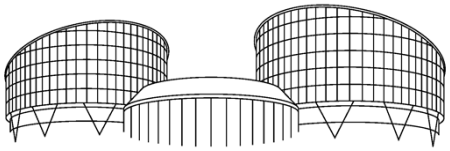

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CAMPANELLI v. RUSSIA

(Application no. 35474/20)

JUDGMENT

STRASBOURG

4 October 2022

This judgment is final but it may be subject to editorial revision.

In the case of Campanelli v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Georgios A. Serghides*, President,*
Anja Seibert-Fohr*,*
Peeter Roosma*, judges,*
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 35474/20) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 June 2020 by an Italian national, Mr Stefano Campanelli, born in 1969 and living in San Teodoro, Italy ("the applicant"), who was represented by Mr Y.A. Tarasov, a lawyer practising in St Petersburg;

the decision to give notice of the application to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

noting that the Government of Italy did not make use of their right to intervene in the proceedings (under Article 36 § 1 of the Convention);

Having deliberated in private on 13 September 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns an allegation of international child abduction and the domestic courts' decisions, under Article 8 of the Convention.

2. The applicant lived in an extramarital relationship with a Belorussian citizen, Ms M.L., in Italy.

3. On 25 September 2014 M.L. gave birth to their son, D. The latter is a citizen of Italy and Belarus.

4. On 23 March 2016 the Nuoro Court established joint custody of the applicant and M.L. over the child, determined the schedule for the applicant's contact with the child and obliged the applicant to pay child maintenance. On 8 July 2016 the Cagliari Court of Appeal modified the above judgment, having, in particular, revised the contact schedule.

5. On 9 February 2018 M.L. informed the Italian police that she and D. had left Italy and that she had no intention to come back to Italy.

6. On 9 March 2018 the applicant received a letter from M.L., posted from Russia on 5 February 2018, in which she informed him that from then on she would reside in St Petersburg.

7. On 30 May 2018 M.L. was granted a residence permit in Russia valid until 30 May 2023.

8. On 27 July 2018 the applicant lodged an application with the Dzerzhinskiy District Court of St Petersburg ("the District Court"), seeking his son's return to Italy on the basis of the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"). He requested the District Court that pending the proceedings M.L. be prohibited from changing D.'s place of residence in the Russian Federation and from taking him outside of Russia *(заявление об обеспечении иска)*.

9. On 13 August 2018 the District Court took an interim decision *(определение о принятии мер по обеспечению иска)* preventing M.L. from changing the child's place of residence in Russia and from taking the child outside of Russia pending the proceedings. On the same day the decision in question was transferred to the Border Guard Service and the Chief Department of the Ministry of the Interior of the Russian Federation.

10. Despite the above interim decision, on an unspecified date later in August 2018 M.L. and the child left Russia for Belarus. This fact became known to the applicant in November 2018.

11. Meanwhile, on 4 October 2018 the applicant requested the District Court to determine the contact arrangement between him and his son pending the Hague Convention proceedings.

12. On 26 October 2018 the District Court granted the applicant's request and determined a provisional schedule for his contact with the child. Relevant enforcement proceedings were instituted on 16 November 2018.

13. On 14 February 2019 the District Court granted the applicant's request and ordered that the child be returned to the place of his habitual residence in Italy.

14. However, following M.L.'s and a prosecutor's appeal, on 6 June 2019 the St Petersburg City Court ("the City Court") quashed the judgment of 14 February 2019 and rejected the applicant's request for the child's return to Italy. The City Court considered that Italy had not been the State of D.'s habitual residence and that D.'s removal from Italy had not been unlawful within the meaning of Article 3 of the Hague Convention. These conclusions were reached on the basis of the following considerations: (i) M.L. and D. had been citizens of Belarus; (ii) they had been permanently residing in Belarus where they had their registered place of residence; (iii) D. had been three and a half years old when he had been removed from Italy, the age when the child had both psychological and physiological need for his mother; (iv) M.L. had no intention of returning to Italy; criminal proceedings had been pending against her in Italy in connection with D.'s removal; (v) D. lacked the necessary knowledge of the Italian language and had reached a significant level of integration into the social and family environment in Russia and, subsequently, in Belarus.

15. The City Court furthermore relied on Principle 6 of the United Nations 1959 Declaration of the Rights of the Child, which provided that a child of tender years should not, save in exceptional circumstances, be separated from his or her mother, as well as on the report by the childcare authority, stating that D.'s separation from his mother would cause him psychological trauma and affect his psychological well-being and development. In view of such factors, the City Court concluded that the circumstances of the present case fell under exceptions to immediate return under Articles 13 (b) and 20 of the Hague Convention and that there had been, therefore, no grounds for granting the applicant's request for D.'s return to Italy.

16. The City Court also took into account that one year and four months had elapsed since D.'s removal from Italy in February 2018, that D. had had no long-term communication with the applicant since then and that the family ties between them had therefore been ruptured.

17. The City Court took the view that the circumstances of the child's removal from Italy had not been in breach of the applicant's custody rights and that he had been free to make use of his parental rights at the place of the child's residence in Belarus.

18. The City Court noted furthermore that M.L., a citizen of Belarus, had been free to choose to reside there.

19. The City Court went on to say that under the Constitution, "motherhood and childhood" had been one of the fundamental principles of the Russian Federation, implying the impossibility of disrupting the relations between the mother and the child, except when it contradicted the interests of the child. The City Court noted the absence of any such contradiction in the present case.

20. On 10 September 2019 a judge of the City Court refused to refer the applicant's cassation appeal to the Presidium of that court for examination, having found no significant violations of substantive or procedural law which had influenced the outcome of the proceedings.

21. A second cassation appeal by the applicant was rejected on 29 October 2019 by a judge of the Supreme Court of the Russian Federation.

22. The applicant subsequently pursued proceedings in Belarus for a contact arrangement between him and his son and obtained a judgment in his favour in February 2020. However, the judgment could not be enforced as it was established that M.L. and the child moved back to Russia.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant's complaint is twofold: it concerns the refusal to return his son to Italy on the basis of the Hague Convention and the failure to secure

the enforcement of the interim decisions of 13 August and 26 October 2018 taken in the framework of those proceedings.

24. The Government submitted that the applicant had never challenged the bailiffs' actions or inaction in the enforcement of the interim decision of 26 October 2018 determining a provisional schedule for his contact with the child pending the Hague Convention proceedings. The applicant did not contest that. The Court considers that the Government's submission may be regarded as implying the applicant's failure to exhaust the domestic remedies in this respect and rejects this part of the complaint for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

25. The Court notes that the remaining part of the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground, including compliance with the six-month period under Article 35 § 1 of the Convention (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 46-59, 1 March 2022, in which the Court addressed the COVID-related extension of the period in question and concluded that it should be exceptionally considered to have been suspended for three calendar months in total whenever it either started to run or was due to expire at any time between 16 March and 15 June 2020). In the present case the six-month period was due to expire on 29 April 2020 (see paragraph 21 above). Having lodged his application on 14 June 2020, the applicant thus complied with this requirement.

26. The general principles emerging from the Court's case-law on the issue of international abduction of children have been summarized in *X v. Latvia* ([GC], no. 27853/09, §§ 92-108, ECHR 2013), and *Neulinger and Shuruk v. Switzerland* ([GC], no. 41615/07, §§ 131-40, ECHR 2010, with further references).

27. The determination of whether the applicant's son was to be returned to Italy depended on whether his removal from Italy by his mother M.L. was wrongful within the meaning of Article 3 of the Hague Convention. This required the ascertaining of the following circumstances: (1) the State of the child's habitual residence immediately before the removal; (2) whether the applicant had custody rights in respect of the child under the law of that State immediately before the removal; and, if so, (3) whether the applicant actually exercised his custody rights in respect of the child at the time of the removal (see *Thompson v. Russia*, no. 36048/17, § 60, 30 March 2021).

28. Although the City Court did not give any consideration to the above circumstances in reaching its conclusion that the child's removal had not been wrongful under the above criteria of the Hague Convention (see paragraph 14 above), it proceeded as though the duty to return the child under the Hague Convention had been triggered. Having relied on the child's interest, in view of his young age, in not being separated from his mother, the City Court dismissed the return request with reference, in particular, to Article 13 (b) of the Hague Convention, implying the existence of a grave risk that the child's

return would expose him to psychological harm. The City Court took into consideration the reluctance of the child's mother to return to Italy in view of the criminal proceedings pending against her there on account of the child's removal. It further relied on Principle 6 of the United Nations 1959 Declaration of the Rights of the Child providing that a child of tender years should not, save in exceptional circumstances, be separated from his or her mother, as well as on the report of the childcare authority stating that the child's separation from his mother would cause him psychological trauma and affect his psychological well-being and development.

29. The exceptions to return under the Hague Convention must be interpreted strictly and the harm referred to in Article 13 (b) of the Hague Convention cannot arise solely from separation from the parent who was responsible for the wrongful removal or retention. This separation, however difficult for the child, would not automatically meet the grave risk test. Nothing in the circumstances unveiled before the domestic courts objectively ruled out the possibility of the mother's return together with the child. It was not implied that M.L. did not have access to Italian territory, that the criminal proceedings pending against her in Italy would necessarily lead to her separation with the child in the event of return, or that the applicant might actively prevent her from seeing the child in Italy or deprive her of parental rights or custody. Allowing the return mechanism to be automatically deactivated on the sole basis of a refusal by the abducting parent to return would subject the system designed by the Hague Convention to the unilateral will of that parent, and would be contrary to the letter and spirit of that Convention (see *Thompson v. Russia*, cited above, §§ 54-74, with further references).

30. The interpretation and application of the provisions of the Hague Convention by the domestic courts failed, therefore, to secure the guarantees of Article 8 of the Convention and the respondent State failed to comply with its positive obligations under Article 8 of the Convention to secure to the applicant his right to respect for his family life. There has accordingly been a violation of Article 8 of the Convention on account of the refusal to return the applicant's son to Italy.

31. In view of its finding above, the Court considers that it is not necessary to examine the merits of the applicant's complaint concerning the failure of the domestic authorities to secure the enforcement of the interim decision of 13 August 2018 prohibiting M.L. from changing the child's place of residence in Russia and from taking the child outside of Russia pending the Hague Convention proceedings.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. The applicant claimed 18,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,932 in respect of costs and expenses incurred before the Court.

33. The Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

34. Having regard to the documents in its possession, the Court awards the applicant EUR 1,932 covering costs under all heads, plus any tax that may be chargeable to him.

35. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention concerning the refusal to return the applicant's son to Italy and failure to secure the enforcement of the interim decision of 13 August 2018 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention on account of the refusal to return the applicant's son to Italy;

3. *Holds* that there is no need to examine the complaint under Article 8 of the Convention on account of the failure to secure the enforcement of the interim decision of 13 August 2018;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,932 (one thousand nine hundred and thirty two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President