



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

THIRD SECTION

Application no. 40628/10  
by Toby Nigel BALL  
against Andorra  
lodged on 15 July 2010

**STATEMENT OF FACTS**

THE FACTS

The applicant, Mr Toby Nigel Ball, is a British national who was born on 23 March 1969 and lives in Sant Julià de Loria (Andorra). He is represented before the Court by Mr A. Clavera Arizti, a lawyer practising in Andorra.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 13 June 2005 the applicant and his wife were legally separated. The civil judge granted custody of the children to the mother and set up a contact schedule in respect of the father.

On 14 July 2006, within the framework of proceedings for the adoption of interim measures, the civil judge decided to temporarily suspend the contact schedule set up in respect of the applicant.

During the following months, several applications were lodged by the applicant and by his wife before the courts. An application for new interim measures was lodged by the applicant and subsequently rejected by the courts and, on 19 December 2006, the applicant's wife filed a petition to initiate divorce proceedings.

On 2 April 2007, the same civil judge suspended the above-mentioned interim measures and adopted new ones. He restored the contact schedule in respect of the applicant's daughter and ordered the appointment of a psychologist in respect of the applicant's son with a view to an eventual restoration of the contact schedule in his regard.

The applicant appealed before the *Tribunal Superior de Justicia* of Andorra which, on 19 June 2008, reversed the first-instance decision with regard to the applicant's son and stated that given that the interim measures had expired, it was for the judge dealing with the divorce to set up new pertinent ones. The court stated that meanwhile those taken in the initial separation judgment were to be enforced.

The applicant requested the civil judge to enforce that judgment and restore the initial contact schedule.

On 24 July 2008, the judge temporarily suspended the contact schedule.

On 29 May 2008 the Andorra *Tribunal de Corts* had issued a stay-away order against the applicant in favour of his wife.

The applicant appealed against the decision of 24 July 2008. On 21 October 2008, while his appeal was still pending, the divorce judgment was rendered. The divorce judge granted custody of the children to their mother and set up in favour of the father a contact schedule that would remain suspended pending the decision of a psychologist.

The applicant appealed against that judgment. It seems, from the documents provided, that the appeal was allowed with suspensive effect.

On 12 February 2009, the *Tribunal Superior de Justicia* of Andorra decided upon the appeal submitted by the applicant against the provisional suspension of the contact schedule ordered by the civil judge on 24 July 2008. The *Tribunal Superior de Justicia* stated that since there was already a divorce judgment, the separation judgment should be set aside and the content of the divorce judgment enforced.

The applicant then lodged an application for clarification with the *Tribunal Superior de Justicia* of Andorra. He was unclear about which interim measures were enforceable, those included in the divorce judgment or those set out in the decision of 19 June 2008 restoring the initial contact schedule set up in the separation judgment.

On 23 April 2009 the court dismissed the applicant's request for clarification. It reasoned that pending an appeal with suspensive effect the content of the divorce judgment was not enforceable but that previous decisions adopted in the separation proceedings were not enforceable either. The applicant was forced to await the decision on the appeal.

The applicant submitted an application for the annulment of the proceedings, invoking Article 10 of the Andorran Constitution (right to jurisdiction).

On 20 May 2009, the *Tribunal Superior de Justicia* dismissed the application. It reasoned that the applicant's right to jurisdiction had not been infringed. The relevant procedural rules forbade the enforcement of decisions appealed against with suspensive effect and of decisions rendered in separation proceedings when a divorce judgment had already been rendered in the case.

The applicant then lodged an *amparo* appeal with the Constitutional Court, invoking his right to jurisdiction. He contended that the impossibility of enforcing the decision of 19 June 2008, already final, left him defenceless. The Constitutional Court declared the *amparo* appeal inadmissible as devoid of constitutional content in a decision rendered on 12 October 2009. The applicant finally lodged another appeal (*recurso de*

*súplica*), which was dismissed on 21 December 2009 in a decision served on 20 January 2010.

The applicant has not provided the Court with any further information concerning subsequent developments in the proceedings.

## **B. Relevant domestic law**

The Constitution:

### **Article 10**

“1. All persons shall have the right to a court and to have a ruling founded in the law, and to a due trial before an impartial tribunal established by law. (...)”

### **Article 14**

“The right to privacy, honour and reputation shall be guaranteed. All shall be protected by law against unlawful interference in their family and private life.”

## **COMPLAINTS**

Relying on Articles 6 § 1 and 8 of the Convention, the applicant complains that the refusal of the *Tribunal Superior de Justicia* of Andorra to enforce a final judicial decision has left him defenceless and has, consequently, violated his right to maintain meaningful contact with his two children.

## **QUESTIONS TO THE PARTIES**

Have domestic remedies been validly exhausted pursuant to Article 35 § 1 of the Convention regarding Article 8 of the Convention?

Are the decisions rendered on 23 April 2009 and 20 May 2009 by the *Tribunal Superior de Justicia* of Andorra consistent with Articles 6 § 1 and 8 of the Convention?