



## The authorities' removal of a child born from gestational surrogacy who had no biological ties to the intended parents was not contrary to the European Convention on Human Rights

In today's **Grand Chamber** judgment<sup>1</sup> in the case of **Paradiso and Campanelli v. Italy** (application no. 25358/12) the European Court of Human Rights held, by eleven votes to six, that there had been: **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract, entered into with a Russian woman by an Italian couple who had no biological relationship with the child.

Having regard to the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child and the uncertainty of the ties between them from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Court held that a family life did not exist between the applicants and the child. It found, however, that the contested measures fell within the scope of the applicants' private life.

The Court considered that the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. On this last point, it regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children.

The Court then accepted that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the room for manoeuvre ("margin of appreciation") available to them.

### Principal facts

The applicants, Donatina Paradiso and Giovanni Campanelli, are Italian nationals who were born in 1967 and 1955 respectively and live in Colletorto (Italy).

After attempting unsuccessfully to have a child, the applicants put themselves forward as adoptive parents and in December 2006 they obtained official court authorisation to adopt a foreign child. Having waited in vain for a child to be proposed, they decided to resort to assisted reproduction techniques again and to the services of a surrogate mother in Russia. Ms Paradiso claimed that she had travelled to Moscow and handed over her husband's seminal fluid to a clinic. A surrogate mother was found and Ms Paradiso and Mr Campanelli entered into a gestational surrogacy agreement with the company Rosjurconsulting. After *in vitro* fertilisation, two embryos were implanted in the surrogate mother's womb in June 2010.

A child was born on 27 February 2011 in Moscow. On the same day the surrogate mother gave her written consent to the child being registered as the applicants' son. In March 2011 the applicants

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

were registered as the new-born baby's parents by the Registry Office in Moscow. The Russian birth certificate, which indicated that the applicants were the child's parents, was certified in accordance with the provisions of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

In April 2011 Ms Paradiso, on the basis of the birth certificate, obtained from the Italian Consulate in Moscow the documents that would enable her to return to Italy with the child. On 30 April 2011 she arrived in Italy with the child. In a note of 2 May 2011 the Italian Consulate in Moscow informed the Campobasso Minors Court, the Ministry of Foreign Affairs and the Colletorto Prefecture and Municipality that the paperwork in respect of the child's birth contained false information. A few days later Mr Campanelli contacted the Colletorto municipality, requesting that the birth certificate be registered.

On 5 May 2011 the prosecutor's office opened criminal proceedings against the applicants, who were suspected of misrepresentation of civil status, use of falsified documents and breach of the Adoption Act, since they had brought the child to Italy in violation of the legal procedure. In parallel, the Public Prosecutor's Office at the Campobasso Minors Court requested the opening of proceedings to make the child available for adoption, since he was to be considered as being in a state of abandonment for the purposes of the law. On the same date the Minors Court appointed a guardian *ad litem* and opened proceedings to make the child available for adoption. At the close of those proceedings, the Minors Court held on 5 June 2013 that the applicants no longer had standing to act in the adoption proceedings, given that they were neither the child's parents nor members of his family within the meaning of the law.

On 16 May 2011 the Minors Court placed the child under guardianship at the request of the Public Prosecutor. The child's guardian asked the court to suspend the applicants' parental responsibility, in application of the Adoption Act. The applicants challenged those measures.

In July 2011 the court ordered that DNA testing be carried out in order to establish whether Mr Campanelli was the child's biological father and the Ministry of the Interior asked the Registry Office to refuse to enter the particulars of the birth certificate in the civil status register. On 1 August 2011 Mr Campanelli and the child underwent DNA testing, which showed that there was no genetic link between them. On 4 August 2011 the Registry Office of the Colletorto Municipality refused to register the Russian birth certificate. The applicants lodged an appeal against this refusal with the Larino Court, which, on 29 September 2011, declined jurisdiction. The proceedings were resumed before the Campobasso Court of Appeal, which held that the applicants were not the biological parents and that there had not therefore been a gestational surrogacy. The Court of Appeal noted that the birth certificate was fraudulent and in breach of Russian law. It considered that it was legitimate to refuse to register the Russian birth certificate and also to grant the Public Prosecutor's request that a new birth certificate be issued. It therefore ordered that a new birth certificate be issued, indicating that the child was the son of persons unknown, born in Moscow on 27 February 2011, and decided that he would be given a new name.

By an immediately enforceable decision of 20 October 2011, the Minors Court ordered that the child be removed from the applicants, taken into the care of the social services and placed in a children's home. Ms Paradiso and Mr Campanelli lodged an appeal before the Campobasso Court of Appeal, which dismissed it by a decision of 28 February 2012. No appeal to the Court of Cassation lay against that decision.

In the meantime, on 30 October 2011 the public prosecutor at the Larino Court had ordered the preventive seizure of the Russian birth certificate. The applicants challenged that order before the Campobasso Court, which dismissed their appeal. In the court's view, the hypothesis that the applicants had behaved illegally with a view to having the particulars of the birth certificate entered in the civil status register and to circumventing the Italian legislation appeared well-founded.

In execution of the decision of 20 October 2011, the child was placed in a children's home for about fifteen months. In January 2013 he was placed in a family with a view to his adoption. In April 2013 his guardian asked the Minors Court to give the child a formal identity, so that he could be registered for school without complications. The child has now been adopted.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Paradiso and Mr Campanelli alleged that the measures taken by the authorities, resulting in the child's definitive removal, had infringed their right to respect for private and family life.

The application was lodged with the European Court of Human Rights on 27 April 2012.

On 27 January 2015 a Chamber of the Second Section of the Court delivered a [judgment](#), finding, by five votes to two, that there had been a violation of Article 8. On 27 April 2015 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 1 June 2015 the panel of the Grand Chamber accepted that request. A hearing took place on 9 December 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luis **López Guerra** (Spain), *President*,  
Guido **Raimondi** (Italy),  
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),  
Angelika **Nußberger** (Germany),  
Vincent A. **de Gaetano** (Malta),  
Khanlar **Hajiyev** (Azerbaijan),  
Ledi **Bianku** (Albania),  
Julia **Laffranque** (Estonia),  
Paulo **Pinto de Albuquerque** (Portugal),  
André **Potocki** (France),  
Paul **Lemmens** (Belgium),  
Helena **Jäderblom** (Sweden),  
Krzysztof **Wojtyczek** (Poland),  
Valeriu **Grițco** (the Republic of Moldova),  
Dmitry **Dedov** (Russia),  
Yonko **Grozev** (Bulgaria),  
Síofra **O'Leary** (Ireland),

and also Roderick **Liddell**, *Registrar*.

## Decision of the Court

### Article 8

The Court held, firstly, that the relationship between the applicants and the child did not fall within the scope of family life for the purposes of Article 8. It noted that, before the Italian courts, the parental authority exercised by the applicants in respect of the child had been recognised by implication in so far as a request had been made for its suspension. It observed, however, that that authority had been uncertain. According to the Campobasso Minors Court, there had been illegality on the applicants' part, firstly in that they had brought to Italy a foreign child who had no biological ties with either of them, in breach of the rules laid down on international adoption, and, secondly, in that they had entered into an agreement that was in breach of the prohibition on heterologous assisted reproduction.

The Court had already accepted in its case-law that, in spite of the absence of a biological tie and of a legally recognised parental relationship, there could exist a family life between the foster parents who had cared for a child on a temporary basis and the child in question, on account of the close personal ties between them, the role played by the adults *vis à vis* the child, and the time spent together.

The Court observed that Ms Paradiso and Mr Campanelli had forged close emotional bonds with the child in the first stages of his life, the strength of which was clear from a report drawn up by the team of social workers in response to a request by the Minors Court of 10 May 2011. Ms Paradiso, Mr Campanelli and the child had lived together for six months in Italy, Ms Paradiso having previously lived with the child in Russia for about two months. The Court noted that the termination of the relationship between the applicants and the child was not directly imputable to the applicants, but that it was nonetheless 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 and the uncertainty of the ties between them 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 for the existence of family life had not been met. The Court accepted, however, that the facts of the case fell within the scope of the applicants' private life.

The Court noted that the applicants had been affected by the judicial decisions which resulted in the child's removal and his being placed in the care of the social services with a view to adoption. The Court considered that the measures taken in respect of the child had thus amounted to an interference with the applicants' private life. Such interference would be in breach of Article 8 unless it was "in accordance with the law", pursued one or more legitimate aims, and was "necessary in a democratic society" in order to achieve those aims.

The Court considered that it was foreseeable that, in application of private international law, the national courts would apply Italian law, giving rise to the finding that the child was in a "state of abandonment" within the meaning of the Adoption Act.

In so far as the applicants' conduct ran counter to the Adoption Act and the Italian prohibition on heterologous artificial reproduction techniques, the Grand Chamber, like the Chamber, accepted that the measures taken in respect of the child had pursued the aim of "preventing disorder". Moreover, it accepted that those measures had also been intended to protect the "rights and freedoms" of others. On this last point, the Court regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children. The impugned measures had thus pursued legitimate aims.

Lastly, in determining whether the impugned measures were "necessary in a democratic society", the Court had to consider whether the reasons adduced to justify them were relevant and sufficient. In addition, according to the Court's established case-law, the notion of necessity implied that the interference corresponded to a pressing social need and that it was proportionate to the legitimate aim pursued, regard being had to the fair balance which had to be struck between the relevant competing interests. The Court would also take into account that a certain room for manoeuvre ("margin of appreciation") was left to the national authorities.

The Court noted that the national courts had based their decisions on the absence of any genetic ties between Ms Paradiso, Mr Campanelli and the child, and on the breaches of the domestic

legislation concerning international adoption and on medically assisted reproduction. These measures had had the effect of ensuring the immediate and permanent rupture of any contact between the applicants and the child, who had been placed in a home and under guardianship.

In its decision of 20 October 2011, the Campobasso Minors Court took into consideration that Ms Paradiso had stated that she was not the genetic mother; that the ova came from an unknown woman; that the DNA tests had shown that there was no genetic tie between Mr Campanelli and the child; that the couple had paid a considerable amount of money; and that there was nothing to prove that Mr Campanelli's genetic material had actually been taken to Russia. In addition, this was not a case involving traditional surrogate motherhood, since the child had no genetic ties with the applicants. The only certainty was the identity of the surrogate mother, who was not the genetic mother and who had waived her rights to the child after his birth. The identity of the genetic parents remained unknown. The applicants had acted unlawfully in bringing a child to Italy in breach of the Adoption Act. The agreement concluded between them and the company Rosjurconsulting had been in breach of the Medically Assisted Reproduction Act, which prohibited heterologous assisted fertilisation. The only way to bring this unlawful situation to an end had been to remove the child from the applicants. The Minors Court had considered that, given the short period spent with the applicants and his young age, the trauma of the separation from the applicants would not be irreparable. The Minors Court had added that, having regard to the fact that the applicants had preferred to circumvent the Adoption Act in spite of the authorisation obtained by them, it could be thought that the child resulted from a narcissistic desire on the part of the couple or that he was intended to resolve problems in their relationship, and that it was permissible to express doubts as to the applicants' genuine affective and educational abilities.

The Court observed that the domestic authorities relied 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 the Adoption Act. The Court had no doubt that those reasons were relevant, directly linked as they were to the legitimate aims of preventing disorder and of protecting children. Furthermore, concentrated as they were on the situation of the child and the illegality of the applicants' conduct, those reasons had been sufficient and proportionate.

With regard to the proportionality, the Court did not underestimate the impact of the immediate and irreversible separation from the child on Ms Paradiso's and Mr Campanelli's private life. However, since the public interests at stake weighed heavily in the balance, the Court noted that it was appropriate to attach comparatively less weight to the applicants' interest in their personal development by continuing their relationship with the child. Agreeing to let the child stay with the applicants would have been tantamount to legalising the situation created by them in breach of important rules of Italian law.

The Court thus accepted that the Italian courts, having concluded that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the wide margin of appreciation available to them.

The Court concluded that there had been no violation of Article 8 of the Convention.

## Separate opinions

Judge Raimondi expressed a concurring opinion. Judges De Gaetano, Pinto de Albuquerque, Wojtyczek and Dedov expressed a joint concurring opinion. Judge Dedov expressed a concurring opinion. Judges Lazarova Trajkovska, Bianku, Laffranque, Lemmens and Grozev expressed a joint dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.