



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

THIRD SECTION

CASE OF PASCAL v. ROMANIA

(Application no. 805/09)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

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

In the case of Pascal v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemeļe,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 805/09) 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 French national, Mr David Denis Pierre Pascal (“the applicant”), on 16 December 2008.

2. The applicant was represented by Mr Radu Gabriel Revnic, a lawyer practising in Cluj-Napoca. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, from the Ministry of Foreign Affairs.

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 As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the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

4. The applicant alleged, in particular, that the Romanian authorities had failed to ensure the enforcement of judicial decisions granting him visiting rights in respect of N.M.E.P., his under-age daughter.

5. On 21 September 2010 the President of the Third Section decided to give notice of the application to the Romanian Government and to invite the French Government to state whether they wished to exercise their right to submit written comments in respect of the case (Article 36 § 1 of the Convention). It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

6. On 11 January 2011 the French Government informed the Court that they did not wish to exercise their right to submit written comments in respect of the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1976 and lives in Cluj-Napoca, Romania.

8. The applicant was married to O.M.M. and the couple had one daughter, N.M.E.P., who was born on 8 June 2004.

A. Proceedings for interim and exceptional visiting rights

9. On 1 August 2006, following the applicant's and O.M.M.'s separation, he brought proceedings against O.M.M., seeking an injunction for interim contact rights with his daughter.

10. By a judgment of 3 August 2006 the Cluj-Napoca District Court allowed the applicant's action of 1 August 2006. It held that the applicant could see his daughter every Sunday between 10 a.m. and 1 p.m. at her mother's house or elsewhere. O.M.M. appealed against the judgment.

11. By a final judgment of 19 October 2006 the Cluj County Court allowed an appeal by O.M.M. against the judgment of 3 August 2006 and ordered a retrial.

12. By a final judgment of 29 November 2006 the Cluj-Napoca District Court, in a second set of proceedings, allowed the applicant's action of 1 August 2006. It held that the applicant could see his daughter every Sunday between 10 a.m. and 1 p.m., at her mother's house or elsewhere.

13. On 7 March 2007 the applicant brought proceedings against O.M.M., seeking an injunction for exceptional contact rights on 28, 29 and 30 March 2007 between 10 a.m. and 1 p.m.

14. By a final judgment of 8 March 2007 the Cluj-Napoca District Court allowed the applicant's action in part and acknowledged his right to visit his daughter exceptionally on 29 March 2007 between 10 a.m. and 1 p.m. at O.M.M.'s home or elsewhere, on the ground that it was in the best interest of the child to preserve family ties with her father and her relatives.

15. On an unspecified date in 2007 the applicant brought proceedings against O.M.M., seeking an injunction for exceptional contact rights on 29, 30 and 31 May and 1 June 2007 between 10 a.m. and 1 p.m.

16. By a final judgment of 24 May 2007 the Cluj-Napoca District Court allowed the applicant's action in part and acknowledged his right to visit his daughter exceptionally on 30 May and 1 June 2007 between 10 a.m. and 1 p.m., at O.M.M.'s home or elsewhere, on the ground that it was in the best interest of the child to preserve family ties with her father and her relatives.

17. On an unspecified date in 2007 the applicant brought proceedings against O.M.M., seeking an injunction for exceptional contact rights for the 2007 Christmas holiday.

18. By a judgment of 20 December 2007 the Cluj-Napoca District Court allowed the applicant's action for exceptional contact rights for the 2007 Christmas Holiday. It held that given the tense relationship between the parents it would be in the best interest of the child and less stressful for her if she could meet her father away from her mother's home. Consequently, it allowed the applicant to take the child away from her mother's home for seven days, starting on 22 December 2007. O.M.M. appealed against the judgment.

19. By a final judgment of 1 February 2008 the Cluj County Court dismissed O.M.M.'s appeal against the judgment of 20 December 2007. It held that the appeal was moot, as the injunction of 20 December 2007 was enforced and her daughter was returned to her after seven days.

B. Divorce and custody proceedings

20. On 23 August 2006 the applicant brought divorce and child custody proceedings against O.M.M.

21. By a judgment of 15 February 2007 the Cluj-Napoca District Court allowed the applicant's action for divorce, awarded sole custody of the child to O.M.M., and ordered the applicant to pay monthly child support. By relying on witness statements and on the Cluj Guardianship Authority's (*Autoritatea Tutelară Cluj*) social investigation and recommendation the court held that the mother was the child's main caregiver. Consequently, it considered that the mother was able to ensure N.M.E.P.'s emotional and physical development, and that her presence was still essential, given the young age of the child. The judgment was final, as neither the applicant nor O.M.M. appealed against it.

C. Reports produced by the Centre for Abused Children attached to Child Social and Protection Services

22. On 25 September 2006 the County Centre for Abused Children attached to the Child Social and Protection Services (*Direcția Generală de Asistență Socială și Protecția Copilului – Centrul Județean de Intervenție pentru Copilul Abuzat*) produced a psycho-social report in respect of N.M.E.P. According to the report the Centre for Abused Children carried out an investigation into the case after they were informed by O.M.M. that the child's father had behaved inappropriately towards his daughter by bathing with her without wearing underwear, and had neglected the child when she was left alone with him. The report also stated that following a discussion with both parents they accused one another of inappropriate behaviour towards the child which negatively influenced the minor's behaviour. In addition O.M.M. also accused the applicant of being physically aggressive towards her in January 2006. Consequently, both

parents were invited, and agreed, to attend psychological counselling sessions at the County Centre for Abused Children. The child's father was informed on several occasions that his behaviour in bathing naked with his daughter could influence his relationship with her and could have unforeseen negative consequences. The report concluded that the child's situation needed to be monitored and that the parents needed to continue the psychological counselling sessions within the centre.

23. On 5 December 2007 the Centre for Abused Children attached to the Child Social and Protection Services produced a psychological evaluation report in respect of N.M.E.P. The report stated, *inter alia*, that the child was developing normally for her age. She felt closer to her mother and evaluated her in positive terms. She started being upset when she was asked about her father. The father was represented in a negative way because of the tense situation between the parents. None of the father's actions were received positively, and she did not wish her father to visit, because of the tense situation with her mother. She considered her father's visits to be a negative process. Her father was excluded from the description of her family, which in her opinion consisted of her mother and her maternal grandparents. She refused to discuss any potential sexual abuse by her father. The report concluded that the child was scarred by the tense situation between her parents, and that consequently she did not wish to receive visits from her father. Moreover, there was no clear evidence that she had been sexually abused by either of her parents.

24. On 6 December 2010 the Centre for Abused Children attached to the Child Social and Protection Services informed the Government, *inter alia*, that attempts were being made to mediate the relationship between the applicant and his former wife to help them protect the best interest of their child. In 2006 the parents were asked to attend psychological counselling sessions. After four meetings the applicant decided that the sessions were useless and discontinued attending them.

D. Proceedings for permanent visiting rights

25. On an unspecified date in 2007 the applicant brought injunction proceedings against O.M.M., seeking to establish a schedule for visiting rights. He requested the court to order O.M.M. to allow him to see his daughter on Sundays, on 8 May, 8 June, 14 July, 11 and 24 November; one week for Orthodox Easter and one for Christmas every two years; in August; one week between October-December, January-March and April-June; and to allow him to leave the country with the child for at least a week during the time they spent together and in August 2007.

26. By a judgment of 7 June 2007 the Cluj-Napoca District Court allowed the applicant's action in part, seeking to establish a schedule for visiting rights. Relying on the statements of the parties' witnesses and on

the report produced by the County Centre for Abused Children attached to the Child Social and Protection Services, the court held that the father could visit the child and spend a few hours per week with her in the mother's absence. The absence of her mother would avoid any stressful situation for the child caused by the tension between the parents. Also the contact with her father would be welcomed by and beneficial for the child as long as N.M.E.P. needed the attention of both parents for her balanced emotional and physical development, which could not be achieved in the presence of both parents. According to the social investigation carried out at the applicant's home, his living conditions were appropriate. The fact that the supplement to the social investigation, which the court did not order, mentioned that the rooms of his home looked unwelcoming, without providing details on why they would be unfit to host a child, could not be considered a well-grounded reason for refusing the applicant contact with his daughter. Moreover, O.M.M.'s arguments that the applicant was not capable of taking care of the child were rebutted by the available witness statements.

27. In respect of the applicant's request to be allowed to occasionally take the child out of the country the district court held that regardless of the parent's position, the minor had a legal right to meet her relatives, including the paternal ones. The paternal relatives met the child and had her well-being at heart. In N.M.E.P.'s case, she enjoyed ties with both Romanian and French cultures, and she could not be denied the right to maintain those direct contacts with the two countries. In addition, no evidence supported O.M.M.'s argument that the applicant would fail to return the child to Romania. The child had been left alone with the applicant before and he had always returned her to her mother. Moreover, the witnesses stated that whenever O.M.M. did not agree to leave the child alone with him he did not insist on O.M.M. doing so. Also, she never expressed concern that the applicant would fail to return the child to her. The applicant's failure to indicate the dates for travelling abroad and for returning to Romania by providing plane tickets could not be considered arguments for the dismissal of his request, as it was the court's task to set those dates. Also, the applicant had provided the names and addresses of all his relatives, where he would like to take the child. Consequently, after it had been established that the schedule suggested by the applicant was not in the minor's best interest, the court set a contact rights programme for the applicant and allowed him to take the child away from O.M.M.'s home, even in her absence and without her consent: on Sundays, on 14 July and between 1 and 15 August; every second year on 8 June, a week at Easter and a week at Christmas. In addition, the court allowed the applicant to take the child out of Romania, even without O.M.M.'s consent, every second year for a week at Easter and for Christmas and yearly between 1 and 15 August. The parties appealed against the judgment. O.M.M. asked the

court, *inter alia*, to order a psychological evaluation of the child, but the applicant contested O.M.M.'s request.

28. By a judgment of 14 November 2007 the Cluj County Court dismissed O.M.M.'s request for a psychological evaluation of the child, on the ground that it would be inconclusive for the case, and allowed the applicant's appeal in part. It also allowed the applicant to take the child away from O.M.M.'s home every year on 24 November, even in her absence, and upheld the judgment of 7 June 2007. The judgment became final on 5 April 2008, as the parties' appeal on points of law (*recurs*) was dismissed by the Cluj Court of Appeal.

29. On an unspecified date in 2009, following O.M.M.'s and his daughter's move to the United Kingdom on an unspecified date in 2009, the applicant brought proceedings against O.M.M., seeking a new contact schedule and an injunction for his daughter to be brought to his home at O.M.M.'s expense under the penalty of 50 new Romanian lei (RON) (approximately 13 euros (EUR)) in daily compensation for any delay on the following dates: every second Sunday; every second year on 8 June, at Orthodox Easter and at Christmas; and yearly between 1 and 15 August.

30. By a judgment of 12 November 2009 the Cluj-Napoca District Court allowed the applicant's action in part. It held that the change of the child's residence to a different country justified the applicant's action for a new contact schedule. However, the court considered that the schedule suggested by the applicant was too tiring for the child, taking into account her young age and her need to attend school. In this respect the court held that the Orthodox Easter period would prove a good opportunity for the applicant to visit his daughter at her home and would give him the opportunity to meet the child in a familiar environment for the latter. For the winter and summer holidays, when the applicant and his daughter could spend more time together, he was allowed to take his daughter away from her mother's home, since there would be enough time for the child to rest and play. Moreover, the court considered that the parents must share the child's travelling expenses for the summer and winter holidays, while the travelling expenses for Easter would be incurred by the father. Furthermore, on account of O.M.M.'s previous obstructive behaviour with regard to the enforcement of judgments, the court ordered her to pay a RON 50 (approximately EUR 13) daily compensation for any delay if she failed to comply with the contact schedule established by the court, as follows: yearly at Orthodox Easter at the child's home in the United Kingdom, at the applicant's expense and between 1 and 15 August at both parents' expense; and one week every two years for Christmas at both parents' expense. The applicant appealed against the judgment.

31. By a judgment of 23 February 2010 the Cluj County Court allowed the applicant's appeal against the judgment of 12 November 2009, in part. It held that every two years at Orthodox Easter, the child was to travel to

Romania and stay at the applicant's home. The expenses would be borne by both parents and the child would be accompanied by the mother on the outbound flight from the United Kingdom and by the father on the return flight home. Moreover, the father could travel to visit his daughter every second month for the last weekend of the month, while the mother had to bring the child to Romania to her father's home every second month for the last weekend of the month. Both parents had to pay their own travelling expenses. The monthly travel visits could not take place around the Easter and the Christmas period, when the contact schedule established by the first-instance court applied. Lastly, it upheld the remaining provisions of the judgment of 12 November 2009.

32. The applicant informed the Court on an unspecified date in 2011 that O.M.M had appealed on points of law (*recurat*) against the judgment of 23 February 2010, and that her appeal (*recurs*) had been allowed. He submitted that the contact schedule had been changed by the final judgment, in so far as he was forced to travel to the United Kingdom on the last Sunday of every month to see his daughter. Moreover, according to him the judgment did not refer to the mother's duty to bring his daughter to him for the Christmas and summer holidays. Furthermore, for Easter he would be able to see his daughter once every two years starting from 2010, but only for two days and not for a week. The Easter holiday was the only time the courts had ordered the mother to bring N.M.E.P. to him. The applicant did not submit a copy of the alleged final judgment to the file.

E. Enforcement proceedings

33. On 20 August and 15 October 2006 a bailiff employed by the applicant attempted to enforce the judgment of 3 August 2006. The enforcement reports produced by the bailiff on the same dates stated that O.M.M. had left her home with the intention of preventing the enforcement of the judgment, although she had been notified of the bailiff's visits; and also that she allowed the applicant to see his daughter at her home and in her presence but did not agree for him to take her away.

34. On 10 and 17 December 2006 a bailiff employed by the applicant attempted to enforce the judgment of 29 November 2006. The enforcement reports produced by the bailiff on the same dates stated that O.M.M. allowed the applicant to see his daughter at her home but did not agree for him to take her away.

35. On 29 March 2007 a bailiff employed by the applicant attempted to enforce the judgment of 8 March 2007. The enforcement report produced by the bailiff on the same date stated that O.M.M. had allowed the applicant to see his daughter at her home but did not agree that he could take her elsewhere, because N.M.E.P. refused to leave with her father. Eventually,

the two parents agreed that their daughter could leave if she was accompanied by her mother.

36. On 16 April 2008 a bailiff employed by the applicant attempted to enforce the judgment of 7 June 2007. On the same date the bailiff notified O.M.M. that on 25 April 2008 the applicant wanted to take N.M.E.P. to France for a week at Easter.

37. On an unspecified date in 2008 O.M.M. contested the enforcement proceedings opened against her on 16 April 2008.

38. On 22 April 2008 the bailiff requested the Cluj Social Assistance and Child Protection Agency to delegate a representative to accompany him to O.M.M.'s home on 25 April 2008 on account of O.M.M.'s previous repeated refusals to allow the applicant to have contact with his daughter.

39. On 25 April 2008 the bailiff accompanied the applicant to O.M.M.'s home. The enforcement report produced by the bailiff on the same date stated that it was impossible to enforce the judgment, as neither the mother nor the daughter were present, and O.M.M. had written to the applicant that she had gone on holiday for Easter.

40. On 12 May 2008 the Cluj Social Assistance and Child Protection Agency informed the bailiff's office that so far as the enforcement proceedings were concerned the Agency was not party to the proceedings, did not have legal standing and it did not have any record of the child being placed under special protection measures.

41. By a judgment of 18 June 2008 the Cluj-Napoca District Court dismissed O.M.M.'s action contesting the enforcement proceedings opened against her on 16 April 2008, on the ground that they were lawful. There is no evidence in the file that O.M.M. appealed against the judgment.

42. On 15 July 2008 the bailiff made a second attempt to enforce the judgment of 7 June 2007. On the same date the bailiff notified O.M.M. that the applicant would visit her home on 1 August 2008 at 11 a.m. to take the child away for the period between 1 and 15 August 2008.

43. On 1 August 2008 the bailiff accompanied the applicant to O.M.M.'s home. The enforcement report produced by the bailiff on the same date stated that the child refused to leave with her father and consequently O.M.M. did not agree to allow her to go.

F. Other judicial proceedings

44. On an unspecified date in 2006 the applicant brought proceedings against O.M.M., seeking an injunction for a fine of between RON 20 and RON 50 (approximately EUR 5 to 13) for every Sunday O.M.M. refused to allow him to see his daughter as required by the final judgment of 29 November 2006.

45. By a final interlocutory judgment of 30 January 2007 the Cluj-Napoca District Court dismissed the applicant's action for a fine. It

held that according to the enforcement report produced by the bailiff on 10 December 2006 O.M.M. had allowed the applicant to see his daughter at her home and in her presence, but that she had refused to allow him to take the child away. In these circumstances the Court considered that O.M.M. had not obstructed the enforcement of the judgment of 29 November 2006.

46. On 4 February 2008 the applicant brought proceedings against O.M.M., seeking an injunction for a RON 5,000 (approximately EUR 1,250) security deposit and a civil fine of RON 50 (approximately EUR 13) for every day she prevented him from enforcing the judgment of 7 June 2007.

47. By a judgment of 10 July 2008 the Cluj-Napoca District Court allowed the applicant's action of 4 February 2008 in part. It ordered O.M.M. to pay a RON 30 fine for every day she prevented the applicant from enforcing the judgment of 7 June 2007. In this respect it held that O.M.M. had prevented the applicant on several occasions in 2008 from seeing his daughter, either by not being at home or by refusing to allow him to take his daughter away from her home. However, the court dismissed his claim for a security deposit, on the ground that it had already ordered O.M.M. to pay a fine for obstructing the enforcement of a final judgment. The applicant appealed against the judgment.

48. By a judgment of 11 November 2008 the Cluj County Court dismissed the applicant's appeal against the judgment of 10 July 2008, on the ground that the applicant had already been ordered to pay a fine. Moreover, forcing her to pay an additional RON 5,000 penalty would be disproportionate, and might affect the child due to the financial burden imposed on her mother. The applicant appealed on points of law (*recurs*) against the judgment.

49. By a final judgment of 18 February 2009 the Cluj Court of Appeal allowed the applicant's appeal on points of law against the judgment of 11 November 2008 in part and ordered O.M.M. to deposit on a bank account a payment of RON 3,000 (approximately EUR 750) in the applicant's name. It also upheld the remaining part of the judgment of 11 November 2008. It held that while the mother's financial stability had to be considered, the child had a right to spend time with her father. Moreover, the mother had a good income and the amount established by the court for the warranty maintained a balance between the financial burden imposed on O.M.M. and the aim of preserving family ties.

50. On 17 April 2009 the applicant brought proceedings against O.M.M., asking the court to establish the amount of the fine O.M.M. had to pay following the judgment of 10 July 2008 and seeking an injunction for O.M.M. to pay him RON 8,000 (approximately EUR 2,000) in compensation for non-pecuniary damage following her repeated refusals to accept the enforcement of the judgment of 7 June 2007.

51. By a judgment of 22 October 2009 the Cluj-Napoca District Court dismissed the applicant's action of 17 April 2009. It held that the court could not establish the amount of the fine due, as the applicant had not been able to show how many times he had been obstructed in the enforcement of the judgment of 7 June 2007 after O.M.M.'s duty to pay a fine was set by the court on 10 July 2008. Moreover, the tense relationship between the parents, reflected also in his relationship with his daughter, did not allow the applicant always to see his daughter in the circumstances he would have wished. While separation from one's child after divorce implied a certain suffering, this was not of such a level as to engage O.M.M.'s civil liability. The problems faced by the applicant, in particular his former wife's behaviour, had already been punished by the courts, which had obliged her to set up a security deposit in his favour. In addition, the fact that his daughter had left Romania and he had not been able to see her since February 2009 could not have caused him additional suffering, since he was notified about his ex-wife's decision, was informed of his daughter's address in the United Kingdom, and had brought proceedings for the contact rights schedule to be changed. Consequently, pending those proceedings, his only discomfort was caused by the fact that he did not live in the same country as his daughter any more. The applicant appealed against the judgment.

52. By a final judgment of 5 May 2010 the Cluj County Court dismissed the applicant's appeal against the judgment of 22 October 2009 as time-barred.

G. Criminal proceedings brought by the applicant against O.M.M.

53. On 15 January 2008 the applicant brought criminal proceedings against O.M.M. for obstructing the enforcement of the judgments allowing him contact rights with his daughter. He argued that although he had attempted repeatedly to enforce the judgments of 29 November 2006, 7 June and 20 December 2007 and the judgments allowing him exceptional contact rights with his daughter for 29 March, 30 May and 1 June 2007, he had been unable to do so because of O.M.M.'s behaviour.

54. By a judgment of 11 March 2008 the Cluj-Napoca District Court dismissed the applicant's criminal complaint of 15 January 2008, on the ground that O.M.M.'s behaviour could not be classified as criminal. However, the court applied an administrative sanction, issuing O.M.M. with a warning. It held, *inter alia*, that although O.M.M. had obstructed the enforcement of final court judgments, her conviction would not serve and adequate purpose considering that the parties have a child together and a conviction could also influence the future of the said child, particularly if O.M.M. did not change her behaviour. The applicant appealed against the judgment.

55. By a final judgment of 2 July 2008 the Cluj County Court dismissed the applicant's appeal against the judgment of 11 March 2008. It underlined, *inter alia*, that, according to a report produced by the County Centre for Abused Children attached to the Child Social and Protection Services following counselling sessions with the parties which were quit by the father, the child was affected by the conflict between her parents and considered her mother to be "good" and her father to be "bad" and wanted him to "leave her alone" and to stop visiting her. The child was closer to her mother and was somewhat detached from her father, even rejecting him of her own accord, whether or not induced to do so by her mother. In this context, the court held that although O.M.M. obstructed the enforcement of final court judgments it could not be argued that she did not have in mind the best interest of her child. She allowed the father to visit the child at her home and in her presence. Consequently, given the tense relations between the parents and the need of the child, convicting O.M.M. would not serve any purpose, as it would preserve, *inter alia*, the child's feelings of uncertainty.

H. The applicant's letters to the Court

56. In a letter addressed to the Court in December 2008 the applicant stated that from July 2006 until December 2008 he had attempted to exercise his acknowledged visiting rights 108 times. All the attempts of the applicant to visit his daughter according to the schedule established by final judgments were obstructed by the categorical refusal of O.M.M. to let him take the minor away from her home, and whenever he was allowed to see his daughter he was compelled to agree to the visits taking place in her presence, or else in the presence of the minor's maternal grandmother. Consequently, he lodged 107 criminal complaints against O.M.M. for non-compliance with the provisions of the final judgments allowing him personal contact with his daughter.

57. In a letter addressed to the Court on an unspecified date in 2011 the applicant stated that he had no knowledge of his daughter's whereabouts and that he had not seen her for a year and a half. His former wife had allegedly moved from the address he had known in the United Kingdom and had not notified him of the new address. Moreover, although the domestic courts had been informed about the mother's failure to notify him of his daughter's new address during the proceedings seeking to change the contact rights schedule, they did not order her to disclose it to him. Consequently, he was unable to contact or see his daughter.

II. RELEVANT DOMESTIC LAW

58. 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. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

59. 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 judgments granting him visiting rights in respect of N.M.E.P., his minor child. He relied on Article 8 of the Convention, which 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. Admissibility

60. 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.

B. Merits

(a) Submissions of the parties

(i) *The applicant*

61. The applicant submitted that although he had used all the legal remedies available to him in order to enforce the judgments granting him visiting rights to his daughter they all proved ineffective. He argued that the authorities had refused to enforce the judgments, mainly as a result of the obstructive behaviour of the mother and the passivity of the bailiff and of the police. The authorities also failed to take additional preparatory measures to facilitate his visits. Moreover, he lodged more than a hundred criminal complaints against his former wife for obstructing the enforcement proceedings, but some of those complaints are still pending before the domestic authorities. Furthermore, although his former wife was sentenced to pay fines and a security deposit for obstructing the enforcement proceedings, the situation did not change.

62. He argued that between 2006 and 2009, in spite of all the judgments granting him more extensive visiting rights, he succeeded in visiting his daughter only a few times very briefly, and only at his former wife's home and in her presence. From 2009 he was unable to see his daughter any more as she was taken to the United Kingdom by her mother. He obtained an injunction changing his contact rights according to his daughter's present living situation, but he was unable to see her as he was unaware of her new address, and the domestic courts allegedly failed to oblige his wife to notify it to him.

63. By relying on the Court's case-law (see *inter alia*, *Lafargue*, cited above; *Costreie*, cited above; and *Ignaccolo-Zenide v. Romania*, no. 31679/96, ECHR 2000-I) the applicant concluded that he had been *de facto* deprived of his parental rights without any legal basis as a result of the domestic authorities' failure to quickly and effectively enforce the judgments granting him contact rights and to punish his former wife's obstructive behaviour towards the enforcement proceedings.

(ii) *The Government*

64. 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 N.M.E.P., while also taking into consideration the particularities of the case, namely the tense situation between the parents and the child's negative views about her father.

65. They argued that the authorities acted diligently and accomplished their duties related to the enforcement of the judgments. The applicant was granted regular contact with his daughter by way of judicial decisions and the bailiff took immediate action to enforce the said decisions by issuing summons and accompanying the applicant to the child's home on the dates of his visits. While the government acknowledged that the enforcement attempts were not successful, they underlined that the mother's obstructive behaviour was not the sole reason for the failed visits. The reports prepared by the bailiff on several occasions indicate that the enforcement attempts had also failed due to the child's reluctance to join her father.

66. By relying on the case of *Fușcă v. Romania*, no. 34630/07, § 43, 13 July 2010, they argued that the situation in the present case was delicate and it was unlikely that the focus on civil enforcement proceedings could have improved the situation. Consequently, a more sensitive approach towards the child was needed for the successful enforcement of the contact rights. Therefore, in this context, and having regard to the child's attitude of rejection towards her father, the State authorities had complied with their positive obligations under Article 8.

(b) The Court's assessment

(i) Relevant principles

67. 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).

68. 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).

69. 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 of means (see, among other authorities, *Ignaccolo-Zenide*, cited above, § 94; *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 *Nistor v. Romania*, no. 14565/05, §§ 70, 109, 2 November 2010).

70. 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 far 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 v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003). 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).

71. The Court further reiterates 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 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).

72. 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).

(ii) *Application of the above principles to the present case*

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

74. 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 expected in the circumstances of the case for the facilitation of reunion between the applicant and his child, N.M.E.P., so as to comply with the provisions of the final judgments awarding him contact rights. 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 and her mother, 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).

75. The Court notes that the domestic courts granted sole custody of the child to the mother and that the applicant failed to appeal against this decision. The Court also observes that the applicant was granted by way of judicial decisions a right to regular contact with his daughter. 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.

76. In its assessment of the domestic authorities' conduct in respect of the enforcement of the judgments granting the applicant visiting rights, the Court notes that the domestic courts allowed the applicant's requests for interim or permanent visiting rights without any undue delay; the requests lodged on 1 August 2006 and in 2007 were allowed on 3 August 2006 and on 14 November 2007 respectively, for example.

77. The bailiff took immediate action to enforce the judgments by issuing the first summons on 20 August 2006; he subsequently issued several further summonses, following each of the applicant's requests, and accompanied the applicant to the child's home on each of the dates set for his visits.

78. In addition, the applicant has never complained before the domestic courts about any action and/or potential omission on the part of the bailiff.

79. While it is true that the enforcement attempts were less than successful (see paragraphs 33-35 above), the Court notes that the attitude of the mother, even though a determining factor in the applicant's inability to fully enforce the judgments awarding him contact rights, was also caused by the child's unwillingness to see her father. Indeed, this is what the domestic authorities held in reply to the applicant's criminal complaint regarding the mother's behaviour (see paragraph 55 above). In this respect, the Court does not discern any arbitrariness in the authorities' decisions not to pursue O.M.M. criminally. Moreover, their reasoning, stressing that O.M.M.'s behaviour concerned the best interest of the child, does not appear devoid of merit (see, *mutatis mutandis*, *Sbârnea v. Romania*, no. 2040/06, § 119, 21 June 2011). In this context, even assuming that the applicant's allegation of an additional pending 107 criminal complaints lodged by him against his former wife were true, the Court does not discern how the alleged failure of the domestic authorities to deal with all those complaints or with some of them would have influenced his ability to enforce the judgments awarding

him contact rights in respect of his daughter or improve his relations with the daughter.

80. The Court further notes that in 2009, the civil courts also fined the mother for every day that she failed to comply with the contested judgments and ordered her to place a sum on deposit in the applicant's name (see paragraphs 30 and 48 above).

81. In this context, the Court considers that the conflict between the applicant and O.M.M. made it particularly difficult for the domestic authorities to act in order to fully enforce the applicant's visiting rights. Consequently, the Court finds that the authorities diligently examined the applicant's successive complaints against O.M.M., and that the fines and security deposit ordered could not be considered unreasonably low, regard being had to the fact that larger fines and a higher deposit might have threatened the well-being of the child and the aim of building closer family ties (see *D. v Poland*, cited above, and *Fuşcă*, cited above, § 48).

82. The Court further observes that the child's reluctance to see her father was a constant element throughout the years, as evidenced not only by the reports prepared by the bailiff (see paragraph 43 above), but also by the reports prepared by the County Centre for Abused Children attached to Child Social and Protection Services (see paragraph 23 above) and by the findings of the criminal and civil courts (see paragraphs 51 and 54 above). However, whatever the reason for N.M.E.P.'s attitude, her reluctance cannot be imputed to the domestic authorities.

83. Moreover, the tense situation between the parents and O.M.M.'s obstructive behaviour with regard to the enforcement of the judgments was constantly acknowledged by the domestic authorities (see paragraphs 18, 26, 30, 46, 50 and 54 above) who repeatedly delivered reasoned judgments that gave primary consideration to the best interest of the child.

84. 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. 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 daughter, and when he had the opportunity to attend psychological counselling sessions with his former wife (see paragraph 24 above) he discontinued attending them after four sessions (see, by contrast, *Nistor*, cited above, § 105).

85. 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 for the parents to be able to overcome emotional hurdles and 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 those concerned 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.

86. As regards the applicant's allegations that from 2009 he had been unable to visit his daughter because he was not informed about his daughter's alleged new address in the United Kingdom, the Court notes that, even if it was appropriate for the mother to inform the applicant about the address, there is no evidence in the file that the applicant made any attempts to approach either the Romanian or the British authorities in order to obtain the new address and the enforcement of the judgment establishing his changed contact schedule.

87. As regards the applicant's allegations that the domestic courts dealt with the enforcement applications brought before them with unreasonable delay, thus obstructing his parental rights with respect to his daughter, the Court notes that in spite of the numerous proceedings of a civil and criminal nature relating to the applicant's contact with his child, the actual enforcement proceedings relating to the impugned judgments 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.

88. 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. The applicant complained under Article 6 § 1 of the Convention of the outcome of the criminal proceedings brought by him against his former wife in so far as he stated that the authorities had shown themselves to be partial and to favour his wife, and that the same facts as those which constituted the alleged violation of Article 8 of the Convention also gave rise to a breach of Articles 13 and 5 of Protocol No. 7 to the Convention.

90. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these

complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 8 of the Convention concerning the non-enforcement of the final judgments granting him visiting rights in respect of his daughter 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 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President