

The First Section of the European Court of Human Rights (ECHR), with a judgement of October 7th 2021, 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 applicant was unable to fully exercise his right to meet his daughter for twelve years, despite the existence of several judicial decisions establishing the methods of meeting between the two. The man claimed that the national authorities did not take adequate measures to allow him to maintain a bond with her daughter: this allowed the girl's mother to turn her against him. Furthermore, the authorities' inaction in the face of the woman's behavior was denounced on the assumption that they did not make any effort or take measures to allow the applicant to exercise his access right, and that they did not react to the non-compliance by part of the mother of the decisions that granted it to him. Finally, the applicant complained about the excessive length of all the proceedings.

If the purpose of art. 8 of the Convention is essentially to protect the individual against arbitrary interference by public authorities, it not only imposes negative obligations on the State – such as that of refraining from such interference – but also positive obligations relating to the effective respect of private or family life. These obligations may involve the adoption of measures aimed at protecting this respect and the establishment of an adequate and sufficient legal framework to ensure the exercise of the legitimate rights of the data subjects as well as compliance with judicial decisions or specific measures adopted in cases of family conflict. In particular, the State should always act to bring parents and their children together: positive obligations are not limited to ensuring that the child can reach the parent or have contact with him, but also include all preliminary measures to achieve this result. As regards the family life of a minor child, the Court recalled that there is currently a broad consensus – including in international law – on the idea that in all decisions affecting children, their best interests should be at the forefront.

Turning to the facts of the present case, the European Court found that its task was to verify whether the Italian national authorities had taken all measures that could reasonably be required to maintain the links between the applicant and his daughter and to examine the manner in which they intervened to facilitate the exercise of the applicant's right of access as defined by different judicial decisions. In the case at hand, the adequacy of a measure was also assessed by the speed with which it was implemented as the passage of time can in itself affect the relationship between a parent and his child.

The Strasbourg judges acknowledged that the national authorities were confronted with a complicated situation, deriving from the well-known tensions between the child's parents: the applicant's inability to exercise his right of access is to be considered first of all due to the manifest refusal of the mother, then the refusal of the daughter and the distance between the place of residence of the child (who moved with her mother to another city without the consent of the father and the national Courts) and that of the applicant. However, the lack of cooperation between separated parents cannot exempt the competent authorities from implementing all means to allow the maintenance of a family link.

The Court found that the national authorities did not exercise due diligence in the present case and that they did not live up to what could reasonably be expected from them. In particular, the national Courts have not adopted the appropriate measures to create the conditions necessary for the full realization of the applicant's right to access and have not rely on expert reports or psychotherapeutic support requested several times by the latter. Since the separation of the parents, which took place when the girl was only five years old, the national judges have tolerated for about eleven years the obstructive behavior of the mother which, together with unsuitable measures and the excessive length of the proceedings, have prevented the institution of a loyal relationship between the applicant and his daughter, violating his right to respect for family life, provided for by art. 8 of the Convention.

Riferimenti Normativi:



The ECHR convicts Italy for the lack of means to allow the maintenance of a bond with the children in the event of a lack of cooperation between separated parents

Diritto civile Persone e Famiglia

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- art. 8 Convenzione Europea dei Diritti dell'Uomo