



Grandparents' contact rights with their granddaughter suspended on account of criminal proceedings against the father: violation of right to respect for family life

In today's **Chamber judgment**¹ in the case of [Manuello and Nevi v. Italy](#) (application no. 107/10) the European Court of Human Rights held, unanimously, that there had been

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the applicants' inability to see their granddaughter, firstly because of the non-enforcement of court decisions authorising meetings and secondly on account of a court decision suspending those meetings.

The Court found that forbidding meetings between the grandparents and their granddaughter, on grounds that the child associated her grandparents with her father and the suffering she had undergone as a result of alleged sexual interference, was a measure that the authorities were entitled to take in cases of maltreatment. However, whilst great care was necessary in situations of this type and measures for the child's protection could involve restricting contact with members of the family, the Court considered that the authorities had not made the necessary efforts to protect the family ties between the grandparents and their granddaughter, who had not seen each other for about twelve years.

Principal facts

The applicants are two Italian nationals, Franca Manuello and Paolo Nevi, who were born in 1943 and 1938 respectively and live in Turin (Italy).

On 7 August 1997 a daughter, M.C., was born of the marriage between the applicants' son and M.G.T. In May 2002 M.G.T. expressed her wish to petition for judicial separation from her husband. Criminal proceedings were instituted against the applicants' son in June 2002, after M.C.'s headmistress had reported him to the police on suspicion of sexually interfering with the child. On 1 August 2002 the child's mother requested the Turin Youth Court to withdraw parental responsibility from her husband. The applicants have not seen M.C. again since that date.

In December 2002 they applied for authorisation to see the child. Regular meetings were held with social services to prepare for renewed contact with her. Between March 2003 and March 2005 Ms Manuello and Mr Nevi contacted the Youth Court several times asking for news of progress with their application. In December 2005 State Counsel's Office recommended that their application be granted.

On 16 February 2006 the court authorised meetings between the applicants and their granddaughter once a fortnight in the presence of social workers, and with counselling for the child. The meetings never took place. Ms Manuello and Mr Nevi complained to the court of serious

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.

shortcomings on the part of social services, which, despite the decision of 16 February 2006, had never organised the meetings in question.

On 20 June 2007 any possibility of meetings between the applicants and the child was suspended after psychologists' reports indicated that the child associated her grandparents with her father and the suffering she had undergone as a result of the alleged sexual interference. The applicants appealed against that decision and submitted that the court decision suspending meetings did not take account of the fact that D.N. had been acquitted in the meantime. In April 2008 the Turin Court of Appeal held that that factor was insufficient to rule out the possibility that the child's uneasiness stemmed from the sexual interference she had undergone. Relying on reports by social services and psychologists stating that the child refused to meet her grandparents and that the latter had difficulty understanding that refusal, the Court of Appeal upheld the prohibition on meetings between the applicants and the child. That ruling was subsequently upheld on appeal to the Court of Cassation.

Complaints, procedure and composition of the Court

Under Article 8 (right to respect for private and family life) of the Convention, the applicants complained of the excessive length of the proceedings for authorisation to meet with their granddaughter and of the failure by social services to enforce the court's decision authorising contact. Relying on Article 6 (right to a fair hearing), they complained of the unfairness of the proceedings and in particular of the Youth Court's decision suspending meetings.

The application was lodged with the European Court of Human Rights on 14 December 2009.

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

İşıl **Karakaş** (Turkey), *President*,
 Guido **Raimondi** (Italy),
 András **Sajó** (Hungary),
 Nebojša **Vučinić** (Montenegro),
 Egidijus **Kūris** (Lithuania),
 Robert **Spano** (Iceland),
 Jon Fridrik **Kjølbro** (Denmark), *judges*

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 8

The Court held first of all that it was only necessary to examine the complaints raised by the applicants under Article 8. That provision required that the decision-making process involved in measures of interference be fair and respect family life. It then examined whether the Italian authorities had taken all the measures that could reasonably be required of them to maintain the ties between the applicants and their granddaughter.

The Court observed that it had already held that the ties between grandparents and their grandchildren fell within the scope of family ties for the purposes of Article 8 and that measures severing the ties between a child and his or her family could only be applied in exceptional circumstances.

The Court noted that Ms Manuello and Mr Nevi had not seen their granddaughter since 2002 – when the proceedings regarding their contact rights had begun – on account, firstly, of lack of diligence by the relevant authorities in ensuring compliance with the applicants' contact rights as

established in the decision of 16 February 2006, and secondly, from 20 June 2007, on account of the Youth Court's decision suspending meetings.

That prohibition on meetings, based exclusively on reports by psychologists according to which the child associated her grandparents with her father and the suffering she had undergone on account of the alleged sexual interference, was a measure that the authorities were entitled to take in cases of maltreatment. However, in the present case the criminal proceedings against the father had been pending when the Italian courts had authorised the meetings and it was after the father's acquittal that the same courts had decided to forbid any possibility of contact. Although the Court was aware of the fact that great care had to be taken in this type of situation and that measures for the protection of the child could involve restricting contact with members of the family, it considered that the authorities in question had not made the necessary efforts to protect the family ties. The Court noted in that connection that three years had elapsed before the court had ruled on the applicants' request to meet their granddaughter and that the court's decision granting them contact rights had never been enforced.

Whilst its role was not to substitute itself for the domestic authorities regarding the measures that should have been taken, the Court could not ignore the fact that the applicants had been unable to see their granddaughter for about twelve years and that, despite all their efforts to re-establish the family tie, no measure to that effect had been taken by the authorities.

The Court concluded that there had been a violation of the applicants' right to respect for their family life under Article 8.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 16,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in French.

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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.