



## A father's inability to secure full exercise of his right of contact with his child breached his right to respect for his family life

In today's **Chamber judgment**<sup>1</sup> in the case of [Giorgioni v. Italy](#) (application no. 43299/12) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the effectiveness of the measures taken by the Italian authorities to ensure that a father could exercise fully his contact rights in respect of his son despite a situation of conflict with the child's mother.

The Court found in particular that in placing reliance on a series of automatic and stereotyped measures such as successive requests for information and monitoring of the family by the social services, in order to secure the exercise of the father's contact rights in respect of his child, the domestic courts had not taken the appropriate measures to make the full exercise of those rights possible and to establish a meaningful relationship between Mr Giorgioni and his child.

### Principal facts

The applicant, Mr Giorgioni, is an Italian national who was born in 1944 and lives in Selvino (Italy).

Mr Giorgioni had a son, L., with C.M. The couple separated in August 2006. Shortly afterwards C.M. expressed strong opposition to any relationship between the child and his father. Mr Giorgioni asked the Brescia Family Court for the right to have contact with his son. In a decision of 22 June 2008 the court granted the parents joint custody of the child after urging them to cooperate with each other. It decided that the child should live with his mother and granted the applicant a right of contact two days a week, also ordering him to pay maintenance.

In 2008 Mr Giorgioni, complaining that the child's mother was still not allowing him to see their son except in her presence, referred the matter to the court, which asked the social services to organise meetings in a supervised environment. The court also ordered the applicant to pay the maintenance that was overdue.

In April 2010 the court took note of the mother's lack of cooperation with the social services and granted the father visiting and staying contact rights under the supervision of the social services. Despite the court's orders, the mother continued to oppose any meeting in her absence and in November 2010 the applicant informed the social services that he no longer wanted any contact with his son. From that date on he refused to take part in any meetings, to talk to his son on the telephone or to spend holidays with him.

In 2012 the mother announced her intention of moving to Turin with the child and the public prosecutor's office, observing that the child no longer had any contact with his father and that maintenance was no longer being paid, applied to the court for an order withdrawing parental

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](http://www.coe.int/t/dghl/monitoring/execution).

responsibility. Mr Giorgioni in turn applied to the court for sole custody of his son. In May 2012 the court, joining the two sets of proceedings, authorised the mother to settle in Turin since the father was no longer exercising his right of contact. It asked the social services in Turin to schedule meetings between the child and his father in a supervised environment, and unsupervised meetings at a later stage. The Court of Appeal upheld the court's decision. In 2014 the Bergamo District Court sentenced the child's mother to a suspended prison term for not complying with the court's decisions on the father's right of contact, while Mr Giorgioni was sentenced to three months' imprisonment for not paying maintenance, for abandoning his child and for violent behaviour towards his ex-wife.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Giorgioni complained that the authorities had tolerated the conduct of the child's mother when she prevented him from exercising his right of contact and tried to turn the child against him. He also complained that the authorities had not taken positive steps to enable him to exercise his contact rights and form a relationship with his son.

The application was lodged with the European Court of Human Rights on 26 June 2010.

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

Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"), *President*,  
Guido **Raimondi** (Italy),  
Kristina **Pardalos** (San Marino),  
Paul **Mahoney** (the United Kingdom),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),  
Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court considered it necessary to examine the applicant's complaints with reference to two separate periods. With regard to the first period – from August 2006 to November 2010 – the Court noted that Mr Giorgioni had sought from 2006 onwards to establish contact with his son and that, despite the court decisions granting him contact rights, he had been able to exercise those rights only to a limited extent owing to the opposition of the child's mother.

The Court noted that a lack of cooperation between parents who were separated did not exempt the competent authorities from doing everything in their power to enable the family tie to be maintained. In particular, the domestic courts had not taken the appropriate measures at the onset of the parents' separation to enable effective contact arrangements to be put in place. They had subsequently tolerated, for around four years, a situation in which the mother's behaviour prevented the establishment of a meaningful relationship between father and son. The Court observed in particular that the District Court proceedings had resulted in a series of automatic and stereotyped measures, such as successive requests for information and monitoring of the family by the social services, aimed at securing the father's right of contact.

The Court therefore held that there had been a violation of the right to respect for family life.

However, with regard to the second period – from November 2010 until 2016 – the Court noted that the domestic authorities had undertaken efforts since 2010 to allow the father to exercise his contact rights, but that the latter had displayed a negative attitude by cancelling several meetings and later deciding no longer to participate in contact visits. This attitude had apparently been perceived by the child as abandonment. As the applicant had thus not exercised his contact rights for over five years and had been making no effort to maintain the tie with his son, the Court found that the authorities had taken the necessary measures from 2010 onwards to encourage the parents to cooperate. It held that there had been no violation of the father's right to family life in respect of this second period.

#### Article 41 (just satisfaction)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained, and that the Italy was to pay Mr Giorgioni 10,000 euros 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.