



Press Office of the Constitutional Court

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IT IS UNCONSTITUTIONAL TO AUTOMATICALLY SUSPEND THE PARENTAL RESPONSIBILITY OF INDIVIDUALS CONVICTED OF INTERNATIONAL CHILD ABDUCTION

Criminal courts must proceed on a case-by-case basis, when considering whether the best interests of the child would be served by suspending the parental responsibility of a parent who has committed the offence of international child abduction.

This was held by the Constitutional Court in Judgment No. 102, filed today (Judge Rapporteur: Francesco Viganò). The Court declared that the automatic imposition of the ancillary penalty, envisaged to date under Article 574-*bis* of the Criminal Code, is unconstitutional.

According to the Court, there is no doubt that the offence of international child abduction is particularly deplorable and constitutes a serious breach of the rights of the child, as well as of those of the other parent, who also falls victim to the offence.

However, as the ancillary penalty in question has a pronounced effect on the right of the child to maintain a relationship with both parents, the Court has stated that it is not reasonable to consider it as being “always and necessarily [...] the best solution for the child”. Its application will be justified only when it concretely serves the best interests of the child, which are also to be assessed having regard to all events occurring after the offence was committed.

In fact, according to the judgment, it may very well be that “maintaining a relationship with the parent who committed the abduction or retention abroad will not be of detriment to the child, and might even serve his or her interests. In these cases, the State would be under a duty to safeguard the relationship, granting it priority over the need to punish those who have violated the criminal law.” This all the more in cases similar to the one referred to the Court: the mother had brought her children to Austria without the father’s permission; however, the Italian courts hearing the parallel civil proceedings on protecting the children’s best interests later held that the underage child should continue to live in Austria, with the mother.

Finally, the Court emphasised that it is for the Legislator to re-evaluate, in the context of an increasingly likely reform of the relevant law, whether such decisions are best made by criminal courts. In any event, this would be without prejudice to the need to ensure coordination among all the judicial authorities (criminal courts, juvenile courts and ordinary civil courts) called upon to protect the interests of minors in such sensitive situations.

Rome, 29 May 2020