



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

FIRST SECTION

CASE OF GLUHAKOVIĆ v. CROATIA

(Application no. 21188/09)

JUDGMENT

STRASBOURG

12 April 2011

FINAL

12/07/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gluhaković v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Anatoly Kovler, *President*,

Nina Vajić,

Christos Rozakis,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 21188/09) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Stjepan Gluhaković (“the applicant”), on 7 April 2009.

2. The applicant was represented by Mr S. Babić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 8 June 2010 the President of the First Section decided to communicate the complaint concerning the applicant's right to respect for his private and family life to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in Rijeka.

5. In February 1999 the applicant married A. However, in July, while she was pregnant, A. left the applicant and on 25 December 1999 gave birth to a daughter, I.K.

6. Several separate proceedings concerning contact between the applicant and his daughter I.K. were conducted before the Rijeka Municipal

Court as well as before the Rijeka Social Welfare Centre (hereinafter “the Social Welfare Centre”).

1. The applicant's request for contact with his daughter before the Rijeka Social Welfare Centre

7. At the beginning of 2000 the applicant asked the Social Welfare Centre to issue a decision regulating his contact with I.K.

8. On 26 April 2000 the applicant complained to the Social Welfare Centre that he saw his daughter only for one hour a week and that the child, who had started to recognise human faces, was scared of him because his face was not familiar to her. He requested to be allowed to see the child every four days, because he worked in Italy and his work schedule was organised in such a way that he worked for three whole days and then had a fourth day off.

9. On 4 May 2000 the applicant saw a psychiatrist at the suggestion of the Social Welfare Centre's personnel. A medical report drawn up by the psychiatrist indicated that the applicant was suffering from paranoid psychosis and recommended that contact between the applicant and I.K. be supervised by the child's mother or another person. The psychiatrist reiterated that conclusion in his report of 1 June 2000.

10. On 10 June 2000 the Social Welfare Centre issued a decision giving custody of I.K. to the child's mother and ordering that meetings between the applicant and I.K. take place every Tuesday – between 9.30 a.m. and 10.30 a.m. at the Rijeka Counselling Centre for Marriage, Family and Youth (hereinafter “the Counselling Centre”) in the presence of the child's mother and an employee of the Counselling Centre.

11. On 16 June 2000 the Ministry for Work and Social Welfare quashed the first-instance decision on the ground that it was necessary to hold an oral hearing before adopting a decision in the case. Nevertheless, the meetings between the applicant and I.K. were arranged at the Counselling Centre.

12. On 19 January 2003 the Social Welfare Centre issued a decision ordering meetings between the applicant and I.K. every Tuesday – between 9.30 a.m. and 11.30 a.m. at the Counselling Centre in the presence of an employee of the Counselling Centre.

13. The applicant lodged an appeal on 19 January 2003 which was dismissed on 7 December 2004 by the Ministry of Health and Social Welfare.

2. The contact issue in the civil proceedings before the Rijeka Municipal Court in the course of the divorce and custody proceedings

14. Meanwhile, on 21 March 2000 A. brought a civil action in the Rijeka Municipal Court seeking a divorce from the applicant. On 24 July 2002 the

Rijeka County Court adopted a divorce judgment ordering the applicant to pay maintenance for I.K. and also granting him contact with I.K. every Tuesday between 9.30 a.m. and 11.30 a.m. in the presence of a third person. The applicant lodged an appeal arguing, *inter alia*, that it was difficult for him to come to Rijeka every Tuesday, due to his work schedule in Italy. He further explained that in order to see his daughter on Tuesdays, he often had to drive at night and was obliged to ask his colleagues to replace him at work, which caused him significant difficulties.

15. On 15 January 2003 the Rijeka County Court quashed the part of the judgment concerning contact between the applicant and I.K. and that part of the case was remitted to the Municipal Court.

16. For the purposes of the resumed proceedings before the Municipal Court, on 2 March 2005 the Counselling Centre drew up a report on the meetings between the applicant and I.K. The report stated that the applicant and his daughter had been meeting regularly on the Counselling Centre's premises since June 2000 and that they had developed a warm personal relationship. However, in view of the child's age and needs, further meetings on the Counselling Centre's premises would not be possible because the premises were not considered appropriate.

17. At a hearing held on 6 September 2005 a psychologist from the Counselling Centre, S.M., stated that the meetings between the applicant and his daughter had been held in the Centre's kitchen or offices of its employees and that the Centre had no suitable space for the meetings.

18. That opinion was reiterated in a further report of 8 November 2005.

19. In the resumed proceedings the Rijeka Municipal Court gave judgment on 30 November 2006 granting contact between the applicant and I.K. every Tuesday – between 9.30 a.m. and 11.30 a.m. in the weeks when I.K. attended school in the afternoon, and between 3.30 p.m. and 5.30 p.m. when I.K. attended school in the morning – at the Counselling Centre, in the presence of a member of staff. The Municipal Court based its decision on reports by a psychologist and a psychiatrist on the applicant's mental health, commissioned for the purposes of the proceedings. The reports established that the applicant suffered from paranoid psychosis and stipulated that contact between him and I.K. should be supervised. The Municipal Court made no comments as regards the applicant's argument about the time of the meetings and his work schedule.

20. As regards the place of the meetings, the relevant part of the judgments reads:

“... this court has ordered that contact ... between the child I.K.G. and her father still be held at the premises of the Counselling Centre, under the supervision of a third person, to be designated by ... the Welfare Centre ... because it finds that this decision is in the interests of the welfare of the child. An extension of [the father's] parental rights ... is possible on the condition that he undergoes the treatment recommended in the report by the expert [in psychiatry].

This court has ordered that contact take place on the premises of the Counselling Centre given that during these proceedings the Welfare Centre did not make an adequate proposal as to the premises on which contact – which should be limited in view of the father's diagnosis – should take place. This court has also taken into account the fact that the [child] attends school on a changing schedule and has ordered contact accordingly ...”

21. On 19 December 2006 the applicant lodged an appeal, in which he again explained the situation regarding his work schedule. For that reason he sought an order for contact with I.K. every fourth day for a duration of ten hours, or every eighth day, with I.K. spending the night at his home. He also requested to spend half of the winter and summer school holidays, half of all bank holidays, and half of Christmas Day, which was also I.K.'s birthday, with her.

22. On 9 March 2007 the Rijeka County Court upheld the judgment of the first-instance court. It made no comments as to the applicant's arguments related to his work schedule in Italy. The relevant part of the judgment concerning a suitable place for meetings between the applicant and his daughter reads:

“On the basis of the report by the Rijeka Welfare Centre of 28 July 2005 the first-instance court established that the [opinion of the Welfare Centre] was that the meetings between the applicant and his daughter could no longer be held at the premises of the Counselling Centre because it was no longer suitable for the child's needs and in this respect the [first-instance] court heard evidence from witness S.M., a psychologist at the Counselling Centre. On the basis of her evidence the first-instance court established that on several occasions the Rijeka Welfare Centre had sought the opinion of the Counselling centre about the meetings between the applicant and his daughter; that the witness had actively participated in these meetings; that the relationship between the applicant and his daughter was good; and that the staff of the Counselling centre were of the opinion that the decision by the Welfare Centre concerning contact should be altered, an opinion with which she personally agreed, in particular in view of the passage of time since the last decision by the Welfare Centre, that the daughter had advanced in age and that the premises of the Counselling Centre were no longer suitable. However, she had no idea or suggestion as to a suitable location for the meetings or as to whether the presence of a third person was necessary. Finally, [she was of the opinion] that the meetings could also be held outside [the centre], but in the presence of a third person given that the applicant suffered from certain disorders, [which could lead to him acting overly] suspicious.

...

On the basis of a further opinion by ... expert [in psychiatry] M.B. of 6 November 2006 the first-instance court established that ... there were no reasons to restrict the rights the applicant had thus far enjoyed in connection with his contact with his daughter, and that a possible extension of his parental rights could be granted on the condition that he cooperated in his medical treatment.

Taking the above-mentioned report as a starting point ... the [first-instance] court ordered that the meetings between I.K.G. and the applicant should continue at the premises of the Counselling Centre in the presence of an expert ... since during the

proceedings the Welfare Centre had made no adequate proposal as to the premises on which contact, which, in view of the applicant's diagnosis, should be restricted, should take place. The [first-instance] court found that that decision had also taken into account that the daughter attended school on a changing schedule and ordered contact with her father accordingly. An extension of his parental rights ... was possible on the condition that he undergo treatment, as recommended in the opinion of the expert.

...

... in its reasoning the first-instance court cites correct and valid reasons which this court endorses completely. ... the first-instance court ordered that the meetings between the applicant and his daughter were to be held on the premises of the Counselling Centre, because during the proceedings the Welfare Centre did not make an adequate proposal as to suitable premises for those meetings ...”.

23. On 5 June 2007 the applicant lodged a constitutional complaint. *Inter alia*, he reiterated his arguments about the time of the meetings with I.K. and his work schedule and the arguments concerning the suitability of the premises for their meetings.

24. On 25 September 2008 the Constitutional Court dismissed the applicant's constitutional complaint. It made no comments as to the applicant's arguments about the time of the meetings and his work schedule and his arguments concerning suitable premises for the meetings.

3. The applicant's further requests concerning contact between the applicant and I.K. before the Rijeka Municipal Court

(a) First set of proceedings

25. In the meantime, and subsequent to the judgment of the Rijeka County Court of 9 March 2007 (see paragraph 22 above) on 27 August 2007 the applicant sought the Rijeka Municipal Court to change the decision on contact between him and I.K. in view of his work schedule, and in view of the statement of the Counselling Centre that there was no suitable space there for meetings between the applicant and I.K. He also stated that on 23 July 2007 the Counselling Centre had informed him that meetings were no longer possible on its premises. The applicant asked that meetings between him and I.K. be held in his flat in Rijeka.

26. In his submissions of 6 September 2007 the applicant complained that he had not seen I.K. since July 2007 because the Counselling Centre had been closed.

27. At a hearing held on 29 October 2007 the applicant stated that he had had no contact with I.K. for the past three months.

28. On 29 October 2008 the Rijeka Municipal Court ordered contact between the applicant and I.K. one day a week for two hours on the premises of the Rijeka Social Welfare Centre in the presence of J.T., a retired special needs expert. The relevant part of the decision reads:

“... this court has ordered that the meetings [between the applicant and his] daughter shall take place one day a week for a duration of two hours, depending on the child's school activities and the day when the father is in Croatia. Since the father is free every fourth day, because he works for three whole days, he is always free on one day of the week.

Since the applicant had no adequate suggestion as to the premises of the meetings, this court holds that the meetings are to be held on the premises of the Rijeka Social Welfare Centre, which is the most suitable place [in terms of] space for the meetings.”

29. On 7 January 2009 the applicant lodged an appeal with the Rijeka County Court complaining that the meetings were not possible at the Social Welfare Centre and asking that the meetings be held in his flat in Rijeka. He also complained that for the past seventeen months he had had no contact with I.K.

30. On 20 January 2009 the Social Welfare Centre submitted to the Rijeka County Court that they had no suitable place for meetings between the applicant and I.K. since, owing to a shortage of space, two to three staff members shared the same office. The only space where the applicant and I.K. could meet was the corridor, which, in the Centre's view, was not a suitable location.

31. On 3 November 2009 the Rijeka County Court upheld the decision of the Rijeka Municipal Court of 29 October 2008 and specified that meetings be held between the applicant and I.K. every Thursday – between 9.30 a.m. and 11.30 a.m. in the weeks when I.K. attended school in the afternoon, and between 3.30 p.m. and 5.30 p.m. when I.K. attended school in the morning – at the Social Welfare Centre, in the presence of J.T. The relevant part of the decision reads:

“The assessment of the first-instance court as regards the place for the meetings is correct ...

... the first-instance court correctly assessed that, in view of the circumstances of the case, the most suitable place for the meetings could for now only be the premises of a State institution, since an institutional setting would enable an appropriate response to made to any unexpected situation. ...

... this court finds that the [Rijeka Social Welfare Centre] as a public institution responsible for ... implementation of measures aimed at protecting the interests of minor children, is obliged to enforce such measures, including the supervision of meetings between children and their parents, and to ensure that all necessary conditions are met. This includes [providing] the premises for meetings where they cannot be organised in a different manner.

...

... this court finds that it is in the interest of the daughter, irrespective of her current age ..., to meet her father every Thursday for two hours, depending on her school schedule, because Thursday is, owing to the child's weekly schedule, the most appropriate day.”

(b) Second set of proceedings

32. On 7 May 2009, while his appeal against the decision of the Municipal Court was still pending, the applicant again requested the Rijeka Municipal Court to change its decision on contact between him and I.K. He relied on the above allegations of the Centre about the shortage of space.

33. The applicant also reiterated his arguments as regards his work schedule.

34. On 8 March 2010 the Rijeka Municipal Court ordered contact between the applicant and I.K. once a week when the applicant was free for a duration of three hours in the presence of a third person. The parents were to find a solution as to the place of the meetings.

35. The applicant alleged that this judgment was not properly enforced because no suitable place for the meetings was found and the child's mother refused to let him meet I.K. in his flat.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. The relevant articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 85/2010. of 9 July 2010, consolidated text) provide:

Article 35

“Everyone has the right to respect and legal protection of his or her private and family life ...”

37. The relevant part of the Family Act from 1998 (*Obiteljski zakon*, Official Gazette no 162/1998), in force until 22 July 2003, reads:

Section 99

“When parents do not live together a social welfare centre shall decide with which parent the child shall live and also order the manner and time of the contact with the other parent, where it is not decided by this Act that such decision is to be adopted by a court.

...”

38. The relevant part of the Family Act (*Obiteljski zakon*, Official Gazette nos. 116/2003, 17/2004, 136/2004 and 107/2007) reads:

Section 100

“(1) When parents do not live together a court shall decide with which parent the child shall live and also order the manner and time of the contact with the other parent.

(2) In order to ensure the child's welfare contact and meetings between the child and the parent he or she is not living with may be restricted or banned, and in view of the circumstance of each case a court may also designate a person who shall be present during contact.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained that the national authorities had not fulfilled their positive obligation of ensuring that his right to contact with I.K. was effective. He relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' arguments

40. The Government argued that the applicant had not exhausted all available domestic remedies because he had failed to lodge an administrative complaint against the decision of the Ministry of Health and Social Welfare of 7 December 2004. He had also failed to exhaust the available remedies in respect of the two sets of non-contentious proceedings conducted before the Rijeka Municipal Court because he had failed to lodge a constitutional complaint.

41. The applicant argued that he had exhausted all available remedies.

(b) The Court's assessment

(i) General principles

42. The Court reiterates that in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would mean duplicating the domestic process with proceedings before the Court, which would hardly be compatible with the subsidiary nature of the Convention (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008). Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his or her Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005).

43. The Court reiterates further that where an applicant has a choice of domestic remedies, it is sufficient for the purposes of the rule of exhaustion of domestic remedies that he or she make use of a remedy which is not unreasonable and which is capable of providing redress for the substance of his or her Convention complaints (see, *inter alia*, *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000, and *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, § 43, 5 July 2005). Indeed, where an applicant has a choice of remedies and their comparative effectiveness is not obvious, the Court interprets the requirement of exhaustion of domestic remedies in the applicant's favour (see *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 110, ECHR 2008-... (extracts), and the cases cited therein). Once the applicant has used such a remedy, he or she cannot also be required to have tried others that were available but probably no more likely to be successful (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 56, 12 April 2007, and the cases cited therein).

(ii) Application of these principles to the present case

44. The Court agrees with the Government that the applicant did not use all remedies envisaged by the national law in each and every set of the proceedings concerning his contact rights. It is true that, in respect of the

decisions adopted before the administrative authorities, he failed to lodge an administrative complaint before the Administrative Court and, in the event of the unfavourable outcome of these proceedings, also a separate constitutional complaint.

45. It is also true that the applicant did not lodge a constitutional complaint against the Rijeka County Court's decision of 3 November 2009. However, the Court also notes that the main argument of the applicant was that the national courts repeatedly ignored his request that his visiting rights be adjusted to suit his work schedule and that the Social Welfare Centre had no suitable place for meetings with his daughter. These very same issues were the subject of his constitutional complaint (see above, paragraph 23) lodged in the context of the civil proceedings instituted on 21 March 2000 and thus the Constitutional Court had an opportunity to examine them. However, on 25 September 2008 it dismissed the applicant's constitutional complaint.

46. In these circumstances the Court is of the view that the applicant was not required to lodge another constitutional complaint against the Rijeka County Court's decision of 3 November 2009 or further remedies in respect of the decision by the Rijeka Municipal Court of 8 March 2010, since the very same issues were at stake.

47. Furthermore, the Court notes that the main proceedings at issue are the regular civil proceedings, which commenced on 21 March 2000, conducted before the ordinary courts, and that in those proceedings a decision on contact between the applicant and I.K. had also been taken. In the course of those proceedings the applicant used all available remedies, including a constitutional complaint. It follows that the Government's objection must be rejected.

2. The applicant's victim status

48. The Government argued that the applicant was not a victim of the violation claimed because he had been seeing I.K. on the premises of the Counselling Centre.

49. The applicant argued that his problems with maintaining regular contact in adequate premises had persisted since 2000 and that since July 2007 he had not seen I.K.

50. The Court notes that the applicant complained that the national authorities had not taken into account his work schedule in Italy without any good reason and that since the Counselling Centre had been closed in July 2007, he had had no contact with his daughter. The Court considers that the applicant's allegations warrant examination on the merits and therefore rejects the Government's objection.

3. Conclusion

51. The Court notes that the complaint as regards the proceeding conducted before the ordinary courts is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

52. The applicant argued that when deciding when contact between him and his daughter was to take place, the national authorities had ignored his arguments concerning his work schedule and had not found a proper place for meetings between them even though he had suggested that the meetings be held in his flat in Rijeka.

53. The Government argued that, owing to the applicant's mental illness, contact between him and I.K. had to be supervised. They further argued that the national authorities had never prevented the applicant's contact with I.K. The meetings between them had been held on the premises of the Counselling Centre. The meetings had had to be scheduled on a fixed day in the week because a child had needed to maintain a regular schedule.

2. The Court's assessment

(a) Relevant principles

54. The Court notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005, and *Fușcă v. Romania*, no. 34630/07, § 32, 13 July 2010).

55. Further, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290).

56. In relation to the State's obligation to implement positive measures, the Court has held that Article 8 includes for parents a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunions (see, among other authorities, *Ignaccolo-Zenide*, cited above, § 94; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00,

§ 49, ECHR 2003-V). This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures (see, *inter alia*, *Olsson v. Sweden* (no. 2), 27 November 1992, § 90, Series A no. 250), but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299).

57. The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is not, however, absolute (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58). The establishment of contact may not be able to take place immediately and may require preparatory or phased measures. The co-operation and understanding of all concerned will always be an important ingredient. While national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention (see *Hokkanen*, cited above, § 58, and *Olsson* (no. 2), cited above, § 90).

58. What is decisive is whether the national authorities have taken all necessary steps to facilitate the execution that can reasonably be demanded in the specific circumstances of each case (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen*, cited above, § 128; and *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003).

59. In this context, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who does not live with the child (see *Ignaccolo-Zenide*, cited above, § 102).

(b) Application of the above principles in the present case

60. The Court notes that it is common ground that the tie between the applicant and his child falls within the scope of “family life” within the meaning of Article 8 of the Convention.

61. As regards the background of the present case, the Court notes that the applicant was granted by way of judicial decisions the right to regular contact with his daughter, who lived with her mother. Initially, until 29 October 2008, the meetings were ordered every Tuesday for a duration of two hours, in the presence of a third person. On 29 October 2008 the meetings were ordered once a week at the Social Welfare Centre and then on 3 November 2009 every Thursday at the same Centre. On 8 March 2010 the meetings were ordered once a week at an unspecified place.

62. Thus, the applicant's right to see his daughter at regular intervals was never in dispute for the national courts and they all agreed that the applicant

should be able to enjoy that right. However, in view of the principle that the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 33, *Reports* 1998-I; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III; and *Lykourazos v. Greece*, no. 33554/03, § 56, ECHR 2006-VIII), the national court should have also ensured that the applicant was able to exercise his right to contact with his daughter effectively.

63. The Court accepts that ordering that the meetings be supervised by a third person was a reasonable measure in view of the applicant's health problems as described by experts in psychology and psychiatry.

64. The Court notes that as early as April 2000 the applicant explained to the national authorities that his work schedule allowed him to take every fourth day off and asked that the meetings between him and his daughter be ordered accordingly. He repeatedly put forward the same argument in all the proceedings conducted before the national authorities which concerned contact with his daughter. He clearly and explicitly argued that owing to the fact that he worked in Vicenza, Italy, and since his work schedule was organised in such a way that he worked three full days and then had every fourth day off, it was very difficult for him to come to Rijeka every Tuesday. He asked that, instead, meetings be held every fourth or every eighth day.

65. However, these arguments were constantly ignored. Thus, neither in the judgment of the Rijeka Municipal Court of 30 November 2006, nor in a judgment by the Rijeka County Court of 9 March 2007, adopted in the appeal proceedings, did these courts make any comments as to the time of the visits and the applicant's work schedule, but continued to order the meetings every Tuesday.

66. The applicant again reiterated his arguments in his constitutional complaint of 5 June 2007, lodged in connection with the above-mentioned judgments of the ordinary courts. The Constitutional Court also ignored them.

67. It is true that on 29 October 2008 the Rijeka Municipal Court did order meetings to be held once a week, without further specification of the day. However, this judgment was altered on 3 November 2009 by the Rijeka County Court and the meetings were ordered every Thursday, despite the applicant's repeated argument that seeing his daughter on a fixed day of the week was very difficult for him owing to his work schedule.

68. Contrary to the attitude of the national courts, the Court finds the applicant's arguments relevant for the exercise of his right of contact and

accepts that it was difficult for the applicant to travel from Vicenza to Rijeka on a fixed day in view of his work schedule.

69. In this connection the Court observes that the national courts gave no explanation as to why it was not possible to accommodate the applicant's proposal as to the time of the meetings. They repeatedly ordered the contact between the applicant and his daughter on a fixed day of the week, paying no heed to the applicant's arguments.

70. Another issue in the present case is the objection of the Counselling Centre, put forward as early as March 2005, to the effect that they had no suitable place for the meetings between the applicant and his daughter. Further to this, when giving evidence before the Rijeka Municipal Court on 6 September 2005, a psychologist from the Counselling Centre submitted that the applicant had been seeing his daughter in the Counselling Centre's kitchen or in the offices of its employees. The same problems were reiterated in a further report by the Counselling Centre dated 8 November 2005.

71. However, irrespective of that objection, in its judgment of 30 November 2006 the Rijeka Municipal Court ordered that the meetings between the applicant and his daughter be held on the Counselling Centre's premises, without making any observations as to the suitability of these premises for the meetings. This decision was upheld by the Rijeka County Court on 29 March 2007, again with no reference to the suitability of the premises.

72. While it is true that the applicant did see his daughter until July 2007 on the premises of the Counselling Centre, the Court is mindful of the fact that these meetings were held in the Centre's kitchen and offices of its employees.

73. While the national courts never denied the applicant contact with his daughter and repeatedly ordered that meetings between the applicant and his daughter should be held, they also constantly ignored the reality of the applicant's situation as to his work schedule, as well as his objections and those of the Counselling Centre concerning the place of the meetings. This resulted in a situation where in order to see his daughter the applicant had to go to significant lengths to organise his replacement at his work and where the meetings took place in unsuitable places, such as the kitchen and offices of the Counselling Centre.

74. In addition, the Court is also mindful that further developments which took place after the applicant had lodged his constitutional complaint (see paragraph 23 above) did not ameliorate the situation. Thus, in July 2007 the applicant was informed by the Counselling Centre that no further meetings were possible there. However, a fresh decision was adopted a year and three months later, on 29 October 2008, without any provisional arrangements having been made in the meantime.

75. Further to this, and in the parallel proceedings, on 29 October 2008 the Rijeka Municipal Court ordered that the meetings be held at the Rijeka Social Welfare Centre, without assessing whether those premises were suitable. In the Court's view, before designating that place for the meetings, the Rijeka Municipal Court should have firstly assessed whether there was a suitable space available on the premises of the Social Welfare Centre.

76. Both the applicant and the Social Welfare Centre, in their respective appeals, complained that there was no suitable space in the Social Welfare Centre where the applicant could see his daughter. The Social Welfare Centre explained that owing to a shortage of space, two to three staff members shared the same office, and that the only space where the applicant and I.K. could meet was in the corridor. This resulted in a situation where the applicant could not see his daughter. However, on 3 November 2009 the appeal court upheld the decision that the meetings be held at the Social Welfare Centre, without addressing the objections raised by the applicant and the Centre itself.

77. Only as late as 8 March 2010 did the Rijeka Municipal Court order that the applicant was to see his daughter once a week when his work scheduled allowed. However, it failed to establish where the applicant should see his daughter, but left it to the parties to find a suitable place for the meetings.

78. The Court is mindful of the applicant's argument that, owing to the situation described above, he had had no contact with his daughter since July 2007.

79. The Court finds that the situation, as complained by the applicant before the Constitutional Court, is sufficient for it to establish that the national authorities have failed to adequately secure the applicant's right to respect for his family life as regards his right to effective contact with his daughter. Moreover, even before 25 September 2008 when the Constitutional Court decided on the matter that was before it, the contact between the applicant and his daughter had completely ceased.

80. There has accordingly been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. The applicant also complained under Article 6 § 1 of the Convention about the national courts' ruling that his contact with I.K. had to be supervised because he suffered from a mental illness; under Article 13 of the Convention that he had no effective remedy in respect of the violation of his Convention rights; and that the fact that custody of I.K. was given to his former wife violated Article 5 of Protocol No. 7. He also invoked Article 17 of the Convention.

82. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

83. Article 46 of the Convention provides as far as relevant:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

84. The Court has found that the national authorities have failed in their positive obligation to secure to the applicant the efficient enjoyment of his right to contact with his daughter in violation of Article 8 of the Convention.

85. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, appropriate individual measures to fulfil its obligations to secure the right of the applicant to respect for his family life (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI).

86. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I). This discretion as to the manner of

execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

87. However, exceptionally, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be taken in order to put an end to a violation it has found to exist. In such circumstances, it may however leave the choice of measure and its implementation to the discretion of the State concerned (see, for example, *Aleksanyan v. Russia*, no. 46468/06, § 239, 22 December 2008; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, ECHR 2009-...; and *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 174-177, 22 April 2010).

88. In the present case the Court notes that the national courts consistently ignored the applicant's arguments as to his work schedule and finding a suitable place for his meetings with his daughter.

89. Having regard to the particular circumstances of the case and the urgent need to put an end to the violation of Article 8 of the Convention, the Court considers that to discharge its obligation under Article 46 of the Convention, the respondent State shall secure effective contact between the applicant and his daughter at a time which is compatible with the applicant's work schedule and on suitable premises, on the basis of the judgment by the Rijeka Municipal Court of 8 March 2010.

B. Article 41 of the Convention

90. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

1. Damage

91. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

92. The Government deemed the sum claimed unsubstantiated and excessive.

93. The Court considers that the applicant has suffered non-pecuniary damage as a result of the domestic courts' failure to secure him the effective enjoyment of contact with his daughter, which was incompatible with Convention principles. The damage cannot be sufficiently compensated by a finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

2. Costs and expenses

94. The applicant did not make a claim in respect of costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

95. The Court considers it appropriate that the default interest 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 concerning the applicant's right to respect for his private and family life admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that the respondent State shall secure effective contact between the applicant and his daughter at a time which is compatible with the applicant's work schedule and on suitable premises, on the basis of the judgment by the Rijeka Municipal Court of 8 March 2010;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Croatian kuna at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 12 April 2011 Rule pursuant to 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President