



Non-enforcement of a grandmother's right of access to her Roma granddaughter infringed her right to respect for family life

In today's Chamber judgment¹ in the case of [Terna v. Italy](#) (application no. 21052/18) 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, and

no violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8.

The applicant in this case, Ms Terna, complained of the removal and placement in care of her granddaughter (who had resided with her since birth), and of her inability to exercise her right of access as granted by the domestic courts. She considered that that situation had resulted from stigmatisation of the child's family and was connected with their Roma ethnicity.

The Court noted that Ms Terna had constantly attempted to establish contacts with the child ever since she had been placed in a children's home in 2016, and despite the various court decisions she had been unable to exercise her right of access to the child. The Court considered that even though the legal means provided under Italian law appeared adequate to enable the State to honour its positive obligations under Article 8 of the Convention, the authorities had for a certain period allowed a *de facto* situation to take hold at variance with the decisions given by the courts, ignoring the long-term effects likely to stem from the child's permanent separation from the person responsible for caring for her, that is to say Ms Terna. Consequently, the Court held that the domestic authorities had failed to expend adequate and sufficient efforts to ensure respect for Ms Terna's access rights, and that they had infringed the applicant's right to respect for her family life.

The Court also considered that the delays in organising the applicant's right of access pointed to a systemic problem in Italy. However, the domestic courts had at no stage relied on reasoning related to the ethnic background of the child and her family to justify taking her into care. The reasons given for the latter had involved the fact that it was in the girl's best interests to be removed from an environment in which she had been severely penalised in many respects, and also on account of Ms Terna's inability to exercise any parental role.

Principal facts

The applicant, Emilia Terna, is an Italian national who was born in 1966. She lives in Milan (Italy). In 2001 she married S.T., who belongs to the Roma ethnic group.

Between 2008 and 2014 Ms Terna and her husband were sentenced to several prison terms for drug trafficking and trafficking in human beings. In the meantime, in November 2010 one of S.T.'s daughters gave birth to a baby girl, whom she entrusted to Ms Terna as she herself was unable to care for the child. Following Ms Terna's arrest in 2014 and during her imprisonment, the child was entrusted to Ms Terna's sister.

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.

In March 2016 the court entrusted custody of the child to the municipality of Milan and confirmed her placement with Ms Terna, held that the child's parents were deprived of parental responsibility and transmitted the file to the guardianship judge for monitoring of the family's situation. By a decision of 31 March 2016, the guardianship judge appointed an expert to carry out an assessment of the family situation. A guardian was appointed for the child on 5 April 2016.

Following three months of investigation and several interviews, the expert submitted his report. He noted that Ms Terna faced difficult challenges in managing the child's development, given that the girl suffered from delayed language acquisition and had attachment issues. It was mentioned that Ms Terna had no parental skills, was unemployed and was in an extremely difficult financial situation. He also indicated that the child was growing up in a family where several members had criminal records. The expert considered that the child's placement in a foster family and/or in a children's home, with continued contact with Ms Terna, was a possible solution. He also noted that the child's guardian had expressed doubts as to whether such contacts should be maintained, fearing a possible abduction of the child by her Roma family, and that she recommended severing the bond between the child and Ms Terna.

In October 2016 the court ordered that the child be placed in a children's home and instructed the social services to take charge of the contacts between Ms Terna and the little girl, who was placed in a children's home in November 2016. The child's guardian subsequently applied to the guardianship judge, requesting that the court-ordered meetings be suspended, as she considered that the child's Roma family might remove the girl by force if they discovered where she had been placed.

In November 2016 the guardianship judge invited the social services to suspend the meetings and asked the court to organise the meetings in a protected setting with a police presence, if this corresponded to the child's interest, in order to guarantee that the location of her placement remained unidentified.

In December 2016 the court confirmed its previous decision and instructed the social services to organise meetings with Ms Terna, while taking steps to ensure that the children's home in question was not identified. At the expert's request, the meetings, which had never taken place, were suspended pending finalisation of a new expert report.

In May 2017 the Milan psychologist, who had been monitoring the child for several years, submitted a report describing the child's unhappiness on account of the long interruption in contact with Ms Terna. In her view, it would be in the interest of the child, and to her psychological benefit, for such meetings to be organised.

In June 2017 the expert submitted his report, finding that Ms Terna was devoid of parental skills and that the child was already well integrated in her new family.

In April 2018 the court declared the child available for adoption. It noted that the child's natural parents had been deprived of parental rights and that Ms Terna was the only person who had objected to the declaration of availability for adoption, since the child's grandfather was in prison. It considered that the child was in a situation of psychological and physical abandonment. With regard to Ms Terna, it considered that she was unfit to exercise her parental functions in such a way as to ensure the child's healthy and balanced development, for several reasons: firstly, the girl had been growing up in a criminal environment, one that was also characterised by Ms Terna's various convictions and by the fact that she continued to visit her husband in prison, without distancing herself from his criminal activity; further, Ms Terna had hidden the child's existence from the authorities for several years and had never told the girl the truth about her parents; in addition, the expert report had emphasised the applicant's cognitive and emotional shortcomings and her inability to place the child's needs ahead of her own. Ms Terna appealed against that decision.

In November 2018 the court of appeal ordered a new expert report in order to assess the relationship between the child and Ms Terna. The expert submitted his report in July 2019. He indicated that there

were no grounds for ruling in favour of the child's removal, as Ms Terna was fulfilling her role in an adequate manner. The proceedings are pending before the Milan Court of Appeal.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Terna complained about the failure to enforce her right of contact, recognised in 2016.

Relying on Article 14 (prohibition of discrimination) taken together with Article 8, she submitted that since March 2016 she had been subjected to treatment that she described as illegal, on account, in her view, of stigmatisation of the child's Roma family.

Relying on Article 13 (right to an effective remedy), she alleges that she has had no effective remedy in respect of her complaint under Article 8.

The application was lodged with the European Court of Human Rights on 7 May 2018.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Linos-Alexandre **Sicilianos** (Greece),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),

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

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

Even though there had never been any official procedure assigning custody of the child to Ms Terna, she had looked after her granddaughter ever since her birth, a close interpersonal bond had grown up between them, and Ms Terna had behaved in all respects as her mother. Consequently, the relationship between Ms Terna and her granddaughter was, in principle, similar in nature to the other family relationships protected by Article 8 of the Convention.

As from 2016, when the child was placed in a home, Ms Terna had constantly applied to the court for visits to be arranged, but she had never been able to exercise her right of access despite the decisions given by the court. Subsequently, in February 2017, by which time no visits had ever been arranged, the court had acceded to the guardian's request to suspend all attempts to arrange visits until the expert report had been finalised. The report was finalised in June 2017. Ms Terna had subsequently lodged two requests with the court, both rejected. The child had then been put up for adoption and Ms Terna's right of access had been suspended.

The Court, obviously, acknowledged that in the present case the authorities had been faced with a very difficult situation, particularly owing to the risk of abduction alleged by the guardian and to the implications of the latter for the practical organisation of visits. However, it noted that on two occasions the court had ordered the social services to organise visits in such a way as to keep the whereabouts of the children's home in question secret, but the social services had not complied.

The authorities had thus failed to show due diligence in this case, at no stage taking the action that could reasonably have been expected of them. In particular, the social services had not adopted

appropriate measures to ensure the proper implementation of Ms Terna's right of access to her granddaughter. Nor had the domestic courts made the requisite practical arrangements for effective contact between Ms Terna and the child, and they had subsequently, for a certain period, "tolerated" the applicant's inability to visit her.

Even though the legal means provided under Italian law appeared adequate to enable the State to honour its positive obligations under Article 8 of the Convention, the authorities had for a certain period allowed a *de facto* situation to take hold in breach of the courts' decisions, ignoring the long-term effects likely to stem from the child's permanent separation from her principal carer, that is to say Ms Terna.

Having regard to the foregoing considerations and notwithstanding the respondent State's margin of appreciation in such matters, the Court considered that the domestic authorities had not expended adequate and sufficient efforts to ensure respect for Ms Terna's visiting rights, and that they had infringed the applicant's right to respect for her family life.

There had been a violation of Article 8 of the Convention.

[Article 14 \(prohibition of discrimination\) read in conjunction with Article 8](#)

As regards the fact that no visits had ever taken place, despite having been ordered by the court, the Court noted that this reflected a failure on the part of the social services to organise the visits, and reiterated that it had found a violation of Article 8 of the Convention owing to the lack of adequate and sufficient efforts from the domestic authorities to ensure respect for the applicant's right of access to her grandchild. The Court also noted that case-law showed that the delays in question pointed to the existence of a systemic problem in Italy.

Inasmuch as the third party (the European Roma Rights Centre) referred to a 2011 survey which indicated that a large number of Roma children were in care in Italy, the Court could only point out that its sole aim in this case was to determine whether the child's placement in care and the failure to enforce the applicant's right to visit her had been motivated by the ethnic background of the child and her family. The Court noted that the reason given for placing the child in care had been her interest in being removed from an environment in which she had been severely penalised in many respects, and Ms Terna's lack of parental skills. The domestic courts had at no stage relied on reasoning related to the ethnic background of the child and her family to justify taking her into care.

As for the guardian's role, although the Court considered that her assessment reflected prejudice and her turn of phrase had been unfortunate and indeed objectionable, nonetheless her words in themselves constituted insufficient grounds to conclude that the courts' decisions had been based on the ethnic background of the child and her family. In that regard, the Court pointed out that even though the guardianship judge had provisionally acceded to the guardian's request by ordering the suspension of the visits and adopting temporary measures to prevent the child's abduction, that decision had subsequently been amended by the court.

There had been no violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention.

[Other articles](#)

Having regard to its findings under Article 8 of the Convention, the Court considered that there was no need to examine the complaint under Article 13 (right to an effective remedy) separately.

[Just satisfaction \(Article 41\)](#)

The Court held that Italy was to pay the applicant 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 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.