



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

THIRD SECTION

CASE OF SBÂRNEA v. ROMANIA

(Application no. 2040/06)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

28/11/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Sbârnea v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 2040/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Gheorghe Sbârnea (“the applicant”), on 25 October 2005.

2. The applicant was represented by Ms T. Koletsis and Mr N. Crăciun, lawyers practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the public authorities had taken no effective action to enforce a judicial decision defining his rights of contact with his minor daughter.

4. On 30 November 2007, the President of the Third Section decided to communicate the complaint of non-enforcement of contact arrangements to the Government. It was also decided to examine the merits of the part of the application that was communicated at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Bucharest.

A. Background to the case

6. The applicant married M.S. on 19 August 1993. On 9 March 1994 their daughter E. was born.

7. At the petition of the applicant the marriage was dissolved by a final decision of 27 January 1998 and M.S. was awarded resident parent status. The said judgment did not include contact arrangements for the applicant, as no such request was made.

8. According to the applicant and to the information available in the case file, in the period following the divorce and until the end of 2002 or the beginning of 2003, he was able to see E. without any restrictions. Their relationship was close and affectionate.

9. During the Christmas holiday of 2002 the applicant announced to E. that he was remarrying and that he and his new wife were expecting a new baby girl.

10. From that point onward, E. started refusing to meet him on her own, expressing the wish that her mother also be present during these meetings. The applicant's explanation was that M.S. was trying to punish him by preventing him from having contact with his daughter, after she realised that he was starting a new life and that the separation from her was therefore final.

B. Proceedings initiated by the applicant for contact rights

11. On 4 February 2003, the applicant brought an action for the establishment of his rights of contact with the child. He stated that M.S. was not respecting his right to spend time alone with their daughter.

12. During the proceedings, M.S. indicated that, although the divorce decision did not set out any contact schedule, she had always encouraged E. to spend time with her father. Nevertheless, lately she had noticed that the child had a reserved attitude towards meeting her father alone, and the girl had asked her also to be present during those meetings.

13. A report on the social investigation conducted by social services after carrying out on 10 April 2003 a home visit to M.S. and discussions with both the child and the mother indicated that the mother had not prevented the applicant from visiting the child, but on the contrary she tried to encourage their relationship, given the fact that the girl suffered considerably after her parents' divorce. The report also indicated that the applicant continued to see E.

14. In a judgment of 25 April 2003, the Bucharest District Court ("the district court") concluded that the applicant had the right to maintain personal relations with the child in the absence of M.S., as, on the basis of the evidence adduced, it could not be concluded that such a visiting schedule would be contrary to E.'s interests. The court noted further that

with wisdom, tact and affection the new reality could be explained to the child and she had to be helped to accept the existing situation.

The court established that the applicant could spend time with E. at his home every second Saturday between 10 a.m. and 6 p.m., and every other alternating Sunday between the same hours, as well as for one month during the summer holiday, half of the winter and spring holidays and on alternate Christmas, New Year's Eve and Easter celebrations.

The judgment became final, as no appeal was lodged.

C. Criminal complaint against M.S.

15. On 10 July 2003, the applicant lodged a criminal complaint against M.S., alleging that she had not complied with the final judgment of 25 April 2003, which defined his contact rights with E.

16. During August 2003, the investigating authorities took statements from the proposed witnesses and the mother. The child also gave a statement on 24 November 2003, stating that she did not want to see her father and that her mother allowed her to meet him but she did not want to.

17. On 2 December 2003, the prosecutor decided not to pursue M.S. criminally, considering that the non-compliance with the said judgment could not be imputed to her, but to the child's refusal.

18. The applicant lodged a judicial complaint against the prosecutor's decision. By a first-instance judgment of 4 March 2004 the Bucharest District Court referred the case back to the prosecutor for the investigation to be continued. The court considered that, given her age, the girl did not have a full understanding of her refusal to meet her father and under these circumstances, it was expected that it was M.S.'s duty to inculcate in her a positive attitude towards the father and that the prosecutor had ignored statements by M.S. in which she admitted that she had agreed to allow the father to visit the girl only in her presence. The court also considered that it was necessary to prepare a psychological expert report ("*expertiză psihologică*") in order to identify the real cause of the girl's refusal to meet her father.

19. The file was sent back to the prosecutor. M.S. and one witness indicated by the applicant were heard again. The mother declared again that she was not preventing the child from having contact with the father, but the child was afraid of him and did not want to meet him. The witness said that on one occasion she had met the three of them and E. had refused to join her father, pleading with M.S. not to go away.

20. E. gave further statements, on 23 November 2004 and 19 January 2005, stating that she refused to have contact with the applicant because he had threatened on several occasions that he would hurt her mother if she refused to do so.

21. The investigating authorities asked for a psychological assessment (“*evaluare psihologică*”) to be prepared. The assessment, carried out by social services on 12 May 2005, indicated that the child was suffering from anxiety and sleep problems and that she needed to be in a harmonious environment, avoiding situations that could stress her.

No psychological expert report could be prepared, as several institutions summoned to carry out such a report declared that it was not within their responsibilities.

22. In a decision of 13 July 2005, the prosecutor decided not to pursue criminal proceedings against M.S. because she did not intend to prevent the applicant from having a personal relationship with the child. It further held that it was not necessary to conduct a psychological expert report, taking into account that such a report could not establish with certainty whether M.S. was in bad faith on this matter.

23. The applicant was notified of the decision only at a later date during 2006, and he lodged a judicial complaint against it.

24. In a first-instance judgment of 20 June 2006 the Bucharest District Court dismissed the complaint. The court noted that the prosecutor heard the witnesses indicated by the parties again and that a psychological expert report would not have been conclusive for the outcome of the case. The child had many times expressly stated in front of the investigating authorities and social workers that she did not want to see her father. The same state of affairs had been confirmed by her teacher and by the neighbour taking care of her. None of the evidence indicated that the child wanted to see her father and M.S. was preventing her.

The court further held that the father’s expectation that the child should understand that state authority prevails over parental authority was exaggerated; the child only understood his intention to harm her mother, hence her reaction; M.S.’s failure to attend some of the meetings with the social workers needed to be assessed in a general context, and taking into account that this attitude had been shown only after a number of meetings with social workers, conducted at their home.

The court concluded that the decision not to pursue M.S. criminally did not amount to an incentive not to comply with the final judgment defining the applicant’s contact rights with the child; this decision was the result of the conclusion that the conditions required to attract criminal liability had not been met. The applicant could pursue the forced enforcement of the said judgment, according to the procedure regulated by the Code of Civil Procedure; but regard must be had to the fact that only a responsible attitude on the part of the parents and of the experts to whom the parents have turned could lead to a normalisation of the father-child relations.

25. The Bucharest County Court, in a final decision of 4 August 2006, allowed an appeal by the applicant against this judgment, holding that the

prosecutors should have listened to other witnesses and should have conducted a psychological expert report.

26. The case was again referred back to the investigating authorities.

27. The child was assessed psychologically by the psychologists of the Directorate for Social Assistance and Child Protection during March 2008. The conclusions of the report are presented in paragraph 63 below.

28. The applicant, M.S. and E. made statements before the prosecutor on different dates in August 2008.

29. The main elements of the girl's statement were the following:

a) for a while, until 2003, she had a good relationship with her father. Then he started visiting her at school and sending letters asking her not to tell M.S. about it; she felt uncomfortable as she did not have any secrets from her mother;

b) because of the letters she started fearing that he had something to hide, and this was why she wanted her mother to be present too; she spoke daily with him on the phone, she did not understand why he had to send her letters;

c) her father used to call her on the phone to tell her that he would hurt M.S. badly; he kept her for hours on the phone to tell her this; she started having nightmares and dreaming about her mother's grave;

d) at the beginning of August 2008, he took her by force and pushed her into his car. She was very upset. He did not even call to announce that he was coming. Her opinion did not matter to him;

e) maybe in his own way he loved her; but she did not like it that he had something against M.S.; he acted as if he intentionally wanted to harm her. If he loved her, he would not do so. This was her reproach to him. She told him this several times and he told her that he could not do anything about it, but he had to lodge judicial actions. She did not understand it;

f) since the previous winter she had not wanted to see him at all. He did not call her for several weeks, after which he appeared at their door with the bailiff and several policemen. She started shaking when she saw so many policemen;

g) she would like her father to stop all his complaints against her mother;

h) she still cared for her father, but only a little now. There were things that disturbed her about him. She did not have the feeling that he tried to make any effort to make things better;

i) she went several times to the child protection authorities. The people there were nice, but she did not like going there. Her classmates who had divorced parents did not have to go there; it was difficult for her to tell them why she was upset, because they were like foreigners to her.

30. By a decision of 25 August 2008, the prosecutor terminated the criminal proceedings against M.S., concluding that she was not obstructing the enforcement of the judgment defining the applicant's visiting rights.

31. In respect of the indications given by the Bucharest County Court in its decision of 4 August 2006, the prosecutor noted that the applicant had been asked to suggest other witnesses who would support his allegations. However, he did not produce such witnesses, stating that "[he] had lost [his] trust in this prosecution unit and therefore, [he] refused to produce these witnesses. [He] reserved the right to indicate their name when [he] considered the moment to be opportune."

32. As regards the indication to conduct a psychological expert report, the prosecutor noted that the National Forensic Institute had responsibility to conduct only psychiatric expert reports, which was not the type of report needed in the instant case. The prosecutor nevertheless relied on the conclusions of the psychological assessment carried out by social services.

33. The prosecutor further took note of the applicant's statements according to which "it was the mother's duty to comply with the visiting programme. If she had not been able to influence the child in the direction set by the court (...), she had to pay for it". The prosecutor indicated that the crime punished by Article 307 of the Criminal Code implied an action from the side of the accused; or the factors for which the applicant held M.S. responsible were actually a lack of action, namely that she failed to inspire in the girl positive feelings towards him.

34. In other statements taken into account by the prosecutor in his decision, the applicant declared that he did not see any harm in the fact that a child needed to be aware that state authority was above parents' authority and that even if a harsh law might frighten a child, that law should be obeyed. The applicant considered that it was not in the best interest of the child to take her moods into account. A child needed to learn that he or she had responsibilities too. The fact of taking a child away with him, even by force, did not mean that he was torturing the child.

35. As regards M.S.'s refusal to attend some of the psychological counselling sessions, the prosecutor underlined that this obligation had not been set by the final judgment defining the applicant's contact rights. The prosecutor then analysed whether this absence showed M.S. to be in bad faith. The prosecutor relied on the child's statements according to which she did not like to go to the social assistance office. He considered that one could not expect a parent to remain indifferent to a child's attitude towards these meetings, and that this was the reason why M.S. had refused to attend some of the meetings with social workers.

36. The applicant's complaint against the prosecutor's decision was dismissed by a first-instance judgment of 17 June 2009. This judgment was upheld by the Bucharest County Court, in a final decision of 1 October 2009. The county court explained that the crime under Article 307 § 2 of the

Criminal Code implied acts by a person who had resident status with a child aimed at preventing the other parent from maintaining a personal relationship with the child. But in the instant case M.S. had not taken such actions; she had only expressed her disagreement with forcing the child to do something she did not want to do. No elements indicated that M.S. was the one who had induced the negative feelings in the child. It was also concluded that no other psychological report was needed, in the light of the reports already conducted and relied upon by the prosecutor and the first-instance court.

D. Involvement of social services

1. Activities during 2004

37. During 2004 the applicant lodged several requests for assistance from social services, indicating that he still had problems in communicating with his daughter, who was refusing to meet him. He held that this was due to the pressure exerted on the child by M.S.

38. A social worker visited the mother and the child at their home on 19 May and 17 June 2004. On both occasions, they noted that the two had a strong and affectionate relationship. The child declared she did not love her father and she was afraid of him; the mother undertook to enrol E. on a counselling programme. Further interviews were conducted by social services with the neighbour who sometimes took care of E. after school hours until M.S. returned from work, and with her school teacher. Both indicated that E. had previously had a good relationship with her father, but that recently she had refused to see him any more. According to these statements, E. refused to meet or talk to her father even when she was alone, without her mother around. The school teacher indicated that the father had visited E. several times at the school.

39. On 14 July 2004, a written notification was sent to M.S. recommending her to enrol E. on a counselling programme.

40. From the information available in the case file, it appears that the girl was enrolled on a counselling programme with a psychologist from an unspecified date during the summer of 2004.

41. Following a new request from the applicant, by a letter of 27 October 2004 social services informed him of the steps taken and confirming that they would continue to monitor the situation of the child in the following months.

2. *Activities during 2005*

42. The applicant made renewed requests for assistance, indicating that he was willing to do anything possible to help restore the psychological balance of the child.

43. M.S. and E. were invited for a meeting with social services on 14 March 2005. The report drawn up on that occasion indicated again that E. did not want to meet her father, that she did not trust him any more and that she feared that he had tried to hurt her mother. The social worker proposed a trilateral meeting, but M.S. refused this proposal, after seeing that E. did not agree with it.

M.S. informed the social worker that E. visited a psychologist weekly.

44. On 17 March 2005, M.S. gave a new statement to social services, reiterating the same elements. She also mentioned that she had insisted that E. go to the birthday party of her paternal grandfather, who was ill. Since then, the girl had seen her father once, when he came to bring her a birthday gift, but she had refused to leave with him.

The mother indicated that all these events in the life of her daughter had created in her a feeling of fear, and that she had therefore enrolled the girl in a counselling programme, which she attended weekly.

45. A new social investigation report was prepared on 31 March 2005, following a home visit and discussions between the social worker and E. and the mother. The report concluded that E. was still refusing to meet her father and she was not prepared to meet him. The child believed that her relationship with the applicant would have been better if he had not tried to hurt her mother by making all “his complaints to the courts, the police and threats”; the mother reiterated that she was not preventing her daughter from having a personal relationship with her father, but that she did not want to force her to meet him against her will.

46. During a visit to the child’s home on 31 March 2005, the social worker obtained the mother’s approval for more frequent meetings at their home. The mother refused to have meetings at their headquarters.

47. The social worker made a new home visit on 11 April 2005. She talked with the child about the relation between the child and the father, E. repeating that she did not wish to see him and that she would like to be left alone.

48. On 20 April 2005, M.S. and E. went to social services and they discussed the counselling programme in which E. was enrolled within the Institute for the Protection of Mother and Child; the girl refused the proposal to meet the applicant at their offices.

49. On 12 May 2005, the psychologist in charge of E’s case prepared a psychological assessment (“*evaluaare psihologică*”). The test concluded that the girl presented certain disorders of a neurotic character (reactive to stress). It recommended psychotherapy and a harmonious emotional

climate, by avoiding stress and situations that may cause psychological trauma.

50. By a letter of 8 June 2005 the applicant was informed that the social worker had come to the conclusion that it was the child's own decision not to meet him and that their attempts to set up a meeting at their office between him and the child had failed because of a very vehement refusal from E.'s side.

51. The applicant lodged several complaints with the social services office and with the superiors of the social worker in charge of the case, expressing the concern that the case had not been handled properly.

52. Following the applicant's renewed complaints, social services proceeded to request M.S. to present herself at their office for further discussions. M.S. did not attend the proposed meetings.

3. Activities since 2006

53. During 2006, M.S. was invited several times to attend meetings with the social worker in charge of the case. She did not attend these meetings.

54. On 23 June 2006, the Bucharest District Court invited the General Directorate of Social Services and Child Protection (formerly the Public Service for the Protection of Children in Difficulty or Handicapped, hereinafter "GDSACP"), to submit a copy of their file on the case, as well as to state whether they had experts who could conduct psychological expert reports ("*expertiză psihologică*") on minors.

55. By a letter of 25 May 2006, GDSACP informed the district court of their activities in respect of E. and that they had employees who were psychologists whose responsibilities included the psychological assessment and counselling of children.

56. The county court then asked GDSAPC to specify whether their experts could determine with certainty whether the rejection of one parent by a child is due to influence exerted by the parent who is resident with the child. GDSAPC informed the county court that their experts were of the opinion that it was not possible to determine with certainty the influence exerted by the parent with residence in respect of a child's attitude towards the other parent.

57. On 25 September 2006, the social worker in charge of the case file closed it, noting that the mother held that she did not oppose the child having a relationship with her father, but that the child was continuing to refuse to meet him and that after several complaints addressed to different public authorities the father had stopped contacting social services.

58. On 12 October 2006 the applicant again contacted social services, complaining that the situation had worsened. He asked them to reopen the case. Letters were sent to M.S. on several occasions inviting her to meetings to discuss the situation of the child. M.S. did not reply to the invitations,

although a few times she telephoned them to notify them that she would not be able to attend the meetings, either due to her work schedule or to illness.

59. On 24 May 2007 the social worker talked to the maternal grandfather, who declared that the applicant saw E. often and they went out together for walks. On 21 August 2007 the social worker had a telephone conversation with M.S., who informed her that E. had spent the first part of her summer holidays with her father.

60. On 19 December 2007 M.S. and E. visited the office of GDSACP. On that occasion, E. gave another written statement in front of two social assistants, declaring that she did not want to meet her father, that she did not like the way he had behaved towards her during the summer holidays, when she had had to spend two weeks with him and he had threatened to harm her mother if she did not agree to go with him.

61. On 19 February 2008, at the request of the prosecutor investigating the case against M.S., GDSACP issued a report on the case. The report showed that the applicant had lodged a criminal complaint against M.S., which strengthened the feelings of rejection shown by his daughter. In respect of M.S. the report concluded that at the beginning she had cooperated well with them, but that lately her attitude had changed and she was not responding to their requests for meetings.

62. From the information submitted by the applicant it appears that during 2008 E. was subjected again to a psychological evaluation by experts from social services. The assessment report was prepared on 20 March 2008, after three meetings with the child.

63. The report noted that the child was tense during these meetings. In respect of her relationship with her parents, the report concluded that her relationship with her mother had an emotional basis, E. perceiving her mother as a supporting element, while she was ambivalent in her relationship with the applicant. The girl showed a strongly negative attitude towards paternity, the report concluding that the basis of the child-father relationship was insufficiently structured and consolidated. The current situation had triggered the development of a latent aggressiveness, the child being “overloaded” with problems specific to her parents.

The conclusions of the report were as follows: there was a need to ensure an emotional basis which would support the development of the child’s personality. It was necessary for the parents (especially the father) to respect the child’s rhythm and adapt to its specific characteristics so that the child could internalise according to her own feelings both her relationship with her parents and the situation she was facing. This could allow an adequate and balanced integration of the maternal and paternal sides of the girl’s life. The report further recommended psychological counselling for the child, as well as for the parents, in order for the latter to understand and assume their roles as parents. It was recommended that a stable environment be ensured

for her, in order to avoid exposing the girl to situations that could generate inner conflicts and have a negative impact on her psychological state.

64. The mother, informed of the conclusions of the report, indicated that she would enrol E. again in a counselling programme, with a psychologist the girl knew from before and was comfortable with.

65. A note prepared by social services on 21 October 2008 showed that the relations between E. and the father remained tense, the father having lodged a new judicial action to obtain residence rights in respect of the child, despite the fact that she wanted to stay with her mother.

66. During November 2008, M.S. and the child were again invited to social services to discuss their case further. E. declared that she was aware that her father had the right to see her, but she did not want to see him, because she did not feel good in his presence. She said that when they met he brought along various people to act as witnesses. One day, in front of her mother and a friend of his father, the applicant took her by force and put her in his car. Her father called her almost daily and they could not have a normal conversation because he did not listen to her and told her she was not right.

E. Attempts to enforce the final judgment of 25 April 2003

67. On 7 December 2007 the applicant made a request to the bailiff for the enforcement of the judgment setting out his contact rights. He asked for the necessary actions to be taken so that he could spend the first two weeks of the winter holidays with E., starting from on 21 December.

68. On 12 December 2007 the Bucharest District Court authorised the request to proceed with the enforcement on a non-working day, a Saturday, with a view to taking the child away for the first two weeks of the winter holidays.

69. On 22 December 2007 the bailiff, in the presence of M.S., the applicant and the child, drew up a report noting that she could not proceed with the enforcement, as E. refused to join her father.

70. On 14 January 2008 the applicant made a new request for the bailiff to continue with the enforcement. The bailiff refused to take further action, noting that the first request concerned the winter holidays, which were already over. The bailiff also considered that the applicant had actually disputed the note prepared on 22 December 2007 because he judged that E.'s refusal to join him did not constitute an obstacle to the enforcement and that if she tried to resist "she could be forced, obviously not by slapping or ill-treatment, but by being firmly taken by the hand by the bailiff or by the policemen and then passed over to the father"; "[the father] in principle could be waiting at home and the child be brought to [him]".

71. The applicant lodged a judicial complaint against the bailiff, asking that the note of 14 January 2008 be declared void. The complaint was

dismissed by a final decision of the Bucharest District Court on 7 January 2009, with the reasoning that in his initial request of 7 December 2007 the applicant had limited his enforcement request to the winter holidays and that that request had been dealt with by the document of 22 December 2007.

72. The applicant lodged a new request for enforcement with the bailiff in respect of the summer holidays of 2009. The bailiff lodged a request with the court for the enforcement to be authorised. A summons was sent to M.S. on 1 September 2009. The latter replied on 11 September 2009, indicating that E. would be starting school on 14 September 2009 and the holidays were already over. Moreover, she indicated that E., 15 years old at the time and with the ability to make her own decisions, was still refusing to meet him.

73. On 16 September 2009, M.S. and E. visited the bailiff's office. E. declared that she wanted her father to stop spoiling her peace of mind with his complaints and legal actions. She wanted to clarify all misunderstandings, as well as to define their future relations. In this respect she wanted to have these discussions with him at the bailiff's office, in the presence of the bailiff, a lawyer and her mother. It was agreed that E. would propose a date for this discussion, to be communicated well in advance to the applicant too.

74. By a letter of 18 September 2009 the bailiff informed the applicant that E. was proposing a meeting on 2 October 2009.

75. On 29 September 2009, the applicant emailed the bailiff, indicating that he could not accept the proposed meeting, because accepting E.'s invitation would mean teaching her that her moods were superior to her legal obligations, especially in a vital issue such as relations with a parent.

76. According to the report drawn up by the bailiff on 2 October 2009, E. declared that she was disappointed that her father had not come and that he considered her request to meet him a sign of disrespect. She further stated that she did not understand why her father had lodged numerous complaints with the police, the bailiff, the prosecutor and social services, when no one had ever been opposed to her having a personal relationship with him, especially given the fact that they communicated very often by telephone. She declared that she was aware that her father had the legal right to visit her, but at the same time she also had the same right to visit him when she wanted to, without being forced against her will to exert this right. She further stated that the applicant had said to her that she did not have the right to choose whether she wanted to be with him or not, because he was the one who had to decide and she had to listen to him.

F. Civil action lodged by M.S. for redefinition of contact rights

77. On 28 December 2007, M.S. lodged a civil action on behalf of E. to have the applicant's contact rights redefined in the sense that E. would have

the freedom to choose the dates and means of maintaining the personal links with her father. M.S. indicated that the girl started to fear that she would be taken by force against her will and had asked her to do everything possible to avoid such disturbing events and make sure that her right to meet her father when she wanted and when she needed it was officially recognised. Hence the civil action lodged by M.S.

78. A report on the psychological assessment of the child indicated that E. was suffering from slight emotional immaturity, shyness and social introversion, and was afraid of being separated from her mother. She presented feelings of fear in respect of the father, hostility and aggressiveness. The cause of these feelings proved to be her emotional identification with the mother but also the methods chosen by her father to enforce his contact rights with her.

79. In a decision of 10 March 2010, the county court considered that it was its duty to establish a balance between the necessity to pursue the best interest of the child against the right of the divorced parent who did not have residence rights to maintain personal relations with the child. It then considered that the girl's wishes could not represent the only criteria to be taken into account when deciding on the specific way of maintaining personal links between the parent and the child. Therefore it concluded that there was no need to modify the contact schedule.

80. No information is available in the case file as to whether this decision was appealed against.

G. Civil action lodged by M.S. for increase of child support

81. The initial quantum of the child support to be paid by the applicant to the child was set out in the divorce decision of 1998. Since then M.S. asked twice for an increase in the amount, in proportion to the increase in the applicant's income. Her first request was allowed by a final decision of the Bucharest County Court of 28 February 2008.

82. The second action was allowed in a first-instance judgment of 25 November 2008. The Bucharest District Court increased child support from 1,073 Romanian lei (RON), approximately 284 euro (EUR), to RON 1,136 (approximately EUR 300).

83. The applicant lodged an appeal on points of law, arguing that a child could not have higher needs than the equivalent of the minimum salary per economy (RON 350, approximately EUR 90) and it had not been proven what needs were meant to be covered by this increase. He held that the fact that the mother had interfered with the child's compliance with his right of contact meant that he had no guarantees that the child support would be spent in the best interest of the child. There were no guarantees that the mother, in order to satisfy the momentary wishes of the child and to keep the child on her side, would not use the money to buy heroin to the girl.

84. By a final decision of 19 March 2009, the Bucharest County Court dismissed the appeal, by showing that the Family Code provided that the level of child support was determined according to the financial means of the debtor and that the obligation to pay child support and the obligation of the mother to comply with his contact rights were independent of each other.

H. Other judicial actions

85. From the information submitted by the applicant, it appears that he lodged a separate civil action in order to obtain residence rights in respect of E. No information is available as to the final outcome of these proceedings.

86. The applicant also lodged various civil and criminal complaints against the prosecutors investigating his complaint against M.S. and against the lawyer representing her in the different proceedings, accusing counsel of inciting M.S. to show disrespect to the final judgment of 25 April 2003.

II. RELEVANT DOMESTIC LAW

87. The relevant provisions of the Code of Family and of the Code of Civil Proceedings are stated in the Court's judgment in the case of *Lafargue v. Romania*, (no. 37284/02, §§ 65 and 68-70, 13 July 2006). The role and responsibilities of the local public authorities for social assistance and child protection as well as the relevant provisions of Law no 272/2004 on child protection are described in the judgment *Amanalachioai v. Romania*, (no. 4023/04, § 56 and 59, 26 May 2009).

88. Article 307 of the Criminal Code provides:

“It shall be an offence punishable by one to three months’ imprisonment or a fine for one of the parents of an under-age child to detain it without the permission of the other parent ... who lawfully has responsibility for the child.

The same penalty shall be incurred by a person to whom parental responsibility has been given by a judicial decision who repeatedly prevents one of the parents from having personal relations with an under-age child on the terms agreed by the parties or laid down by the appropriate body.

Criminal proceedings may only be instituted if a criminal complaint has first been lodged by the victim.

No criminal liability shall be incurred where there has been reconciliation between the parties.”

89. Article 24 § 1 of the Law no. 272/2004 provides that a child who has attained a degree of maturity has the right to express his/her opinion freely on any matter concerning him/her. Paragraph 2 of the same article provides that a child who has attained the age of ten must be listened to in any

judicial or administrative procedure concerning him or her. Paragraph 4 provides that the child's opinions shall be taken into account and relied upon to the necessary extent, depending also on the age and maturity of the child.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

90. Relying on Articles 6 § 1 and 8 of the Convention, the applicant submitted that the public authorities had failed to assist him effectively to enforce his contact rights in respect of his daughter. In particular, he complained that the criminal proceedings initiated by him against his ex-wife had not been properly conducted and had lasted too long. He submitted that the slow progress of the criminal proceedings had resulted in the continued non-enforcement of the civil judgment defining his contact rights with his daughter, and had thus put him in a position not to be able to exert his parental role.

91. The relevant part of Article 6 § 1 reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

92. Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Scope of the case

93. At the outset, the Court finds that the alleged failure of the public authorities to take positive measures to ensure respect for his right of family in relation to his daughter is at the heart of the applicant's complaint. The Court will therefore examine this part of the application only under Article 8 (see, *mutatis mutandis*, *Sylvester v. Austria*, nos. 36812/97 and 40104/98,

§ 77, 24 April 2003, and *Iosub Caras v. Romania*, no. 7198/04, § 49, 27 July 2006).

B. Admissibility

94. The Court notes that it is common ground that the tie between the applicant and his child falls within the scope of “family life” within the meaning of Article 8 of the Convention. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As the complaint is not inadmissible on any other grounds, it follows that it must be declared admissible.

C. Merits

1. The parties' submissions

95. The applicant considered that the slow pace of the criminal proceedings against M.S. had led to a situation where his daughter had begun to have a disrespectful attitude towards him and their relationship was constantly deteriorating. He was of the opinion that a criminal conviction of his ex-wife would have forced her to comply with the judgment defining his contact rights, by putting more pressure on her to induce in E. a more positive and respectful attitude towards him, and would have also been a lesson for the child that one must respect authority, logic and justice.

96. He considered that state authorities bore the responsibility for the deterioration of his relations with E., because no effective measures had been taken to ensure the enforcement of the judgment defining his contact rights according to the exact schedule set in that judgment.

97. The applicant wanted the Court to recognise his authority as a father. According to him, the non-enforcement of the contact rights had had dangerous consequences for the girl, giving her the feeling that she could do anything she wanted, thus ignoring the father's authority and judicial decisions.

98. He noted that the Government, in their observations, had focused on general principles, without giving details of the specific measures taken by the authorities. He argued that the Government's core submissions were related to the actions taken by social services, whereas his complaint to the Court concerned mainly the lack of involvement of the judicial authorities in respect of the criminal complaint against the mother of the girl.

99. As regards the involvement of social services, the applicant submitted that the psychological assessment of the child had been done according to the wishes of the mother and not under the surveillance of

GDSACP. He further underlined the fact, acknowledged by the Government, that M.S. had failed to attend some of the meetings with social services. He considered that the girl's refusal to meet him could not be used as an excuse, given the fact that she was not mature enough to understand the implications of this attitude; the attitude of the child in rejecting him was another proof of the negative influence of M.S. on the girl.

100. The Government argued that the authorities had acted with diligence and taken all reasonable measures to assist the applicant in the enforcement of his contact rights. They referred in this respect to the actions taken by social services (see paragraphs 37-66 above). They insisted on the fact that the attempts to organise a joint meeting between father and child had failed because of the girl's refusal. The Government referred also to the different psychological assessments to which the girl has been subjected. They reiterated the Court's case-law, according to which any obligation to apply coercion in this area must be limited.

101. The Government further indicated that the applicant was at the time (early 2008) in contact with the girl, E. having spent part of her previous summer holidays with him and the applicant being freely able to telephone the girl.

102. Finally, the Government submitted that the applicant himself had failed to take all measures that were available for the enforcement of the judgment defining his contact rights, as he had not lodged a civil action against M.S. for payment of civil penalties for non-compliance with a final decision.

2. Relevant principles

103. The Court notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

104. Further, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290).

105. In relation to the State's obligation to implement positive measures, the Court has held that Article 8 includes for parents a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunions (see, among other authorities, *Ignaccolo-Zenide v. Romania*, cited above, § 94; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII, and *Iglesias Gil and A.U.I. v. Spain*,

no. 56673/00, § 49, ECHR 2003-V). This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures (see, *inter alia*, *Olsson v. Sweden* (no. 2), 27 November 1992, § 90, Series A no. 250), but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299).

106. The obligation of the national authorities to take measures to facilitate contact by a non-resident parent with children after divorce is not, however, absolute (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58). The establishment of contact may not be able to take place immediately and may require preparatory or phased measures. The cooperation and understanding of all concerned will always be an important ingredient. While national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention (see *Hokkanen*, cited above, § 58, and *Olsson* (no. 2), cited above, § 90).

107. What is decisive is whether the national authorities have taken all necessary steps to facilitate the execution that can reasonably be demanded in the specific circumstances of each case (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen*, cited above, § 128, and *Sylvester*, cited above, § 59).

108. In this context, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who does not live with the child (see *Ignaccolo-Zenide*, cited above, § 102).

109. The Court further reiterates the conclusion it reached in *Glaser v. the United Kingdom*, (no. 32346/96, § 70, 19 September 2000) that active parental participation in proceedings concerning children is required under Article 8 of the Convention in order to ensure the protection of their interests and that when an applicant, as in that case, applies for enforcement of a court order, his conduct, as well as that of the courts, is a relevant factor to be considered.

3. The Court's assessment

110. In examining whether the Romanian authorities took all the necessary steps to facilitate the enforcement of the contact arrangements, the Court must strike a balance between the various interests involved, namely the interest's of the applicant's daughter and her mother, those of the applicant himself and the general interest in ensuring respect for the rule of law (see *Kaleta v. Poland*, no. 11375/02, § 53, 16 December 2008).

111. In its analysis of the adequacy of the measures taken by the public authorities, the Court would take into account three elements which are specific to the present case.

112. Firstly, it notes that the applicant's daughter was aged nine when she started refusing to meet her father on her own. In previous cases before it, the Court had given a certain importance to the age of the child involved and to the fact that the child was mature enough to be able to take his/her own decisions in respect of contacts with the non-resident parent (see, for example, *Kaletka*, cited above, § 58).

113. Secondly, the Court is also taking into account the time span of the case as the various proceedings unfolded and as the girl was growing up and becoming more mature. Thus, it should be borne in mind that the applicant's right of contact was defined in April 2003, within less than three months of the date he lodged a request in this respect. The applicant lodged the application with the Court on 25 October 2005, when E. was eleven and a half and their relationship had deteriorated even more. The first request for enforcement with the assistance of a bailiff was made in December 2007, when E. was almost thirteen. The Court underlines in this respect the fact that according to the Romanian Code of Civil Proceedings, the ordinary procedure for enforcing civil judgments is through the assistance of a bailiff, based on a preliminary request from the person holding the enforceable right.

114. Thirdly, the Court notes that even though the contact rights defined by the final judgment of 25 April 2003 were not enforced under the exact terms set by that judgment, the applicant did not at any moment throughout this period completely lose contact with E. The case file indicates that they could see each other and they could talk on the phone and that on different occasions E. did join the applicant at his home or at various family events.

115. In the light of the applicant's submissions that his application to the Court concerns mainly the criminal proceedings against M.S. (see paragraphs 95 and 98 above), when analysing whether the Romanian authorities took all the necessary steps to facilitate the enforcement of the contact arrangements, the Court will examine firstly the conduct of the authorities in respect of these proceedings.

116. In that connection, it appears that the applicant considers that the slow pace of the criminal proceedings against the mother as well as the lack of a criminal conviction have led to a deterioration of his relationship with the child and encouraged her to develop a negative attitude towards him.

117. The Court notes that faced with the girl's refusal to meet him alone, the applicant had available different types of judicial remedies in order to enforce his contact rights. The ordinary civil remedy is the recourse to the assistance of a bailiff, who may involve any other public authority in the enforcement procedure, including the social services. In specific circumstances, when the resident parent, prevents the other parent from

maintaining contact with the child, recourse could be made either to a criminal complaint or to a civil claim for payment of civil penalties for non-compliance with a final civil judgment. In all cases, it is the person who asks for the enforcement who makes a choice between different types of remedies.

118. In the instant case, the Court observes that the criminal complaint against M.S. was lodged four months after the delivery of the judgment defining the applicant's contact rights. At the time the applicant lodged the action, it does not appear that his relationship with the child was obstructed to the extent that they had no contact or that the mother has prevented him from seeing or contacting the girl. Nevertheless, it appears that he gained the firm belief that M.S. was discrediting him in front of E. and that this led to the girl's change of attitude. As he stated, by the lodging of the criminal complaint he wanted M.S. sanctioned, considering that this would force her to act in such a way as to change the girl's attitude towards him and would also teach the girl a lesson, that justice must be obeyed.

119. The Court observes that the prosecutors and the domestic courts never found that the mother had been at fault in connection with the difficulties in ensuring compliance with the contact rights (see paragraphs 17, 22, 24, 33, 35 and 35 above). It was never established that she had taken any steps to thwart the execution of the judgment defining his contact rights by, for instance, forbidding the applicant from having contact with the child or by preventing the child from seeing him.

In this respect, the Court does not discern any arbitrariness in the prosecutor's and domestic courts' decisions not to pursue M.S. criminally. Their decisions according to which the fact that the mother was not able to persuade the girl to join her father according to the defined contact schedule did not amount to a criminally punishable act do not appear devoid of merit. The situation might indeed have been different if there had been evidence in the case file that M.S. forbade the girl to have contact with her father or was hiding the girl from him.

120. When the Court had previously held that the use of sanctions should not be ruled out, it was in the event of unlawful behaviour by the resident parent (see *Ignacollo-Zenide*, cited above, § 106). Nevertheless, this condition does not appear to be met in the instant case.

121. Furthermore, the Court notes that according to Law no. 272/2004, a child who has attained a degree of maturity has the right to express his or her opinion freely in any matter concerning him or her. According to the same law, once a child has reached the age of ten he or she must be listened to in all judicial or administrative proceedings concerning him or her. The lodging of the criminal proceedings against M.S. therefore opened the way to subjecting the child to numerous encounters with investigation and judicial authorities, during which she had to give statements and explain her

feelings towards her father, which cannot have been a comfortable situation for a child of her age.

122. In the light of the subsequent development of the case and the impact that these proceedings had, especially on the girl, the Court is of the view that the applicant's insistence on the criminal complaint and on proving the alleged bad faith of M.S. does not appear to have been the most constructive approach for rebuilding the emotional contact that the applicant had previously had with his daughter.

123. The Court notes that the criminal proceedings against M.S. lasted a long time and the case was referred back to the prosecutor on two different occasions.

However, it should also be borne in mind that none of the decisions adopted by the prosecutor or the domestic courts during this time had found that the mother had prevented him from having contacts with the child. In referring the case back to the prosecutor, the domestic courts answered the applicant's requests that more witnesses be heard and expert psychological report be ordered.

124. Taking into account that during this time the social services were monitoring the case and in the absence of any indication that it was the mother who had prevented the child from meeting the applicant, the Court is unable to find that the delay in issuing a final decision in the criminal proceedings against M.S. amounted to a breach of the applicant's right to family life.

125. In its analysis of whether the Romanian authorities took all the necessary steps to facilitate the enforcement of the contact arrangements between the applicant and his daughter, the Court should determine further if social services, to whom the applicant appealed for assistance, have acted diligently.

126. The Court notes that the applicant contacted them in March 2004, stating that he was not able to see his daughter. As a result of his requests, social services followed up on the case, with home visits to the mother and the child and to the girl's school.

127. During 2004 and 2005 contact between M.S. and E. on the one side and social services on the other were more frequent (see paragraphs 37-52 above) E. was visited several times at her home by the social worker and discussions were held in respect of the relation with her father. On all occasions the girl held firmly that she did not want to see him. Following their recommendation that the girl be enrolled in a counselling programme, M.S. started taking the girl to a psychologist once a week. It is true that these counselling sessions did not lead to an improvement in the girl's attitude towards the applicant. Nevertheless, the Court reiterates that the public authorities' obligation to take positive measures is not absolute. Neither is it an obligation of result, but an obligation of means. Therefore the Court does not consider that the authorities may be held liable for the

fact that despite counselling the girl still maintained a negative attitude towards the father.

128. The Court further notes that during 2006 and a great part of 2007 M.S. failed to reply to invitations to meetings with social services.

Nevertheless, the Court's task is to analyse the measures taken by the authorities in this respect. According to the information in the case file, they had invited M.S. and E. several times to their offices for discussions, attempted to visit them at home without success, telephoned and spoke to the grandfather, and spoke a few times with M.S.

129. In respect of the mother's position of not attending the planned meetings, the Court does not find devoid of merit the reasoning provided by the prosecutor and the domestic courts in their final decision not to pursue M.S. criminally, that this attitude might be explained by the child's refusal to go to these meetings.

130. The Court further notes that at the end of 2007 M.S. and E. re-established contact with social services, an occasion when E. declared that she still refused to spend time with her father.

131. Considering the state of the girl's relationship with the applicant, and her unchanging position of refusing to meet him, the Court does not discern what further actions could have been taken by social services in this respect. When reaching this conclusion the Court also takes into account the girl's statements that she did not like going to their offices and she did not understand why other children with divorced parents did not have to go to such meetings. The Court therefore does not find unreasonable the attitude of social services of trying to limit the pressure on the girl.

132. As regards the applicant's complaint in respect of lack of action on the part of the bailiff, the Court would note at the outset that according to the Romanian Code of Civil Procedure the forcible enforcement of a civil judgment, including judgments like the one under discussion in the instant case, is done with the assistance of a bailiff, on the basis of a preliminary request by the person holding the enforceable right.

133. The applicant sought the assistance of a bailiff for the first time in December 2007. The Court considers therefore that in the absence of such a preliminary request on his part, the applicant cannot complain of a lack of assistance from the bailiff prior to the date when he lodged his first request in this respect.

134. As to the period following the first request for enforcement, the Court observes that at the time, the applicant's relations with the daughter, as he admits himself, had already seriously deteriorated. At the time, the girl was already of an age when she could not simply be handed over to the applicant if she refused to join him. The bailiff took account of the girl's refusal to join her father. The Court does not find this consideration arbitrary or inappropriate.

135. The Court further takes into account the report drawn up by the bailiff in respect of the meeting proposed by E. with the applicant for the date of 2 October 2009. While understanding the applicant's feeling of frustration as he saw his relationship with his daughter deteriorate gradually, it is reasonable to believe that a more tolerant approach to the wish expressed by the child would not have hurt the process of trying to rebuild that relationship.

136. Stressing the fact that the public authorities have positive obligations as regards securing the enforcement of contact rights and thus protecting the applicant's right to family life, the Court appreciates at the same time that re-establishing contact with a child in such delicate circumstances requires long-term efforts on the part of all concerned, including the applicant.

137. The Court finds that the statements given by the girl to different state authorities and social workers reveal the great deal of effort that she had to make all this time, by meeting different state authorities, visiting a psychologist and trying to explain to the applicant her views on their relationship and what she did not like and wanted to change. The applicant's efforts, as he himself explained, appear to have been focused on obtaining an official acknowledgement of his firm belief that M.S. was exerting a negative influence on the child. The Court notes in this respect the girl's statements (see in particular paragraphs 29 and 76 above) that she did not feel that he attempted to understand her point of view or to respond to the wishes that she had expressed so many times.

Considering that one must always keep in mind the best interest of the child and be mindful that the positive actions of the authorities in protecting the right to family life for one of the parents do not interfere with the child's own right to family life, it cannot be concluded that the national authorities should have interfered, in this emotionally fraught situation, to a greater extent than they have done.

138. All the foregoing considerations are sufficient to enable the Court to conclude that in the very difficult circumstances of the instant case, the authorities struck a fair balance between the competing interests and did not fail in their responsibilities to protect the applicant's right to family life with his daughter. Accordingly there has been no violation of Article 8 of the Convention.

II. OTHER COMPLAINTS

139. The applicant also alleges a violation of Article 6 § 1 of the Convention in respect of the various criminal and civil proceedings initiated against the bailiff, the lawyer representing M.S. and the prosecutors investigating the case. He also complained, under Article 6 § 1 of the Convention, that the domestic decisions defining the level of child support

were not well reasoned. He further submitted that the same facts as constituted the alleged violation of Article 8 of the Convention also gave rise to a breach of Article 5 of Protocol No. 7.

140. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

141. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged failure to protect the applicant's right to respect for family admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Section Registrar

Josep Casadevall
President