

The Third Section of the European Court of Human Rights (ECHR), with a judgement of October 19th 2021, held – by six votes to one – that there has been no violation of art. 8 of the European Convention on Human rights in the case *Spinelli v. Russia*.

The applicant, an Italian citizen, lodged an application with the European Court, alleging the failure of the Russian authorities to assist him in being reunited with his child after the latter had been taken from Italy to Russia by his mother and retained there: this would have violated his right to respect for private and family life.

It is common ground that the relationship between the applicant and his son falls within the sphere of family life under art. 8 of the Convention: therefore, the Court proceeded to determine whether the State acted in a manner calculated to allow these ties to develop normally.

The ECHR observed that, the applicant, his wife and their son travelled from Italy to Russia to visit the woman's parents, and that when it was time for her and the child to go back to Italy in the beginning of January 2015, she refused to return, informing the applicant of her decision to stay in Russia together with the child. The alleged interference with the applicant's right to respect for his family life cannot therefore be attributed to an action or omission by the respondent State, but rather to the actions of a private individual. That action nevertheless placed the respondent State under positive obligations to secure for the applicant his right to respect for his family life, which included taking measures with a view to ensuring the prompt reunification between the child and his father.

Cases with comparable factual circumstances, that is, where a child habitually resident in one State has been removed to or retained in the territory of another State by a parent, are usually examined with reference to the 1980 Hague Convention on the Civil Aspects of International Child Abduction and to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of the Child, both Conventions not yet in force between Italy and Russia when the alleged retention took place. Consequently, in the absence of a regulatory legal framework for determining the issue of the child's return in Italy, a conflict between the Russian and the Italian legal systems arose in respect of which of the two States had jurisdiction to take measures directed at the protection of the child; each State, in fact, acted in the light of the provisions of its own domestic law: in January 2015, the Court of Monza decided to grant the residence order for the child to the applicant while, in February 2015, the District Court of Gagarinskiy in Russia granted it to the mother.

The ECHR, not being called to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention, decided to assess whether the judgment of the Gagarinskiy District Court establishing the child's residence as being with the mother struck a fair balance between the interests of the child and those of the parents. In carrying out this balancing exercise, the Strasbourg judges attached particular importance to the best interests of the child: in fact, a parent cannot be entitled under art. 8 of the Convention to have such measures taken as would harm the child's health and development.

On the basis of the evidence in its possession, the European Court held that the Russian authorities decided to establish the child's residence with his mother in Russia in his sole best interests and that the decision at issue was reached following adversarial proceedings in which the applicant was placed in a position enabling him to put forward all arguments against his ex-wife's claim. The decision-making process was fair and the reasons advanced by the domestic courts were relevant and sufficient to justify the child's stay in the respondent State. There was, therefore, no violation of art. 8 of the Convention and it remains open to the applicant to apply to the Russian courts for a contact order and, through regular contact, to gradually re-establish the bond with his son.



The best interests of the child justify the adoption of measures that limit the exercise of the right to respect for private and family life of a parent (art. 8 ECHR)

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Riferimenti Normativi:

- art. 8 Convenzione Europea dei Diritti dell'Uomo