

The First Section of the European Court of Human Rights (ECHR), with a judgement of January 20th 2022, ruled against Italy for a violation of art. 8 of the European Convention on Human Rights which guarantees the right to respect for private and family life.

The applicants, a Cuban national and her own daughter, argued that the reasons given by the Italian courts for declaring the child available for adoption did not correspond to the “wholly exceptional circumstances” required for severing family ties. Furthermore, according to them, the Italian judicial authorities have failed to fulfill their positive obligations as defined by the jurisprudence of the European Court and have not taken all the measures that could reasonably have been expected of them to preserve their family ties, as well as to strike a fair balance between the competing interests at stake, taking into account, in particular, that no psychological assessment had been ordered for either of them.

The ECHR reiterated that, for a parent and a child, being together is a fundamental element of family life and that the measures adopted by the national authorities that prevent it actually constitute an interference with the right protected by art. 8 of the Convention (see, inter alia, *K. E T. v. Finland* [GC], no. 25702/94, §151, CEDH 2001-VII, and *Barnea and Caldararu v. Italy*, no. 37931/15, §63, 20 June 2017). This interference violates art. 8 of the Convention unless it is «in accordance with the law», pursues one or more legitimate aims referred to in paragraph 2 and cannot be considered as a measure «necessary in a democratic society». The European judges considered unequivocally ascertained – and the parties did not contest it – that the decisions challenged and taken by the Italian judicial authorities constituted an interference in the applicant's exercise of her right to respect for family life, as guaranteed by art. 8, paragraph 1, of the Convention; nor was it disputed that these decisions were provided for by the law (Adoption Law, as amended by Law No. 149 of 2001) and that they pursued legitimate aims, such as «the protection of health or morals» and «rights and liberties» of minors. This interference satisfied two of the three conditions to be considered justified pursuant to the second paragraph of the aforementioned provision. Therefore, in the present case, the dispute focused on the third condition, namely whether the interference was «necessary in a democratic society».

According to the European Court, the Italian courts, in declaring the child's adoptability, relied on the reports prepared by the welfare services and the reception center staff, as well as on the interviews with the parties. The Court of Appeal and the Court of Cassation considered that the investigation carried out at first instance was complete and thorough: it emerged that the first applicant lacked parental capacities due to her behavior and that she had an unstable lifestyle which made her incapable of looking after her daughter. However, the ECHR stressed that the advantage of transferring the minor to an environment more conducive to her upbringing cannot, in itself, justify taking her away from her biological parents. In the present case, it had not been demonstrated that the child had been exposed to violent situations or proven sexual abuse and the Italian judicial authorities did not detect a lack of emotional development, a worrying state of health or psychological imbalances on the part of the parents. Consequently, the European Court doubted the adequacy of the facts that led to the declaration of the applicant's lack of parental capacity: the decision to sever the family ties was not preceded by any specific psychological assessment of the woman's ability to carry out her role as a parent and no attempt has been made to preserve these ties. Furthermore, the Italian Government has defined the child as a “victim” of sexual abuse although no criminal proceedings have ever been initiated regarding the allegations of the welfare services. The absolute need to preserve as much as possible the ties between the applicant and her daughter as well as the adoption of less radical solutions were not duly taken into consideration: the arguments submitted by the Italian judicial authorities did not sufficiently justify the initiation of the adoption procedure of the girl. Despite the margin of discretion granted to the national authorities in the matter, the interference with the right to respect for the private and family life of the applicants was disproportionate to the legitimate aim pursued. In conclusion, by unanimously ascertaining the violation of art. 8 of the Convention, the European Court held that Italy was to pay € 42,000.00 for non-pecuniary damage and € 10,000.00 for the costs and expenses incurred by the applicants.



Italy again convicted by the Strasbourg Court for having initiated an adoption procedure in violation of the right to respect for family life

Diritto civile Persone e Famiglia

Denise Campagna

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Riferimenti Normativi:

- art. 8 Convenzione Europea dei Diritti dell'Uomo