



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

THIRD SECTION

CASE OF CRISTESCU v. ROMANIA

(Application no. 13589/07)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Cristescu v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Mihai Poalelungi, *ad hoc judge*,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 13589/07) 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 Ioan Cristescu (“the applicant”), on 28 February 2007.

2. The applicant was represented by Ms M.-N. Olteanu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Co-Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the national authorities had failed to ensure the enforcement of a judicial decision granting him rights of contact in respect of Th.N., his minor son.

4. On 21 September 2010 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, has withdrawn from the case (Rule 28), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born on 30 January 1959 and lives in Bucharest, Romania.

A. Background to the case

7. The applicant was married to I.R. and the couple had two children, C.I., born on 19 December 1992, and Th.N., born on 12 August 1996.

8. Following divorce and child custody proceedings initiated by I.R. on 21 March 2001, the Bucharest First District Court of First Instance held on 9 October 2001 that the children should live with their mother. The applicant was entitled to visit his children according to the following schedule: every first and third weekend of the month, from 6 p.m. on Friday to 6 p.m. on Sunday; two weeks during the summer holidays; and one week during the winter holidays.

During the proceedings, two environment studies were conducted at the applicant's home and at I.R.'s home respectively. The studies concluded that the children were well taken care of and that their development was in accordance with their age. It was noted that the elder child, C.I., had started living with the applicant on 24 September 2001, and that their relationship was based on good communication. The applicant expressed his wish that C.I. be placed with him, in the light of their close relationship.

The court did not interview the two children, given their young age.

In delivering its judgment, the court took into consideration the evidence adduced, including the two studies; it held that the mother had proved to have spent more time with the two children, but it also underlined that it was in the two children's best interests to be placed with their mother, particularly in view of their age.

9. The applicant appealed against the judgment, reiterating his wish that he be awarded custody of his elder son, C.I., with whom he had a very close relationship.

On 21 May 2002 the Bucharest County Court modified the first-instance court's judgment concerning the custody of C.I., which was awarded to the applicant, in view also of the child's own choice in the matter. The first-instance court's reasoning concerning Th.N. was upheld without being reassessed, seeing that none of the parties contested that part of the judgment. The court's reasoning observed that:

"In the present case, it is beyond any doubt that both parents provide for their children a very good environment for their development, both financially, and also morally.

The fact that during the marriage it was the mother who dedicated more time to the children was because she had more free time available, and also because traditionally, in any family, it is the mother who predominantly takes care of the children, especially during the first years of their lives.

It follows that the father cannot be regarded as not having shown interest in the upbringing and education of the children.”

10. I.R. appealed against the judgment, arguing mainly that it was not in the best interests of the children that they be separated. In support of her request, she submitted several statements given by the children’s teachers, but also by the psychologist E.I.V., who had examined both children; the reports mainly noted that the two children were extremely happy to see each other, as it was obvious that they had a very affectionate relationship and that their separation had affected them both:

“The behaviour of the two brothers reveals a strongly affectionate relationship, and their break-up was followed by the psychological breakdown of C.I. (...); their separation has been very traumatising for both children”.

In another report written by E.I.V, it was noted that Th.N. had suffered as a result of the conflict-ridden relationship of his parents, and that:

“The state of conflict that marked the parents’ divorce evidently affected the child. The younger child is stable at present, even though he intensely resents the absence of his older brother.

The rare contact he had with his father following the latter’s separation from his mother evidently perturbed the psychological state of the younger child, owing to the father’s attempts to inculcate in him a hostile attitude towards the mother and to undermine his trust and his affection for her”.

The applicant for his part submitted a copy of a psychological report of 11 September 2002, as well as a medical certificate issued on 16 September 2002 concerning C.I., stating that: the boy was normally developed, presented a level of maturity appropriate for his age and did not have adjustment difficulties as a result of his parents’ separation; the sadness he had shown a few minutes after seeing his little brother proved only that he had reactions which were normal in the case of two separated brothers; and that C.I. had expressed his wish to stay with his father, even though he loved his brother and his mother.

11. The Bucharest Court of Appeal gave its final judgment on 25 October 2002, upholding the County Court’s determination. The court held that considering C.I.’s age, his choice to live with his father was relevant and could not be ignored. The court also held that it was in the children’s best interests that their parents made it possible for them to see each other and to spend time together, whether at the mother’s house or at the applicant’s house.

12. Following I.R.’s refusal to let the applicant take Th.N. from her home, allegedly because he did not want to “leave his mum’s house”, the

applicant asked the courts to specify the exact manner in which his rights of contact were to be implemented.

In its final judgment of 21 April 2003 the Bucharest County Court held that the applicant was entitled to take Th.N. from I.R.'s home according to the visiting schedule which had been previously accepted by the courts.

B. Enforcement proceedings

13. On 24 May 2002 the applicant initiated enforcement proceedings against I.R.; on 31 May 2002 his request was granted in court.

14. The first summons was therefore issued by the bailiff for 28 June 2002; on that occasion, the official record drawn up noted I.R.'s absence from her residence.

On 9 July 2002, the bailiff requested information from the competent authorities regarding I.R.'s current residence.

A further summons was issued on 23 August 2002; the record drawn up on 4 October 2002 in the presence of the bailiff, the applicant and a policeman stated that no one had allowed them to enter the premises, even though noises and a human voice could be heard inside the house.

15. In a further report issued on 16 May 2003 the bailiff noted that I.R. and Th.N. had not been at home.

The official report drawn up on 30 May 2003 noted I.R.'s assertions, according to which it was not she who had opposed the applicant seeing Th.N., but, rather, it was the child who had refused any contact with his father. In order for the father-child relationship to reach a normal level, I.R. further asserted that she would make efforts to encourage the child to grow closer to his father. The parties agreed to allow the two children to meet in a public place, firstly on 1 June 2003, between 6 p.m. and 9 p.m., and then also on the following weekends, Saturday and Sunday, between 5 p.m. and 7 p.m., after which the parents would agree upon the new schedule for mutual visits, so that the children would spend the weekends together, with each parent alternately.

16. On 17 June 2003 I.R. lodged an objection to the report of 30 May 2003, essentially asking for a suspension of its enforcement, on account on the child's alleged refusal to leave with his father. In support of her claims, she adduced two reports drawn up by the psychologist E.I.V. on 2 April and 16 June 2003 (see also paragraph 33 below).

On 14 July 2003 the Bucharest County Court dismissed I.R.'s objection, holding that the annulment of the report drawn up by the bailiff was not justified, in so far as the reasons relied on concerned the merits of the dispute over contact rights.

The judgment became final, as it was not appealed against by any of the parties.

17. On 4 July 2003 the parents met at the bailiff's office and agreed that during the summer vacation the children should stay alternately, for two weeks at a time, with each parent. I.R., however, could not agree on the period of time at issue, and thus opposed the applicant's request that Th.N. should stay with him starting on 15 August 2003 at the latest.

18. On 19 December 2003, in the presence of the bailiff, the applicant went to I.R.'s known residence, where he talked with I.R.'s mother, who informed him that I.R. and Th.N. had left on vacation the previous day.

19. On 19 March 2004 the applicant and the bailiff went to I.R.'s known residence, where they found I.R.'s father. He told them that I.R. and Th.N. were not at home and asked them to leave.

On 30 April 2004 another report was drawn up by the bailiff, noting Th.N.'s refusal to join his father and go to his home.

20. On 6 July 2004 I.R. again contested the enforcement of the impugned judgment of 2002, seeking to prove that its enforcement had become impossible, having regard to the precarious state of health of Th.N., following his two visits to his father's house on the weekends of 6 and 20 June 2004. On those occasions, the child allegedly came back to I.R.'s home sick and confused. Following some urine tests, Th.N. was found to have been intoxicated with benzodiazepine (the first time) and with nicotine (the second time).

With respect to the alleged incidents, I.R. also lodged a criminal complaint against the applicant, accusing him of having endangered Th.N.'s physical integrity (see also paragraph 30 below).

On 20 September 2005 the Bucharest (First District) Court of First Instance dismissed I.R.'s complaint, holding that in an objection to enforcement proceedings, the parties were not allowed to submit arguments concerning the merits of the enforceable judgment. Moreover, the court held that I.R. had not proven in any way her accusations against the applicant.

21. I.R. appealed against that judgment, reiterating her allegations that the applicant had endangered Th.N.'s state of health, thereby rendering it objectively impossible to continue with the enforcement of the disputed judgment allowing him contact.

On 12 April 2006 the Bucharest County Court dismissed the appeal. In its final judgment, the court held that:

"Indeed, medical documents were contained in the file, proving that during a specific period of time, the minor did have in his body certain toxic substances; however, no fault or negligence can be imputed to the father in this regard; therefore, no impediment exists to the enforcement of his contact rights."

22. In the meantime, on 30 November 2005 the applicant, in the presence of the bailiff, went to I.R.'s known residence, where they found that I.R. had moved to an unknown place. Consequently, on 6 December 2005 the bailiff requested the competent authorities to inform

him of I.R.'s new residence. The authorities' reply of 22 December 2005 indicated I.R.'s residence, as noted in the official records.

On 20 January 2006 the applicant and the bailiff went to that address, where they learnt that the house had been sold to third parties in June 2005.

On 23 January 2006 the bailiff requested updated information from the competent authorities regarding the current residence of I.R.; however, in the meantime, on 19 January 2006 I.R. had sent a letter to the bailiff, notifying him and the applicant of her new residence. She had also informed the bailiff that the proceedings seeking to suspend the enforcement of the judgment of 2002 granting the applicant contact rights were still pending (see paragraphs 31-38 below), and thus asked the bailiff to avoid any type of harassment of Th.N. until those proceedings had come to a conclusion.

23. On 30 November 2006 I.R. officially notified the applicant that he could come and visit Th.N. In his reply sent on 15 December 2006, also through the bailiff's office, the applicant expressed his contentment that after so much time, I.R. had finally understood that her persistent attempts to obstruct his rights of contact were harmful for the children.

24. The applicant further submitted that his endeavours to obtain information about his child's performance at school had been unsuccessful. He alleged that the management of the private school attended by Th. N. had consistently denied him the right to visit his child at school, in view of the content of the judgment of 2002, which had allowed him contact rights that could only be exercised according to the schedule specified therein.

25. The applicant complained to the Prime Minister about the alleged infringement of his parental rights by the school on 11 March 2004 (the complaints being subsequently remitted to the prosecutor's office for further investigation) and to the School Inspectorate on 7 April 2004. The applicant has not provided any further details in this regard.

C. Criminal complaints lodged by the parties

1. Lodged by the applicant

26. The applicant lodged a criminal complaint against I.R., accusing her of having not complied with the provisions of a final enforceable judgment. On 10 September 2003 the applicant was informed that on 27 May 2003 the prosecutor had decided to close the investigation, in so far as the impugned acts did not attract criminal liability, and had imposed on I.R. an administrative fine of 5,000,000 Romanian lei ((ROL) – approximately 130 euros (EUR)).

27. On 16 September 2003 the applicant lodged a second criminal complaint, with similar claims. Several persons were questioned, the prosecutor finally deciding on 30 June 2004 not to pursue the criminal

investigation, since it appeared from the case file that it was not the mother's fault, but, rather, the child's unwillingness to see his father that had obstructed the enforcement of the disputed judgment.

28. On 3 December 2003 the applicant lodged another similar complaint. The prosecutor decided on 17 March 2004 not to indict I.R., considering that the adduced evidence proved that Th.N. had not wanted to see his father, as he had been traumatised by his parents' separation. That decision was upheld by the chief prosecutor on 30 June 2004.

29. On 13 June 2004 the applicant lodged another criminal complaint, accusing the mother of endangering Th.N.'s moral and physical development, and of having slanderously accused him when alleging that he had given drugs to Th.N. while the child was visiting him over two weekends (see paragraph 30 below).

On 24 October 2005 the applicant lodged another criminal complaint against I.R., again accusing her of not allowing him to see his child, Th.N., thereby flouting the final judgment of 2002 which allowed him contact rights. The applicant also complained that, following the instructions given by I.R., the headmistress of the school attended by Th.N. had not allowed the applicant to enter the premises, and had refused to speak to him about his son's activities at school, advising him to contact the school only in writing.

In her statement given before the prosecutor on 24 November 2006 I.R. declared that the reason why the applicant could not see Th.N. was because the latter did not wish to have contact with his father, and whenever he was informed that he was supposed to go see his father, "he panicked and was affected". She also expressed her willingness to communicate with the applicant, so as to prevent any misunderstandings, which hurt both children.

The two above-mentioned criminal complaints were joined on 26 March 2009; a decision not to indict I.R. was given on 31 March 2009, the prosecutor holding that the adduced evidence revealed that I.R. had always shown good faith, initiating steps meant to facilitate contact between the applicant and Th.N., but that the latter had refused to meet his father because he felt threatened by him whilst in his presence.

The prosecutor also dismissed the complaints regarding the alleged slanderous accusation, considering that I.R. had not intended to defame the applicant, her acts being motivated solely by her wish to protect the best interests of her child Th.N., who at the time was found to have had toxic substances in his body, according to the medical examinations undergone by the child (see paragraph 30 below).

2. Lodged by I.R.

30. On an unspecified date in June 2004 I.R. lodged a criminal complaint against the applicant. She submitted that after Th.N. had spent the weekend of 4 to 6 June 2004 with his father, he had come back home in a general state of confusion and tiredness. The medical examination performed the next day had revealed that Th.N. had been intoxicated with benzodiazepine.

On 20 June 2004, when she had picked up the child from his father, with whom Th.N. had spent the weekend, the child was again in a state of tiredness. The medical examination conducted that evening had shown no signs of benzodiazepine; however, an examination carried out the following morning had found nicotine in the child's blood.

The investigating authorities required an expert report to be prepared by the Institute of Forensic Medicine. On 24 August 2004 I.R. went to the Institute and declared that she refused to allow Th.N. to be examined. The report was drawn up based on the existing medical documents, noting that the source and the context of both intoxications could not be established. As the minor had not been examined, no conclusion on any potential violent acts against him or on potential traces of medical treatment could be formulated.

The decision not to indict the applicant delivered by the prosecutor on 15 February 2006 was based on the fact that the adduced evidence had not revealed beyond doubt signs of serious negligence or omission imputable to the applicant in the exercise of his parental rights with respect to the incidents of June 2004.

I.R. contested that decision before the courts. Her request was dismissed as out of time on 8 February 2007 by the Bucharest (Second District) Court of First Instance.

D. Civil actions lodged by I.R. for redefinition of parental rights

1. Proceedings lodged in 2002

31. On 7 November 2002 I.R. applied to the courts, requesting that she be granted contact rights with respect to C.I.; she also requested that the contact arrangements of the applicant concerning Th.N. be altered, so as to take place on one Saturday monthly, between 2 p.m. and 6 p.m. She submitted that this change was necessary in view of the "negative influence" that the applicant exerted on the child, who was afraid that he would be taken away from his mother and who, each time when he was required to leave with his father, had nightmares, states of anxiety and crying fits.

32. On 3 March 2003, following a social worker's visit to both of the parents' homes, a report was drawn up, stating that:

"The mother is preoccupied with raising and educating Th.N.; the two have a good relationship, based on affection and communication. In the mother's opinion, the father should be allowed to visit Th.N. at her home and in her presence, for fear that by leaving the child at the father's house, he might have a bad influence on the child.

The mother declared that she had attempted to have personal contact with the minor C.I., but had been obstructed by the father, who had not allowed her to enter his home and who had created a bad image of her in the child's mind."

While acknowledging that C.I. enjoyed "optimal living conditions" at his father's house, the social worker also noted that the two had a harmonious relationship, based on affection and mutual understanding. The applicant had declared that he wished that he could have a closer relationship with his other child, Th.N., but on account of the mother's attitude, such a goal had become unattainable. C.I. had expressed his wish to spend more time with his brother, whom he truly loved.

The social worker also noted that the headmaster of the kindergarten attended by Th.N. had informed him that the applicant was interested in his son's activities and that "he was sometimes allowed to talk to the child, but only in the presence of another person".

The report's conclusion pointed to the fact that the two brothers had a very warm relationship, and also that both parents showed an affectionate and caring attitude towards the two children, both expressing their full receptiveness to developing a closer relationship with the child who lived with the other parent.

I.R.'s request for a psychological report assessing Th.N. was dismissed by the court on 6 March 2003 as unnecessary.

33. I.R. subsequently submitted to the file two psychological opinions (*aviz psihologic*) issued by the psychologist E.I.V., who had seen and examined Th.N. starting in November 2001, immediately after had been separated from his brother. In his report of 2 April 2003, the psychologist stated:

"The minor (Th.N.) is an intelligent child, who tries to understand the situation, but the fear of being separated from his mother, as happened with his brother, causes new states of anxiety, crying fits, nightmares and nocturnal enuresis [bed-wetting].

His current state is also provoked by his father's unscheduled visits, the child feeling threatened by a possible kidnapping, bearing in mind his brother's experience. His relationship with his father has deteriorated also on account of the latter's using insulting words in relation to I.R. and his aggressive behaviour towards the mother in the presence of the child.

The minor does not wish to be visited by his father, not even if his brother is also present, owing to the fact that his brother (C.I.) has attempted several times to persuade him that it is very nice to live with their father, because 'at dad's you don't

need to respect mummy's rules: you don't need to brush your teeth, you don't need to learn, you don't need to take piano lessons'; his brother also made him swear that when he reached the age of ten, he would move in with them."

In a further report issued on 16 June 2003 the same psychologist noted the following:

"I have re-examined Th.N., seeing that new anxiety attacks, episodes of nocturnal enuresis and bruxism [teeth-gnashing] have appeared.

I have noted that these symptoms appeared following the child's being visited by his father, who was accompanied by the brother (C.I.), and also by the bailiff and the father's lawyer. The child has difficulties in relating the incident, as he fears 'the gentleman who forces him to go to his dad's'.

The symptoms presented are caused, on the one hand, by the fact that his relationship with his father has deteriorated and, on the other hand, by the brutality used in enforcing the [father's] contact arrangements.

A pronounced state of anxiety on the child's part when in the presence of his father, and an increasing change in their relationship are noted."

34. The applicant contested I.R.'s arguments, mainly stating that it was impossible for him to have exerted a bad influence on the child Th.N., since he was never really around him because he was not allowed to see him. Moreover, the few times when they had actually met had been in the presence of the bailiff or of the staff at the child's school. His constant attempts to see Th.N. had been undermined by I.R.'s repeated changes of address and of the child's kindergartens, and subsequently his schools, changes which had never been brought to his attention.

35. On 22 May 2003 C.I. was heard by the court *in camera*, where he declared that he would like to be visited at his home only by his brother Th.N., and not by his mother.

36. On 9 October 2003 the Bucharest (Second District) Court of First Instance partly allowed I.R.'s request to be allowed to visit C.I. every other weekend, from Friday at 6 p.m. until Sunday at 6 p.m., two weeks during the summer vacation and one week during the winter vacation. The court dismissed I.R.'s request for an alteration of the applicant's contact arrangements with respect to Th.N. as ill-founded, holding that the circumstances which had been taken into account by the courts in the previous proceedings concerning contact had not changed.

37. The judgment was appealed against by I.R., who reiterated her request that the applicant should be allowed to visit Th.N. one day per month only, on Saturdays, from 2 p.m. to 6 p.m.

On 25 March 2004 the Bucharest Court of Appeal dismissed I.R.'s appeal, holding that the visiting schedule she proposed would be unfair, considering that she herself was allowed to see the other child, C.I., for more than just a few hours per month. Besides, I.R. had not proven that the

circumstances assessed by the courts in 2002, when the applicant's contact rights had been established, had changed in any substantial way so as to warrant an alteration of those rights.

In a dissenting opinion, Judge M.R. stated that the contact arrangements *vis-à-vis* Th.N. needed to be changed, namely reduced. I.R. had produced sufficient evidence proving that Th.N. had been psychologically traumatised by the separation from his brother, and that he was convinced that this separation had been caused by his father, who also wanted to separate him from his mother; at the same time, in the process of enforcing his rights of contact with the bailiff's aid, the father had threatened the child that he would take him with the help of the police if he did not voluntarily come with him; there was evidence in the file (testimonial and expert psychologist opinions) stating that Th.N. suffered from anxiety attacks, nightmares and nocturnal enuresis, on account of his fear of being separated from his mother, and owing to the perceived threat that he would be kidnapped. From that perspective, the judge considered that the child needed a more stable environment, and that he was developing well in the ambience created by his mother and his maternal grandparents.

38. I.R. lodged an appeal on points of law. On 9 March 2009 it was struck out by the Bucharest Court of Appeal for failure to pursue the proceedings.

2. Proceedings lodged in 2006

39. On 22 December 2006 I.R. lodged a request seeking to be granted resident parent status with respect to her son C.I.

She submitted that on 20 December 2006 C.I. had left his father's house and moved in with her, and implicitly with his brother Th.N. and with her new family (husband and their few months' old twins).

I.R. alleged that as a consequence of her tense relationship with the applicant, as evidenced by the several criminal complaints he had lodged against her, it had become very difficult for her to maintain contact with C.I., which also impeded the two children's possibility of spending time together. In the autumn of 2006 her elder son had told her that he wanted to move in with her, to live with her and with his younger brother. His wish was allegedly motivated by his strong and affectionate relationship with his brother, but also by the fact that he felt neglected and badly treated at home, following his father's moving in with his new girlfriend and her own eleven-year-old son.

40. The applicant denied these assertions. He reiterated that it was I.R. who had obstructed the development of a normal relationship between the brothers by not allowing him to take Th.N. according to the schedule approved in 2002 by the courts.

The applicant also filed counterclaims, asking to be granted custody of Th.N., mainly contending that I.R. would not be able to take care of all the

four children she had, in view of the fact that she had many other responsibilities (I.R. being a doctor and a professor as well as a mother and a wife). Moreover, it was important for the children to be raised by their real father, and not a “surrogate father”, namely I.R.’s new husband.

41. On 5 February 2007 a report was drawn up by a social worker who had visited both parents’ homes and had interviewed the parties.

The report reiterated the fact that the intense, litigious past of the parties had decisively aggravated and strained the relationship between the parents, on the one hand, and between them and the children, on the other hand. Such incidents had also contributed to the fact that the two brothers had not been able to see each other as often as they wanted.

The social worker also interviewed C.I., who had stated that:

“he decided in desperation to escape from his father’s home by taxi, as he felt neglected, isolated, offended; he was not allowed to speak to his mother and to his brother Th.N., he was not allowed to have friends over, he did not have a good relationship with his father’s girlfriend or with her son, who had been living with them for the past three years; moreover, he (C.I.) was eager to meet his twin brothers and to spend more time with his maternal grandparents, whom he had not seen for the past five years.”

The report noted that at the time of the social worker’s visit, C.I. seemed very happy to stay at his mother’s house, together with all of his brothers, whom he loved, and with his mother’s husband, who was very open and fond of children. He expressed in categorical terms his intention to stay with his mother. He declared that his father had come three times to see him at school and made him believe that he would not oppose his wish to stay with his mother.

In conclusion, the report recommended that I.R. should be granted resident parent status with respect to C.I., as not only was this the child’s firm wish, but also, in the new family, the child had been greeted with much love, making him feel included and protected.

42. On 8 March 2007 the two children, aged ten and fourteen at the time, were heard by the court, separately and *in camera*. The judge noted Th.N.’s statements, according to which:

“he lived with his mother and with her husband, whom he loved more than he loved his dad; his father came several times to take him;

- two or three years ago, he spent the weekend with his dad, and was not allowed to sleep with his brother C.I, but instead he slept with his dad; on the second day he was sick, and when he was taken to hospital by his mother, it became apparent that he had been intoxicated with nicotine; before that weekend, he had spent two other weekends with his dad, but nothing bad had happened to him;

- last year, on 6 December, he went to the police with his mum, to meet his dad; he said that he did not want to leave with his dad, even though the policeman insisted that he do so;

- many times, his father had talked badly about his mum, telling him to stop living with her;

- prior to his parents' separation, he had witnessed his father strangling his mother."

C.I., for his part, declared that:

- "- when his parents separated, he had decided to leave with his dad, as he had told him that mum had stolen money, and that mum did not care for him and would mistreat him; he witnessed some violent scenes when his father had forced mum to tell him where the money was;

- his brother had felt sick following a visit to their dad's, and then his father had shown him a printed paper, telling him that it was proof that mum had given drugs to his brother;

- at his dad's, he had felt that he was a burden; his father was not interested in him, did not help him with his homework, never asked anything about how he was getting along at school nobody hugged him while he lived with his dad;

- mum took care of him, helped him with his homework, bought him clothes, hugged and kissed him;

- he felt that he could not complain about all these things to anybody; he only saw his mum at school, and his dad was telling him bad things about her; he was afraid to complain to anybody for fear that his father would hear about it and beat him;

- his father had beaten him when he took some of his [father's] own food; from that moment on, he had followed all the rules, for fear that he would otherwise be beaten;

- before he had left for his mother's house, he had warned his dad that he would leave if he continued to behave in such a way, and his dad had told him that if he left, he should never come back;

- following his moving in with his mum, his dad had visited him at school every week, promising that he would change, blaming stress at work for his behaviour;

- if possible, he would like to stop seeing his dad."

Several witnesses were also heard, mainly stating that the two brothers were well taken care of by their mother and that they were both happy together.

43. On 5 April 2007 the Bucharest (Second District) Court of First Instance allowed I.R.'s request to be granted resident parent status with respect to C.I.; at the same time, the court allowed the applicant contact, to be exercised during every first and third weekend of the month, from 6 p.m. on Friday to 6 p.m. on Sunday, but also for two weeks during the summer holidays and one week during the winter holidays.

In so doing, the court held that it was in the best interests of the minor to stay with the parent he felt closer to:

“Even assuming that the minor C.I. had only imagined a complete scenario of abuse and neglect from his father, the fact that he reproduced the same scenario to several people, as transpired from the evidence, proved the existence of a serious breakdown in communication between him and his father.”

Taking into account the child’s own choice, but also his best interests, on the basis of the file, the court held that C.I. should stay with his mother, while also allowing the applicant contact on an identical schedule to that set out with respect to Th.N. The court further held that concurrent efforts on the part of both parents were essential for the improvement of the father’s relationship with his two children.

In dismissing the applicant’s request to be granted custody of Th.N., the court held:

“The disputes between the parties regarding the enforcement of the judgment allowing the father contact are not a good enough reason to justify a change with respect to the custody of Th.N.; the father has at his disposal several procedural means aimed at addressing the non-enforcement of a judgment, but he must also find the appropriate means to allow him to grow closer to the child, while the mother’s duty is to explain to the child the importance of staying in touch with his father.”

44. The judgment was not appealed against and thus became final.

E. Other judicial actions

45. On 16 March 2006 the applicant brought a civil action, seeking to have the final judgment enforced by the imposition of a fine in the event of non-compliance.

46. On 26 September 2006 the court heard Th.N. *in camera*. Th.N. stated that he feared his father and that he did not wish to see him. He also declared that his father had never assaulted him.

47. In its final judgment of 28 September 2006, the Bucharest (First District) Court of First Instance allowed the applicant’s claims.

The court considered that the profoundly conflict-ridden relationship between the parties, proven also by the numerous criminal complaints they had lodged against each other, had had serious negative repercussions on both children, who had been used by the parents as weapons against each other and in that respect, both parents were at fault. However, Th.N.’s bad impression of his father and his constant fear of him had been caused, at least in part, by I.R., as the child lived with her and she had strong moral authority over the child. The court thus held that I.R. should pay the State a fine of ROL 20 (approximately EUR 0.75) per day, for every day that she failed to comply with the contested judgment.

On 20 February 2007 the Bucharest County Court dismissed an appeal lodged by I.R. as inadmissible.

II. RELEVANT DOMESTIC LAW

48. The relevant domestic legal provisions are set out in the Court's judgments in the cases of *Lafargue v. Romania* (no. 37284/02, §§ 64-69, 13 July 2006), and *Costreie v. Romania* (no. 31703/05, §§ 55-58, 13 October 2009). The role and responsibilities of the local public authorities in respect of social assistance and child protection, as well as the relevant provisions of the Child Protection Act (no. 272/2004), are described in the judgment in the case of *Amanalachioai v. Romania*, (no. 4023/04, §§ 56 and 59, 26 May 2009).

THE LAW

I. SCOPE OF THE APPLICATION

49. Relying on Article 8, but also on Article 6 § 1 and Article 13 of the Convention, the applicant complained that the national authorities had not complied with their obligation to ensure the enforcement of the final judgment granting him contact in respect of Th.N. and that the domestic law did not provide any effective remedy in such a case.

50. In the circumstances of the present case and having regard to the manner in which the applicant has formulated his complaints, the Court takes the view that the main legal issue raised by this application concerns the applicant's right to respect for his family life, as protected by Article 8 of the Convention. It therefore considers that its examination should exclusively address the issue raised under Article 8 of the Convention, and that therefore it is not necessary to examine whether there has also been a violation of Article 6 § 1 and Article 13 of the Convention (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Raban v. Romania*, no. 25437/08, § 23, 26 October 2010; and *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, § 41, 22 April 2010).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. The applicant complained that his right to respect for his family life had been infringed as a result of the non-enforcement of the final judgment granting him contact in respect of his minor child, Th.N. 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.”

52. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

A. The parties’ submissions

1. The applicant

53. The applicant complained that his right to respect for his family life had been infringed by the non-enforcement of the judgment granting him contact in respect of his minor child, Th. N., and that the competent national authorities had failed to effectively assist him in the enforcement of his parental rights.

The applicant further argued that the domestic courts, both civil and criminal, had failed to assess promptly and without undue delay the numerous requests and complaints that had been lodged with them by both parents, thereby allowing considerable postponements in the proceedings. The attempts at enforcement, in which the applicant had been assisted by the bailiff, had proved to be ineffective. The management at Th.N.’s school had refused any dialogue with or support to the applicant concerning the improvement of his relationship with Th.N. Social services had not become involved in attempting to facilitate the enforcement of the judgment at issue.

At the same time, the authorities had failed to effectively take measures against I.R. for her repeated attempts to obstruct the exercise of the applicant’s rights of contact, as set out in the final judgment.

Contesting the Government’s arguments that I.R. had shown a true desire to facilitate contact between the applicant and Th.N., the applicant enumerated the mother’s alleged attempts to obstruct the enforcement of the judgment, including the proceedings she had initiated aimed at restricting his contact rights, her successive changes of residence and changes of the child’s schools, and the understanding she had reached with the school authorities that the applicant should be kept away from his son. He reiterated his belief that I.R. had negatively influenced Th.N., causing the child to have a bad impression of him, his father.

The applicant strongly disagreed with the Government’s contention that he had not been diligent enough in pursuing the enforcement proceedings. In this connection, he maintained that he could not be presumed to be able to interrupt all of his professional activities - in the hospital where he

worked or at the university where he taught, and his participation in international conferences - so that he could make daily requests to the bailiff, as it was the latter's legal duty to pursue the enforcement.

The applicant also contended that the manner in which his relationship with his other child, C.I., had evolved did not have any bearing on the State authorities' duty to comply with their positive obligations under Article 8 of the Convention. In the past ten years he had seen his son Th.N. on three occasions only. The authorities had also failed in their obligation to provide guidance for the two parents in their relationship and to help them to cooperate for the children's sake.

2. The Government

54. While acknowledging that the non-enforcement of a judgment granting contact to a parent may generally constitute an infringement of the rights guaranteed by Article 8 of the Convention, the Government contended that in the present case, the State's positive obligations needed to be assessed in the light of the best interests of Th.N., while also taking into consideration the particularities of the case, namely the fact that it was not only the parents who had separated following the divorce and custody proceedings, but also the two children who had been separated at that time.

The impugned decision to separate the two brothers had been taken based on all the evidence available in the case, which had proved that Th.N. was more attached to his mother, while he feared his father. By requesting to be granted custody of C.I. alone, the applicant had in fact aggravated the separation between the two children, which in turn had had a negative effect on Th.N.'s impression of his father.

The applicant's attempts to have the judgment granting him contact enforced had been fully supported by the bailiff, who had made continual efforts to that end. The bailiff's reaction to each of the applicant's requests for enforcement had been prompt. Moreover, the applicant had never contested before the courts the bailiff's acts and/or alleged omissions.

After 23 January 2006 the applicant had not submitted any other request to the bailiff for the enforcement of the judgment in question.

At the same time, in his attempts to have contact with Th.N., the applicant had never requested any assistance from social services or from a psychologist, nor had he considered it useful or beneficial to take C.I. with him when visiting Th.N., even though he had been completely aware that the two children had a very affectionate relationship. The applicant's attitude remained the same, in spite of the fact that the domestic courts, while always upholding his parental rights, had underlined that a delicate, patient and careful approach was needed in such cases, together with good cooperation between the parents.

The Government further argued that it had been solely the inappropriate behaviour of the applicant and his former wife that had caused the

deterioration in his relationship with Th.N. Furthermore, as a result of the tactless manner in which the applicant had approached both his children, not only had his relationship with Th.N. not improved, but also even C.I., who at first had been more attached to him, had ended up leaving his house in order to live with his mother and younger brothers.

In this sensitive context, and having regard to Th.N.'s consistent attitude of rejection towards his father, the State authorities had complied with their positive obligations under Article 8, whilst recognising that sometimes, the best interests of the child might prevail over the interests of the parent.

The Government concluded by referring to the Court's case-law, which underlined that where contact with the parent appeared to threaten the best interests of the child or interfere with those rights, it was for the national authorities to strike a fair balance between them (they cited *Sylvester v. Austria*, nos. 36812/97 and 40104/98, 24 April 2003; *Hokkanen v. Finland*, 23 September 1994, Series A no. 299-A; and *Kallo v. Hungary*, (dec.), no. 70558/01, 14 October 2003). That was what the national authorities had in fact accomplished in the present case, bearing in mind Th.N.'s constant refusal to meet his father.

B. The Court's assessment

1. Relevant principles

55. The Court reiterates at the outset 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).

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

57. In relation to the State's obligation to take positive measures, the Court has held that in cases concerning the implementation of the contact rights of one of the parents, Article 8 includes a parent's right to the taking of measures with a view to his being reunited with his child and an obligation on the national authorities to facilitate such reunion, in so far as the interest of the child dictates that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family; the State's obligation is not one of result, but one of means (see, among other

authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX and also *Nistor v. Romania*, no. 14565/05, §§ 70, 109, 2 November 2010).

58. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly held that what is decisive is whether the national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case (see *Hokkanen*, cited above, § 53; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen*, cited above, § 128; and *Sylvester*, cited above, § 59). The adequacy of the measures taken is to be judged by the swiftness of their implementation, as the passage of time can have irremediable consequences for the relationship between the child and the parent who does not live with him or her; at the same time the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live, even though coercive measures against the children are not desirable in this sensitive area (see *Ignaccolo-Zenide*, cited above, §§ 102 and 106).

59. The Court further reiterates that active parental participation in the 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 applies for enforcement of a court order, his conduct as well as that of the courts is a relevant factor to be considered (see *Glaser v. the United Kingdom*, no. 32346/96, § 70, 19 September 2000).

60. Finally, as the Court has repeatedly held, in matters relating to their custody, the interests of children are of paramount importance. The child's best interests must be the primary consideration (see, to that effect, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 134, 6 July 2010 and *Plaza v. Poland*, no. 18830/07, § 71, 25 January 2011) and may, depending on their nature and seriousness, override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII).

2. Application of the above principles to the present case

61. The Court notes that the enforcement proceedings at issue clearly concern the applicant's "family life" within the meaning of Article 8 (see *H. v. the United Kingdom*, 8 July 1987, § 90, Series A no. 120).

The Court's first task in the present case is therefore to consider whether, in the light of the relevant principles in its case-law, the measures taken by the Romanian authorities were as adequate and effective as could reasonably have been demanded in the circumstances of the case, for the facilitation of the reunion between the applicant and his child, Th.N., so as to comply with the provisions of the final judgment according him contact. Also, in determining whether the non-enforcement of the contact arrangements amounted to a lack of respect for the applicant's family life, the court must

examine whether a fair balance was struck between the various interests involved, namely the interests of the child Th.N. and his mother and brother, those of the applicant himself and the general interest in ensuring respect for the rule of law (see, also, *D. v. Poland* (dec.), no. 8215/02, 14 March 2006).

62. As regards the background to the present case, the Court firstly observes that the decision of the domestic courts to separate the two brothers in granting custody to the mother (in respect of Th. N.) and to the applicant (in respect of C.I.) had a significant impact on the children and on their future relationship with each of their parents. In this connection, the Court points to the fact that the applicant himself considered at the time that it was better for Th.N. to remain with his mother, as the child was more attached to her, and thus he only asked to be granted custody of C.I., who at the time felt closer to the applicant.

The Court notes in this context that even if the separation of the two brothers eventually proved to have had a negative effect on the smooth continuation of the relationships within the family, the conclusions of the domestic authorities seised with the custody issue had a sufficient evidentiary basis (including statements made by witnesses, psychological and other expert assessments, and the parties' – the children's and the parents' – own wishes), for the assessment of whether the proceedings were in compliance with the requirements of Article 8 (see, by contrast, *Mustafa and Armağan Akın v. Turkey*, no. 4694/03, §§ 22-23, 6 April 2010).

63. The Court further notes that in spite of the fact that the applicant was granted by way of judicial decisions a right to regular contact with his son who lived with his mother, the problems concerning the implementation of those contact rights arose immediately after the rights in question had been determined by the domestic courts; the applicant thus had to request the services of a bailiff in order to enforce the execution of his contact rights.

In the assessment of the domestic authorities' conduct in respect of the enforcement of the final judgment granting the applicant contact, the Court notes that the domestic courts allowed the applicant's requests for enforcement without any undue delay; the request lodged on 24 May 2002 was allowed on 31 May 2002, for example.

The bailiff took immediate action to enforce the decisions, by issuing the first summons for 28 June 2002; he subsequently issued several further summonses (following each of the applicant's requests) and accompanied the applicant to the child's successive homes on each of the dates set for his visits.

Moreover, the applicant has never complained before the domestic courts of the bailiff's acts and/or potential omissions.

64. While it is true that the enforcement attempts were not always successful, the Court notes that the attitude of the mother, even though a determining factor in the applicant's inability to see Th.N., was caused throughout by the child's unwillingness to see his father. Indeed, this is

what the prosecution authorities held in reply to the applicant's successive criminal complaints regarding the mother's behaviour (see paragraphs 26-29 above); in the decisions not to issue an indictment against I.R., the prosecution authorities based their reasoning on the fact that the mother's actions and attitude had been motivated by her desire to protect Th.N., inasmuch as the child was reluctant and fearful about joining his father.

In this respect, the Court does not discern any arbitrariness in the prosecutors' and the courts' decisions not to pursue I.R. criminally, while their reasoning pinpointing to the need of a more intense cooperation between both parents does not appear as devoid of merit (see, *mutatis mutandis*, *Sbârnea v. Romania*, no. 2040/06, § 119, 21 June 2011).

65. Moreover, the Court notes that in 2003 the prosecutor imposed an administrative fine on the mother in response to the applicant's complaints about not being allowed to see Th. N. (paragraph 26 above); in 2006, the civil court also fined the mother for every day that she failed to comply with the contested judgment (see paragraph 47 above).

The Court considers that the conflict between the applicant and I.R. made it particularly difficult for the domestic authorities to act in order to fully enforce the applicant's visiting rights. In this connection, the Court finds that the authorities diligently examined the applicant's successive complaints against I.R. and that the imposed fines could not be considered unreasonably low, regard being had to the fact that larger fines might have threatened the well-being of the children (see *D. v Poland*, cited above, and *Fuşcă v. Romania*, no. 34630/07, § 48, 13 July 2010).

66. The Court further notes that the child's reluctance towards seeing his father was a constant element throughout the years, as evidenced not only by the reports prepared by the bailiff, but also by various testimonial statements, by the comments made by Th.N.'s brother, C.I. and, not least, by the numerous statements made in that regard by the child himself before various authorities (such as psychologists, courts, policemen, school representatives and social workers).

This reluctance was acknowledged by the applicant himself, who however, considered the mother to be solely responsible for the child's behaviour. The Court, nevertheless, notes that the applicant's continual assertions that the mother exerted a negative influence on the child Th.N. were taken into consideration by the courts, who however repeatedly held that it was the responsibility of both parents to improve the family relationship and therefore considered that both of them needed to cooperate and give more consideration to the best interests of their children (see paragraphs 11, 43 and 47 above).

Moreover, in 2007 the applicant himself indirectly acquiesced in the domestic court's finding that it was in the best interests of both children to stay with their mother, thereby granting custody of both children to I.R., as he never contested this arrangement.

67. In this respect, the Court also notes that after 20 January 2006 the applicant desisted from seeking the assistance of the bailiff in the enforcement of the impugned judgment of 2002 granting him contact and, according to his assertions, stopped seeing Th. N. altogether.

The Court appreciates the feelings of frustration aroused in the applicant by the unsatisfactory enforcement proceedings, despite his numerous efforts between 2002 and 2006. Notwithstanding, the nature of the obligation that fell to be executed was such that it required the applicant's presence during the attempts at enforcement, regardless of how active or demanding his professional life he claims to have been. The bailiff, an individual unknown to the child, could not have been expected to go alone to the child's home in order to take him away and deliver him to the applicant's home (see *Fușcă v. Romania*, cited above, § 46).

68. Furthermore, in the light of the delicate family situation presented by the instant case, the Court finds it very difficult to accept that ordinary civil enforcement proceedings could in themselves have improved the situation at hand. It considers that the facts of the case indicated clearly that a more sensitive approach towards the child was needed for the successful enforcement of the applicant's contact rights (*ibid*; §§ 41-43).

In this connection, the Court notes that the applicant did not request the assistance of social services or of a psychologist with a view to exploring other possibilities of approaching his estranged son (see, by contrast, *Nistor*, cited above, § 105).

69. The Court is aware that in difficult situations as the present one, involving unresolved issues between parents, a certain amount of time has to pass in order for the parents to overcome emotional hurdles and to establish a mature relationship focusing on the best interests of the child (see *Trdan and Č. v. Slovenia*, no. 28708/06, § 96, 7 December 2010).

However, re-establishing contact with a child in such delicate circumstances requires long-term efforts on the part of all concerned persons, including the applicant (see *Sbârnea v. Romania*, cited above, § 136), notwithstanding the public authorities' positive obligations to ensure the enforcement of contact rights, thereby protecting the applicant's right to respect for his family life. The Court reiterates in this connection that the obligation to take measures to facilitate contact is not absolute; moreover, it is an obligation of means, and not one of result.

In this context, the Court takes note of the applicant's role in the impugned enforcement proceedings and, while reiterating that in such cases, active parental participation is required under Article 8 of the Convention, it considers that the applicant could have expected that in order to re-establish contact with his child, a long-term commitment and effort would be necessary, and this notwithstanding the mother's own conduct, sanctioned as such by the domestic courts (see paragraphs 26, 47 and 65 above). It is also what the domestic courts have suggested and implied in their reasoning

(see paragraphs 11, 29, 43, 47 above), the national authorities being in principle better placed to carry out such an assessment, in particular as they have direct knowledge of the context of each case and the parties concerned (see, *mutatis mutandis*, *Gnahoré v. France*, cited above, § 63).

While the behaviour of the parent cannot be regarded as an absolutely decisive factor since it does not relieve the authorities from the duty to implement such measures as will be apt to enable the family link to be maintained, the Court however finds that in the difficult circumstances of the present case, the domestic authorities did not fail to protect the applicant's right to respect for his family life.

70. As regards the applicant's allegations that the domestic courts dealt with the applications brought before them with unreasonable delay, thus obstructing his parental rights with respect to Th. N., the Court notes that in spite of the numerous proceedings of a civil and criminal nature relating to the applicant's contact in respect of his child Th. N., the actual enforcement proceedings relating to the impugned judgment were never stayed by any court, and thus those proceedings cannot be regarded as having *per se* obstructed the exercise of the applicant's rights of contact.

71. On the other hand, as concerns the length of the divorce and custody proceedings, which lasted approximately eighteen months at three levels of jurisdiction, the Court does not find it unreasonable, bearing in mind the nature of the rights at stake and the evidence needed to be adduced in such a complex case (see, among many other authorities *Rumpf v. Germany*, no. 46344/06, § 41, 2 September 2010).

72. Furthermore, while reiterating that it is not the Court's task to define the content of parental rights as envisaged under Romanian law, with regard to the applicant's complaints regarding the school authorities' refusal to allow him to exercise his parental rights, it notes that the applicant has limited himself to requesting the courts that he be granted exclusively contact rights in respect of Th.N. (see also *R.R. v. Romania (no. 1)*, no. 1188/05, § 150, 10 November 2009), his request being allowed subject to certain conditions (see paragraphs 8 and 12 above). In that regard, the school authorities' response to the applicant's requests (see paragraph 24 above) to be informed of his son's school performance and to visit him in school does not appear to have been arbitrary or manifestly unreasonable, bearing also in mind their awareness of the content of the impugned judgment, but also of the conflict-ridden relationship between the parents regarding the two children.

73. In the light of the foregoing and in view of the margin of appreciation afforded to the national authorities, the Court considers that their handling of the applicant's case had due regard to the best interests of the child in question and of the family as a whole, while taking all the steps to enforce the applicant's contact rights which could reasonably have been required in the very difficult situation at hand.

Accordingly, in the circumstances of the case there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the complaints under Articles 6 and 13 of the Convention.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Myjer and López Guerra is annexed to this judgment.

J.C.M.
S.Q.

CONCURRING OPINION OF JUDGE LÓPEZ GUERRA JOINED BY JUDGE MYJER

I certainly agree with the finding of no violation of Article 8 of the Convention in this case. The Romanian authorities duly addressed the application lodged by the applicant to enforce the judgments specifying his visiting schedule with his child, and adopted all reasonable measures to achieve that goal, including imposing a fine on the child's mother. It fell to the Romanian courts to determine the measures to be taken in the best interests of the child and the means of enforcing them, and there is no evidence that they did not perform that task adequately. In a delicate and sensitive matter such as this, it is difficult (and is certainly not this Court's role) to imagine what other measures the Romanian courts might have taken without negatively affecting a child of such a young age.

I cannot agree, however, with the reasoning of the judgment, which goes beyond examining the conduct of the Romanian authorities and censures the behaviour of the parties to the conflict. In my view, such an appraisal is unwarranted (as it had already been carried out by the Romanian courts, which had direct knowledge of the facts and contact with the parties in the case) and is inevitably conjectural and speculative, given that this Court has had no such direct knowledge or contact. I particularly disagree with the content of the criticism of the applicant's behaviour.

It is asserted in paragraph 67 of the judgment that the applicant should have been present during the attempts to enforce the courts' decisions, accompanying the bailiff to the child's mother's home to pick him up, and in paragraph 68 that the father needed to take a "more sensitive approach". The Chamber likewise reproaches the applicant for not having requested the assistance of social services or of a psychologist. It further indicates that long-term efforts were required from all persons concerned, "including the applicant" (see paragraph 69) and that he could have expected that a long-term commitment and much effort would be needed (*ibid.*).

In the circumstances of this case, I do not consider that it is the role of this Court to determine or censure the applicant's conduct with respect to his child. In addition, I have serious doubts concerning the assertion in the judgment that the father should have been present when the child was taken from his mother's home by the bailiff. Furthermore, I cannot endorse the criticism of the applicant for his lack of effort or sensitivity in a situation in which he has been allowed to see his son only three times in ten years, despite his many attempts to do so through legal proceedings brought in the Romanian courts.