedings to release the child for adoption, since he was to be considered as being in a "state of abandonment". In August 2011 a DNA test was carried out at the court's request. It showed that, contrary to what the applicants had stated, there was no genetic link between the second applicant and the child. In October 2011 the minors court decided to remove the child from the applicants. Contact was forbidden between the applicants and the child. In April 2013 the court held that it was legitimate to refuse to register the Russian birth certificate and ordered that a new birth certificate be issued, indicating that the child had been born to unknown parents and giving him a new name. The child had since been adopted by another family. The domestic court considered that the applicants did not have status to act in those adoption proceedings.

By a judgment of 27 January 2015 (see [Information Note 181](#)), a Chamber of the Court found, by five votes to two, that the child's removal had amounted to a violation of Article 8 of the Convention on account, in particular, of the hasty conclusion that the intended parents were not fit to look after the child and the fact that the interests of the

child, who had been without a legal identity for more than two years, had not been taken properly into account.

On 1 June 2015 the case was referred to the Grand Chamber at the Government's request.

Law – Article 8: The case concerned applicants who, acting outside any standard adoption procedure, had brought to Italy from abroad a child who had no biological tie with either parent, and who had been conceived – according to the domestic courts – through assisted reproduction techniques that were unlawful under Italian law.

(a) *Applicability*

(i) *Family life* – The termination of the applicants' relationship with the child was the consequence of the legal uncertainty that they themselves had created in respect of the ties in question, by engaging in conduct that was contrary to Italian law and by coming to settle in Italy with the child. The Italian authorities had reacted rapidly to this situation by requesting the suspension of parental authority and opening proceedings to make the child available for adoption.

Having regard to the absence of any biological tie between the child and the intended parents, the short duration of the relationship with the child (about eight months) and the uncertainty of the ties from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Court considered that the conditions enabling it to conclude that there had existed a *de facto* family life had not been met.

In these circumstances, the Court concluded that no family life had existed in the present case.

(ii) *Private life* – Bearing in mind that the applicants had had a genuine intention to become parents and had explored the various options available in order to love and bring up a child, what was at issue was the right to respect for the applicants' decision to become parents, and the applicants' personal development through the role of parents that they wished to assume *vis-à-vis* the child. Lastly, given that the proceedings before the minors court had concerned the issue of biological ties between the child and the second applicant, those proceedings and the establishment of the genetic facts had had an impact on the second applicant's identity and the relationship between the two applicants.

It followed that the facts of the case fell within the scope of the applicants' private life.

(b) *Merits* – The measures taken in respect of the child had amounted to an interference with the applicants' private life. This interference had been in accordance with the law and pursued the aims of prevention of disorder and the protection of the rights and freedoms of others.

The national courts had based their decisions on the absence of any genetic ties between the applicants and the child and on the breach of domestic legislation concerning international adoption and on medically assisted reproduction. The measures taken by the authorities had been intended to ensure the immediate and permanent rupture of any contact between the applicants and the child, and the latter's placement in a home and under guardianship.

The facts of the case touched on ethically sensitive issues – adoption, the taking of a child into care, medically assisted reproduction and surrogate motherhood – in which member States enjoyed a wide margin of appreciation.

The domestic authorities had relied in particular on two strands of argument: the illegality of the applicants' conduct and the urgency of taking measures in respect of the child, whom they considered to be "in a state of abandonment" within the meaning of section 8 of the Adoption Act.

The reasons advanced by the domestic courts were directly linked to the legitimate aim of preventing disorder, and also that of protecting children – in the present case but also more generally – having regard to the State's prerogative to establish descent through adoption and through the prohibition of certain techniques of medically assisted reproduction.

As the case was to be examined from the angle of the applicants' right to respect for their private life, bearing in mind that what was at stake was their right to personal development through their relationship with the child, the reasons given by the domestic courts, which had concentrated on the situation of the child and the illegality of the applicants' conduct, had been sufficient.

The domestic courts had attached considerable weight to the applicants' failure to comply with the Adoption Act and to the fact that they had recourse abroad to methods of medically assisted reproduction that were prohibited in Italy. In the domestic proceedings, the courts, focused as they were on the imperative need to take urgent measures, had not expanded on the public interests involved; nor had they explicitly addressed the sensitive ethical issues underlying the legal provisions breached by the applicants.

For the domestic courts the primary concern had been to put an end to an illegal situation. The laws which had been contravened by the applicants and the measures which were taken in response to their conduct served to protect very weighty public interests.

In respect of the child's interests, the minors court had had regard to the fact that there was no biological link between the applicants and the child and had held that a suitable couple should be identified as soon as possible to take care of him. Given the child's young age and the short period spent with the applicants, the court had not agreed with the psychologist's report submitted by the applicants, suggesting that the separation would have devastating consequences for the child. It had concluded that the trauma caused by the separation would not be irreparable.

As to the applicants' interest in continuing their relationship with the child, the minors court had noted that there was no evidence in the file to support their claim that they had provided the Russian clinic with the second applicant's genetic material. Having obtained approval for inter-country adoption, they had circumvented the Adoption Act by bringing the child to Italy without the approval of the Commission for Inter-Country Adoption. Having regard to that conduct, the minors court had expressed concern that the child might be an instrument to fulfil a narcissistic desire of the applicants or to exorcise an individual or joint problem. Furthermore, the applicants' conduct had thrown a "consistent shadow on their possession of genuine affective and educational abilities and of the instinct of human solidarity which must be present in any person wishing to bring the children of others into their lives as their own children".

The child was not an applicant in the present case. In addition, he was not a member of the applicants' family within the meaning of Article 8 of the Convention. This did not mean however, that the child's best interests and the way in which these had been addressed by the domestic courts were of no relevance.

The domestic courts had not been obliged to give priority to the preservation of the relationship between the applicants and the child. Rather, they had had to make a

difficult choice between allowing the applicants to continue their relationship with the child, thereby legalising the unlawful situation created by them as a *fait accompli*, or taking measures with a view to providing the child with a family in accordance with the legislation on adoption.

The Italian courts had attached little weight to the applicants' interest in continuing to develop their relationship with a child whose parents they wished to be. They had not explicitly addressed the impact which the immediate and irreversible separation from the child would have on their private life. However, this had to be seen against the background of the illegality of the applicants' conduct and the fact that their relationship with the child had been precarious from the very moment that they had decided to take up residence with him in Italy. The relationship had become even more tenuous once it had turned out, as a result of the DNA test, that there was no biological link between the second applicant and the child.

The proceedings had been of an urgent nature. Any measure prolonging the child's stay with the applicants, such as placing him in their temporary care, would have carried the risk that the mere passage of time would have determined the outcome of the case.

The Court did not underestimate the impact which the immediate and irreversible separation from the child must have had on the applicants' private life. While the Convention did not recognise a right to become a parent, the Court could not ignore the emotional hardship suffered by those whose desire to become parents had not been or could not be fulfilled. However, the public interests at stake weighed heavily in the balance, while comparatively less weight was to be attached to the applicants' interest in their personal development by continuing their relationship with the child. Agreeing to let the child stay with the applicants, possibly with a view to their becoming his adoptive parents, would have been tantamount to legalising the situation created by them in breach of important rules of Italian law. The Italian courts, having assessed that the child would not suffer grave or irreparable harm from the separation, had struck a fair balance between the different interests at stake, while remaining within the wide margin of appreciation available to them in the present case.

Conclusion: no violation (eleven votes to six).

(See also *Giusto, Bornacin and V. v. Italy* (dec.), 38972/06, 15 May 2007, [Information Note 97](#); *Wagner and J.M.W.L. v. Luxembourg*, 76240/01, 28 June 2007, [Information Note 98](#); *Moretti and Benedetti v. Italy*, 16318/07, 27 April 2010, [Information Note 129](#); *Kopf and Liberda v. Austria*, [1598/06](#), 17 January 2012; *Labassee v. France*, 65941/11, 26 June 2014, [Information Note 175](#); and *Mennesson v. France*, 65192/11, 26 June 2014, [Information Note 175](#))