

The First Section of the European Court of Human Rights (ECHR), with a judgement of September 23rd 2021, ruled against Greece for a violation of art. 8 of the European Convention on Human Rights that guarantees the right to respect for private and family life.

The case concerned the access rights granted to the applicants – respectively the father and grandparents of the child concerned – and the length of various sets of proceedings in which the opposing party was the child's mother.

The European Court examined the case in the light of art. 8 of the Convention arguing that spending time together is a fundamental element of family life between a parent and a child within the meaning of this provision. The main purpose of this article is the protection of the individual from arbitrary interference by public authorities; however, it also creates positive obligations relating, inter alia, to the effectiveness of investigation procedures relating to family life. Indeed, national authorities must take all necessary measures to be able to bring parents together with their children and to facilitate such contacts. This also applies in cases where disputes arise regarding the contact and custody of minors between the parents and / or other family members of the minors.

Since effective respect for family life requires that future relationships between parent and child are determined solely on the basis of all relevant elements, and not by the mere passage of time, the ineffective – and in particular delayed – carrying out of custody procedures may result in a violation of positive obligations envisaged by art. 8 of the Convention. Consequently, in cases involving a person's relationship with their child, there is an obligation of exceptional diligence given the risk that the passage of time could result in a factual decision of the case. This obligation, which is decisive for assessing whether a case has been examined within a reasonable time, as required by art. 6, paragraph 1, of the Convention, is also part of the procedural requirements implicit in art. 8.

The Court noted that the first applicant had submitted a request for interim measures to the first- instance court on 18th December 2015; that, in decision no. 2924/2016 of 27th June 2016, the first- instance court had decided on the interim arrangements for contact with the child; and that the hearing for consideration of the merits of the case had been scheduled for 4th June 2018, that is, almost two years later.

The ECHR also noted that the proceedings in question had begun on 18th December 2015 and that judgment no. 1020/2021, delivered on 11th August 2021 by the Court of Cassation, had not yet been finalized. The proceedings had thus lasted more than five years and nine months for four levels of jurisdiction, including the proceedings for interim orders. In cases of this kind – explained the judges – there is always the danger that any procedural delay would result in the de facto determination of the issue. Having regard to the States' positive obligation to act with special diligence in cases of this kind, the Court concluded that there had been a violation of art. 8 of the Convention because the period of time which had elapsed in the present case could not be considered reasonable.

Finally, the European Court clarified that the second and the third applicants – the grandparents of the child – had not brought a principal action against the child's mother concerning their access rights. The period which was to be taken into consideration had begun on 10th December 2015, and had ended on 27th June 2016, when decision no. 2924/2016 – by which the first-instance court granted interim access rights – had been published. The proceedings had thus lasted less than six months, which was considered reasonable by the Strasbourg Court. In this case, there was no breach by the national authorities of the positive obligations deriving from art. 8 of the Convention. The grandparents' application was therefore rejected as manifestly ill-founded.

## Riferimenti Normativi:

- art. 8 CEDU



## The excessive length of the proceedings to determine arrangements for a father's access to his child breaches the right to respect for family life (art. 8 of the European Convention on Human Rights)

**Diritto civile** Persone e Famiglia

Denise Campagna

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