



Paradiso and Campanelli v. Italy

ECHR 034 (2017)

Country: Italy

Region: Europe

Year: 2017

Court: The European Court of Human Rights

Health Topics: Child and adolescent health, Health care and health services, Sexual and reproductive health

Human Rights: Right to family life, Right to privacy

Facts

The applicants are husband (Campanelli) and wife (Paradiso). After unsuccessful attempts at having a child, they registered themselves as prospective adoptive parents and obtained court approval to adopt a foreign child. Due to delays in the adoption, the applicants decided to resort to surrogacy arrangements. A surrogate mother was found in Russia and the applicants travelled to Russia to hand over the husband's seminal fluid to the clinic. A gestational surrogacy agreement was entered into and two embryos were implanted in the womb of the surrogate mother in June 2010. A child was born in early 2011 and the surrogate mother gave a written consent to the child being registered as the applicant's son. The Registry office registered the boy as the applicants' son and the Russian birth certificate stated the same. Ms. Paradiso obtained all the paper work in the Italian Consulate in Moscow to travel with her child in April 2011. However, the Italian Consulate informed the Minors Court, the Ministry of Foreign Affairs and the Municipality in Italy that the said paperwork contained false information. Campanelli contacted the municipality to register the birth certificate.

Thereafter the Prosecutor's office ensued criminal proceedings against the applicants suspecting that they had brought the child to Italy on the basis of false representation of facts and breach of the Adoption Act and other legal procedure. He also opened proceedings at the Minor Court requesting that the child be allowed to be adopted. The Minors Court appointed a guardian and opened proceedings to make the child available for adoption.

The Minors Court held that the applicants had no right to participate in the adoption proceedings, as they were not considered the parents of the child or his family members. The Court placed the child under guardianship and the guardian asked the Court to suspend the applicants parental responsibilities. The applicants challenged these measures.

The DNA test showed that there was no genetic link between the second applicant and the child. Thereafter the Municipality refused to register the Russian birth certificate. The applicants appealed against this decision and the Court of Appeal held that the birth certificate was fraudulent as the applicants were not the biological parents of the child. It ordered that a new birth certificate be issued stating that the child was the son of persons unknown and that he should be given a new name.

The Minors Court further ruled that the child should be removed from the applicants and placed in a children's home. Subsequent challenges by the applicant were dismissed. The child was placed in a children's home and was adopted.

The applicants alleged that the removal of the child from them interfered with their right to respect for private and family life under Article 8 of the Convention.

Decision and Reasoning

The Court (majority opinion) held that there had been no violation of Article 8. The Court stated that the child was brought into this world by ova and sperm donated by unknown persons. There was no biological tie between the applicants and the child. Further, they stayed together for a very short duration and hence their relationship could not be said to come within the definition of family. The applicants acted outside the ambit of legal adoption and surrogacy provisions.

The Court stated that the authorities had done whatever was in their capacity to protect the child, who was declared to be in a state of abandonment. The Court further stated that due to the nature of ties and the short

duration that the child spent with the applicants, no irreparable harm would be caused to the child if he is separated from the applicants.

The dissenting opinion stated that there had been a violation of Article 8 of the Convention, as the absence of biological ties does not necessarily mean there exists no family life. They stated that there was a genuine parental tie between the applicants and the child, which was based on an emotional bond.

Decision Excerpts

“The Court does not underestimate the impact which the immediate and irreversible separation from the child must have had on the applicants’ private life. While the Convention does not recognise a right to become a parent, the Court cannot ignore the emotional hardship suffered by those whose desire to become parents has not been or cannot be fulfilled. However, the public interests at stake weigh heavily in the balance, while comparatively less weight is to be attached to the applicants’ interest in their personal development by continuing their relationship with the child. Agreeing to let the child stay with the applicants, possibly with a view to becoming his adoptive parents, would have been tantamount to legalising the situation created by them in breach of important rules of Italian law. The Court accepts that the Italian courts, having assessed that the child would not suffer grave or irreparable harm from the separation, struck a fair balance between the different interests at stake, while remaining within the wide margin of appreciation available to them in the present case.” (Para 215)

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