



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

Legal summary

November 2022

I.M. and Others v. Italy - 25426/20

Judgment 10.11.2022 [Section I]

Article 8

Positive obligations

Article 8-1

Respect for family life

Children obliged, over a three-year period, to see their violent father in a non-protective environment and suspension of parental responsibility of mother who opposed such meetings: *violation*

Facts – In July 2014 the mother (the first applicant) left the family home with her two children (the second and third applicants) because of the violence to which she was being subjected by their father, a drug addict and alcoholic. She lodged a criminal complaint against him for ill-treatment and the proceedings are still pending.

In February 2015 the Youth Court, noting that the father no longer saw his children, gave him permission to meet them once a week in a "strictly protected" environment with a psychologist present. The contact sessions were eventually organised in various places that did not provide such an environment, such as the local library, the main square of the town and a room in the town hall, without any psychologist present. From March 2016 onwards the sessions were characterised by the father's very aggressive behaviour. As the mother had decided against taking the children to the sessions that had been arranged, the Youth Court ruled in May 2016 that she should be regarded as being opposed to the resumption of the children's relationship with their father. The court suspended the parental responsibility of both parents. The sessions continued and the children were left alone with their father on occasions, although there had been no improvement in the situation and despite various reports to the judicial authority concerning the father's increasingly aggressive behaviour. The Youth Court did not suspend the sessions until November 2018, one year and nine months after the first report. In 2019 it restored the mother's parental responsibility and deprived the father of his.

Law – Article 8:

(a) *Alleged violation of Article 8 with regard to the children* – The question to be answered was whether, regard being had to its wide margin of appreciation, the respondent State had struck a fair balance between the competing interests, bearing in mind that the child's best interests should always be the paramount consideration.

The contact sessions between the children and their father had not taken place in a strictly protected environment as required by the Youth Court decision authorising them.

Furthermore, the psychologist had been appointed belatedly (in December 2015). Throughout that period the children had been forced to meet their father in an unsettled environment that did not foster their peaceful development, despite the court having been warned that the father was no longer following his rehabilitation programme and that the criminal proceedings against him for ill-treatment were pending. The Youth Court had also been informed that the children needed psychological support, but did not appear to have taken their welfare into account, especially as the contact sessions exposed the children to witnessing the violence committed against their mother and also to the violence they suffered directly as a result of their father's aggression.

Those sessions (over a period of about three years) had upset the children's psychological and emotional balance. The Court therefore failed to understand why the Youth Court, which had received reports as far back as 2015, had allowed them to continue. It had not at any stage assessed the risk to which the children were exposed and had not weighed up the competing interests while making clear that the best interests of the children had to take precedence over the father's interest in maintaining contact with them and continuing with the contact sessions. Hence, notwithstanding the authorities' efforts to maintain the contact between the children and their father, the children's best interest in not being compelled to meet him in conditions that did not provide a protective environment had been disregarded.

Conclusion: violation (unanimously).

(b) *Alleged violation of Article 8 with regard to the mother* – The decision to suspend the mother's parental responsibility amounted to interference with the exercise of her right to respect for her family life. That interference had been in accordance with the law and had pursued the legitimate aims of "protection of [the children's] health" and of their "rights and freedoms".

The domestic courts' decisions in the present case had not taken account of the difficulties surrounding the contact sessions, the unsafe conditions highlighted on several occasions by the various actors, the violence experienced by the first applicant and her children, or the criminal proceedings pending against the father for ill-treatment.

The suspension of parental responsibility had not forced the children to move house, as they had remained with their mother. Nevertheless, under Italian law it entailed deprivation of the right to take decisions in the children's interest, to represent them legally and thus to influence their personal development, even where the parent whose responsibility had been suspended lived with the children.

The Court shared GREVIO's concerns about the existence of a widespread practice on the part of the civil courts whereby women who cited the issue of domestic violence as a reason for not attending contact sessions between their children and their former partner, and not agreeing to shared custody or visitation rights, were regarded as "uncooperative" parents and therefore as "unfit mothers" deserving of sanctions.

The Court was not persuaded that the domestic authorities had provided relevant and sufficient reasons to justify suspending the mother's parental responsibility for three years. The courts had not examined her situation with care and had taken their decisions on the basis of her allegedly hostile attitude to contact and to shared parenting with the children's father, without taking into consideration all the relevant factors in the case.

Conclusion : violation (unanimously).

Article 41: EUR 7,000 jointly to the children (the second and third applicants) in respect of non-pecuniary damage.

(See also *Eremia v. the Republic of Moldova*, 3564/11, 28 May 2013, [Legal Summary](#))

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