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

Press Release
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ECHR 262 (2011)
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Polish authorities refused prisoner permission to visit his dying daughter in hospital and then failed to reply adequately and in time to his request to attend her funeral

In today's Chamber judgment in the case **Giszczak v. Poland** (application no. 40195/08), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

Two violations of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

The case concerned a Polish prisoner's complaint about not being allowed to visit his daughter who was in intensive-care and that, following her death, he decided not to go to her funeral as it was not clear whether he would have to attend in prison uniform and chains and under police escort.

Principal facts

The applicant, Grzegorz Giszczak, is a Polish national who was born in 1970 and is currently serving a 13-year prison sentence for incitement to murder in Hrubieszów (Poland).

Six years into his prison sentence, Mr Giszczak was informed on 21 April 2008 that his 11-year old daughter had been hit by a bus and was in intensive care in a coma. A week later, he applied for compassionate leave to visit her. The authorities subsequently refused this request, on the ground that Mr Giszczak was convicted of a serious crime and, involved in the prison subculture, was rude towards prison officers.

His daughter died on 16 May 2008. Her funeral took place on 21 May 2008.

Mr Giszczak did not go to his daughter's funeral as he says that he was led to believe that he would have to attend in prison clothes with shackles (chains) on both his hands and legs and under uniformed police escort. Informed orally of this decision the day before the funeral, he decided not to go out of fear of disturbing the ceremony.

The Government submitted that Mr Giszczak must have misunderstood as he clearly would have been allowed to go to his daughter's funeral in normal clothes and with simple handcuffs.

The written decision granting him permission to attend his daughter's funeral was served on him on 26 May 2008. It specified that he could attend if escorted by the police but did not mention whether he could go in normal clothes or without joined shackles.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Mr Giszczak complained about the refusal to allow him to visit his seriously injured daughter in hospital and, following her death, to attend her funeral in normal clothes. The case will be examined under Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 13 August 2008.

Judgment was given by a Chamber of seven, composed as follows:

David Thór **Björgvinsson** (Iceland), *President*,
Lech **Garlicki** (Poland),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta)*, Judges*,

and also Lawrence **Early**, *Section Registrar.*

Decision of the Court

Article 8 (right to respect for private and family life)

The Court considered that the reasons given for not allowing Mr Giszczak to visit his daughter in hospital had not been convincing as the authorities' concerns (gravity of the offence and rude behaviour) could have been addressed by organising his escorted leave. The Court therefore concluded that the refusal had not been "necessary in a democratic society" as it had not corresponded to a pressing social need and had not been proportionate to the legitimate aim – namely protecting public safety and preventing disorder or crime – pursued. There had therefore been a violation of Article 8 concerning the refusal to let Mr Giszczak visit his dying daughter in hospital.

As concerned the compassionate leave to go to his daughter's funeral, the Court noted that the written decision had only been served on Mr Giszczak four days after the funeral had actually taken place. Furthermore, it had not been particularly precise. Nor had he been given clear information about the conditions for attending his daughter's funeral when informed orally of the decision. Indeed, the fact that Mr Giszczak had not been informed in time and in a clear and unequivocal manner about the conditions of his compassionate leave had resulted in him refusing to go as he was worried about causing disruption. There had therefore been a further violation of Article 8 on account of the Polish authorities' failure to reply adequately and in good time to Mr Giszczak's request to go to his daughter's funeral.

Article 41 (just satisfaction)

The Court held that Poland was to pay Mr Giszczak 2,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.