



## The best interests of a child born from a surrogacy arrangement abroad ought to have been of paramount importance in the Italian authorities' decisions

In today's **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 a majority, that there had been:

**a 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 by a couple; it subsequently transpired that they had no biological relationship with the child.

The Court found in particular that the public-policy considerations underlying Italian authorities' decisions – finding that the applicants had attempted to circumvent the prohibition in Italy on using surrogacy arrangements and the rules governing international adoption – could not take precedence over the best interests of the child, in spite of the absence of any biological relationship and the short period during which the applicants had cared for him. Reiterating that the removal of a child from the family setting was an extreme measure that could be justified only in the event of immediate danger to that child, the Court considered that, in the present case, the conditions justifying a removal had not been met.

However, the Court's conclusions were not to be understood as obliging the Italian State to return the child to the applicants, as he had undoubtedly developed emotional ties with the foster family with whom he had been living since 2013.

### Principal facts

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

After unsuccessfully attempting to use *in vitro* fertilisation Ms Paradiso and Mr Campanelli opted for a gestational surrogacy arrangement to become parents. For that purpose they entered into an agreement with the company Rosjurconsulting in Russia. A surrogate mother was found and given *in vitro* fertilisation and a baby was born on 27 February 2011 in Moscow. In accordance with Russian law, Ms Paradiso and Mr Campanelli were registered as the baby's parents, without any indication that the child had been born through a surrogacy arrangement.

In April 2011 the Italian Consulate in Moscow delivered documents allowing the child to leave for Italy. A few days after their arrival in Italy, Mr Campanelli unsuccessfully asked the municipal authority of Colletorto to register the birth. The Italian Consulate in Moscow informed the Campobasso Minors Court, the Ministry of Foreign Affairs and the Colletorto municipality that the file on the child's birth contained false information.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its 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).

On 5 May 2011 Ms Paradiso and Mr Campanelli were charged with “misrepresentation of civil status”, and violation of the adoption legislation, in that they had brought the child to Italy in breach of Italian and international law and without complying with the authorisation to adoption obtained by them in December 2006, which ruled out the adoption of such a young child. On the same date the public prosecutor at the Campobasso Minors Court requested the opening of proceedings to free the child for adoption, since, for the purposes of Italian law, he had been abandoned.

In August 2011 a DNA test revealed that Mr Campanelli was not the child’s biological father. Gametes from other sources must have been used in the course of the fertilisation procedure. In consequence, the minors court decided on 20 October 2011 that the child should be removed immediately from the applicants and placed under guardianship, on the ground that there was no biological relationship between them and that there existed doubts as to the applicants’ child-raising and emotional capacities, the conduct of Ms Paradiso and Mr Campanelli having been contrary to the law. The baby was placed in a children’s home, without Ms Paradiso and Mr Campanelli being informed of his location or allowed any contact, then in January 2013 the baby was entrusted to foster parents. In addition, he was left without a formal identity.

In April 2013 the refusal to register the Russian birth certificate was confirmed on the ground that its registration would be contrary to public policy, given that the certificate was inaccurate, there being no biological relationship between the child and the applicants. The latter unsuccessfully submitted that they had acted in good faith, and claimed to have been unaware that Mr Campanelli’s seminal fluid had not been used in the Russian clinic.

In April 2013 the child received a new identity, and it was indicated in the new birth certificate that he had been born to unknown parents. On 5 June 2013 the minors court declared that the applicants no longer had the capacity to act in the adoption procedure initiated by them, given that they were neither the parents nor relatives of the child.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained, in particular, about the child’s removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child’s birth certificate in Italy.

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

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl Karakaş (Turkey), *President*,  
Guido Raimondi (Italy),  
András Sajó (Hungary),  
Nebojša Vučinić (Montenegro),  
Helen Keller (Switzerland),  
Egidijus Kūris (Lithuania),  
Robert Spano (Iceland),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 8

The Court dismissed at the outset the applicants’ complaint submitted in the child’s name, finding that they did not have standing to act on his behalf. It also dismissed, for failure to exhaust domestic remedies, the complaint submitted by Ms Paradiso and Mr Campanelli alleging that it was

impossible to have the child's birth certificate registered in Italy, as the applicants had not appealed on points of law.

With regard to the complaint concerning the child's removal and placement under guardianship, the Court, noting the existence of a *de facto* family life between the couple and the child, held that Article 8 was applicable in this case and declared this complaint admissible. Although Ms Paradiso and Mr Campanelli had spent only six months with the baby, that period had covered important stages in his young life and they had behaved as parents towards him during that period.

As to the merits of the case, the Court considered, firstly, that the measures to remove the child and place him under guardianship amounted to interference in the applicants' private life and had been in accordance with the law. Indeed, the domestic courts' application of Italian law in concluding that the child had been abandoned had not been arbitrary, and the measures taken had been based on provisions of domestic law. In addition, the contested measures pursued the legitimate aim of "prevention of disorder", in so far as the applicants' conduct had been contrary to the law.

Secondly, in assessing the necessity of this interference in a democratic society, the Court was required to examine whether the application of the national law had struck a fair balance between the public interest and the applicants' private interests, namely respect for their private and family life. In so doing, it had to have regard to the essential principle according to which, whenever the situation of a child was in issue, the best interests of that child were paramount.

On the issue of whether these interests had been taken into account by the Italian authorities, the Court noted that they had decided to remove the child in order to put an end to an unlawful situation. They had considered that by contacting a Russian agency and then bringing back to Italy a child whom they passed off as their son Ms Paradiso and Mr Campanelli had attempted to circumvent the prohibition in Italy on using surrogacy arrangements and the rules governing international adoption. According to the Italian authorities, that situation resulted from a narcissistic desire or from a wish to resolve problems in their relationship, which cast doubt on their child-raising and emotional capacities.

However, the reference to public order could not be considered as giving *carte blanche* for any measure, as the State had to take into consideration the best interests of the child, irrespective of the parental relationship, genetic or otherwise. The Court reiterated that the removal of a child from the family setting was an extreme measure, which could be justified only in the event of immediate danger to the child. The threshold set in its case-law in this respect was very high<sup>2</sup>.

Admittedly, the minors court had taken into account the undoubted harm in removing the child, but had considered, given the short period spent with the applicants and his young age, that he would bounce back from this difficulty. For its part, the Court considered that, although the situation before the Italian courts was a sensitive one, the conditions justifying removal had not been met. The argument that, with time, the child would have developed closer ties with his intended parents, making a possible subsequent separation even more problematic, was not sufficient to justify his removal. Moreover, Ms Paradiso and Mr Campanelli, who had been assessed as fit to adopt in December 2006, when they received the authorisation to adopt, were then held to be incapable of bringing up and loving the child on the sole ground that they had circumvented the adoption legislation, without any expert report being ordered by the courts. In addition, the child had not received his new identity until April 2013, which meant that he had had no official existence for more than two years. Yet it was necessary to ensure that a child was not disadvantaged on account

<sup>2</sup> The Court reviewed that case-law in paragraph 80 of the judgment. In particular, it pointed out that in the case of [Wagner and J.M.W.L. v. Luxembourg](#) (application no. 76240/01, judgment of 28 June 2007), the Luxembourg authorities had not recognised the parent-child relationship established in another country, on the ground that this went against public policy; however, they had not taken any measure to remove the underage child or to interrupt family life.

of the fact that he or she was born to a surrogate mother, beginning with citizenship or identity, which were of crucial importance<sup>3</sup>.

In consequence, the Court was not persuaded that the authorities had relied on appropriate evidence in deciding to place the child in the care of the social services. Thus, they had failed to strike a fair balance between the interests at stake, in violation of Article 8. This finding of a violation was not to be understood as obliging the Italian State to return the child to the applicants, given that he had undoubtedly developed emotional ties with the foster family with whom he had been living since 2013.

#### Just satisfaction (Article 41)

The Court held that Italy was to pay the applicants 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

#### Separate opinion

Judges Raimondi and Spano expressed a joint partly dissenting opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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#### Press contacts

[echrpres@echr.coe.int](mailto:echrpres@echr.coe.int) | tel.: +33 3 90 21 42 08

**Céline Menu-Lange (tel: + 33 3 3 90 21 58 77)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**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.

<sup>3</sup> See Article 7 of the United Nations Convention on the Rights of the Child, of 20 November 1989.