

NEWS REPORT

Date:	24 August 2010
Expert:	Alessandro Simoni
Title:	Supreme Court affirms the illegality of the mention of "racial preferences" in international adoption procedures
Country:	Italy
<u>Context</u>	Judicial control over the content of the declarations on the basis of which a couple is declared suitable for an international adoption
Issue at stake:	Whether the juvenile court can issue a declaration of suitability for international adoption once in their statements the adoptive parents mentioned ethnic groups (races) from which they would not be ready to adopt a child
Ground of discrimination:	Race and ethnicity
Source:	<i>Suprema corte di cassazione - sezioni unite civili, sentenza 1.06.2010, n. 13332.</i> Judgment of the supreme court (civil division, <i>en banc</i>) of June 1, 2010, n. 13332. The judgment can be found on the website of the Supreme Court www.cortedicassazione.it
Field:	Private sphere – family
Legislative provisions:	<i>Codice di procedura civile</i> (Civil Procedure Code), Article 363; <i>Legge 4 Maggio 1983 n.184, Disciplina dell'adozione e dell'affidamento dei minori</i> , in <i>Gazzetta Ufficiale n. 133 del 17 maggio 1983</i> (Law of May 4, 1983, n. 184, Regulation of adoption and foster care of minors, in Official Journal, n. 133 of May 17, 1983), Article 30 (as amended by Article 3 of Law 476 of 1998).

Content

This judgment is issued by the Italian Supreme court on the basis of its - seldom used – power to pronounce a decision affirming a "legal principle in the interest of the law" (*principio di diritto nell'interesse della legge*). The case was brought by the General Prosecutor on the basis of Article 363 of the Civil Procedure Code (as amended in 2006), pursuing solely the aim of orienting future case law and not in the course of an appeal lodged by a litigant in a judicial proceeding.

The legal background concerns the judicial procedure that prospective adoptive parents must undergo before completing an international adoption. According to law 184/1983 regulating adoption and foster care, prospective parents must first apply to the juvenile court (*Tribunale dei minori*) in order to obtain a decree declaring their "suitability for adoption" (*decreto di idoneità ad adottare*).

Such applications, which are accompanied by a report of the social services, ordinarily contain information on the characteristics of the couple and of the child to be adopted (whom at this stage is not yet identified), to be used in the best interest of the child during the following steps of the procedure. In the present case, a juvenile court issued a decree declaring the suitability of the prospective parents who declared in the application to be unwilling to adopt "children with dark skin or skin different from the typical European one".

In its judgment the Supreme Court affirms that such a racial preference (although the preference of the parents seems to be purely racial, the Court prefers in its reasoning to speak of "ethnic group" - *etnia*) cannot be approved by the judge, as being in a "striking and unavoidable conflict with [...] national and supranational fundamental principles" as well as with the solidarity which must underlie the choice for adoption.

By making reference to the main antidiscrimination instruments at national (Articles 2 and 3 of the Italian constitution, Article 2 of decree 215/2003, article 43 of law 286/1998 on immigration, Article 1 of law 184/1983 regulating adoption and foster care) and international level (Article 14 ECHR, UN Convention on Racial Discrimination, Article 6 of the EU treaty as amended by the Lisbon treaty, Article 21 of the EU Charter of Fundamental Rights, Directive 43/2000 and UN Convention on the Rights of the Child), the Supreme Court therefore establishes that the "decree declaring suitability for adoption pronounced by the juvenile court [...] cannot be issued on the basis of references to the ethnic group of the minor to be adopted, nor cannot contain indications concerning such ethnic group. Where such discriminations are expressed by the adopting couple, they are evaluated by the judge who decides on the suitability for international adoption".

Although important in principle, this ruling - as recognised by the Supreme Court itself in its reasoning - has limited practical effects, since couples interested in an international adoption can easily avoid undesired racial characteristics by selecting the country in which they will adopt a child through one of the authorised agencies operating according to Italian law.