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

FOURTH SECTION

DECISION

Application no. 48411/19
Erdinci CAERIDIN
against Romania

The European Court of Human Rights (Fourth Section), sitting on 8 February 2022 as a Committee composed of:

Gabriele Kucsko-Stadlmayer, *President,*
Iulia Antoanella Motoc,
Pere Pastor Vilanova, *judges,*

and Ilse Freiwirth, Deputy Section Registrar,

Having regard to:

the application (no. 48411/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 August 2019 by a Romanian national, Mr Erdinci Caeridin ("the applicant"), who was born in 1975 and lives in Constanța, and who was represented by Ms T.A. Calipetre, a lawyer practising in Constanţa;

the decision to give notice of the complaint concerning the State's positive obligation to protect the applicant's right to respect for his family life to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The application concerns the non-enforcement of court decisions setting the contact schedule between the applicant and his child (Y) born

in 2009 who, following the couple's separation, remained with his mother (X).

A. Contact schedule

2. On 9 November 2017 the Constanţa District Court, via an interim procedure, granted contact rights to the applicant and set a contact schedule applicable during the divorce proceedings (request lodged by the applicant on 23 October 2017). On 4 May 2018 the District Court pronounced the couple's divorce, set the child's residence with X, and drew up a detailed contact schedule in the applicant's favour.

3. The applicant went to X's house for the visits envisaged in the contact schedule but was very seldom able to see Y or take the child with him. After such failed attempts, the applicant requested assistance from the Constanţa Directorate General for Social Welfare and Child Protection ("the child-protection authority"), the bailiff and the police. X opposed his presence in her home, and she and her parents (with whom she lived) manifested their dissatisfaction that the applicant came accompanied by representatives of the authorities. Their attitude was also mirrored by the child who refused to go with his father most of the time.

4. Since the separation, the applicant only managed to see Y for short periods of time and to spend a few days together during the school holidays, less than the contact schedule provided.

B. The bailiff's office

5. The applicant started enforcement proceedings through the bailiff's office. X was ordered to pay enforcement costs (bailiff's decision of 1 March 2018) and penalties for each day of non-enforcement (District Court's decision of 5 November 2019 upon a request lodged on behalf of the applicant on 30 July 2019). Several meetings took place in the offices of the bailiff, who noted that the child refused either to attend or to leave with his father (visits of 30 July 2018 and 17 May 2019).

C. The child-protection authority

6. The child-protection authority monitored the family situation, organised several meetings at its headquarters and in X's home, and maintained telephone contact with the parents to offer advice and support.

7. The child confided in the authority's representative that he was afraid his father would get X arrested, and that he was unhappy that the applicant said bad things about X. He also explained that he only sometimes wanted to accompany his father and he wished to be allowed the choice. For her part, X believed that the applicant alienated the child by insisting to see him against

his will and considered that they should let the child decide when he wanted to see his father. She explained that she did not oppose their contact but admitted not knowing how to proceed when the child refused to go with his father.

8. In a report of 16 April 2018 the child-protection authority recommended counselling for the parents, to learn how to deal with their separation and find common ground concerning the child's care and education.

D. Mandatory counselling

9. As Y continued to refuse to see the applicant (see paragraph 5 above *in fine*), on 3 August 2018 the child-protection authority applied for psychological counselling for the family. On 24 October 2018 the District Court ordered a mandatory three-month counselling programme which was extended for another three-month period on 3 July 2019 and again on 23 November 2020.

10. Heard by the court, the child said that he wanted to have a relationship with his father but that he was put off by the applicant's denigratory attitude toward X and the maternal grandparents and by the fact that he always came accompanied by the authorities.

11. The court observed that the applicant had been motivated by revenge against X, whom he blamed for the breakdown of their marriage, and disregarded the child's interests and the need for a harmonious psychological development. It recommended that the applicant change his approach and put Y's interest above his perceived right to maintain contact under a strict court-ordered schedule.

12. The reports drafted at the end of the first two counselling programmes were submitted to the Court (reports of 22 April 2019 and 3 January 2020). Both reports concluded that Y suffered because of the strained relations between his parents and manifested symptoms of parental alienation and emotional abuse because of the mother's attitude, but more predominantly suffered a natural alienation caused by the parents' inability to communicate. Both parents perceived counselling as a form of coercion and failed to see its educational role. The report recommended continuing counselling for the child, for both parents, and relationship counselling for the child with each parent.

E. Criminal complaints

13. Several criminal complaints lodged by the applicant against X, starting from 28 January 2018, for failure to comply with a court order concerning children's rights, were dismissed on 24 October 2019 by the prosecutor's office attached to the Constanţa District Court, which noted that

X had not opposed contact between Y and the applicant and had not been responsible for Y's refusal to go with his father.

F. Complaint with the Court

14. The applicant complained that the authorities had not effectively assisted him in his efforts to see his child, in violation of their positive obligations enshrined in Article 8 of the Convention.

THE COURT'S ASSESSMENT

15. The relevant principles regarding the State's positive obligation under Article 8 of the Convention in cases concerning the enforcement of contact rights are summarised in the case of *K.B. and Others v. Croatia* (no. 36216/13, §§ 142-44, 14 March 2017). The Court's task consists of examining whether the domestic authorities took all necessary steps that could reasonably be demanded in the specific circumstances to facilitate contact between the applicant and his child.

16. It notes that Y refused to see the applicant or spend time with him and was upset by his father's rigid attitude towards enforcement (see paragraphs 3 *in fine,* 5 *in fine*, 7 and 11 above). The applicant was criticised by the authorities for that attitude and for the apparent lack of concern for the child's best interests (see paragraphs 8, 11 and 12 above). At the same time, no domestic authority found that X opposed contact between father and son (see paragraphs 7 *in fine* and 13 above).

17. As for the authorities' actions, the Court observes that the domestic courts acted expeditiously, both when fixing the contact schedule – which in the interim proceedings lasted a little over two weeks (see paragraph 2 above) – and during the enforcement proceedings (see paragraphs 5 and 9 above).

18. Moreover, both the courts and the prosecutor's office examined the applicant's allegations of hindrance of his contact rights (see paragraphs 5 and 13 above). The fact that, after undertaking their examination, those authorities reached conclusions which were unfavourable to the applicant is not indicative of a deficiency in the system, in so far as their examination appears to have been thorough and comprehensive.

19. The bailiff also acted expeditiously and availed himself of all means put at his disposal by domestic law (for an overview of the applicable law, see *Niţă v. Romania* [Committee], no. 30305/16, §§ 27-30, 3 July 2018): he accompanied the applicant to X's home, carried out discussions in his office with X and Y, and obtained a decision ordering X to pay penalties for failing to comply with the contact order (see paragraphs 3 and 5 above).

20. The child-protection authorities accompanied the applicant and offered support and counselling, thus fulfilling their role of facilitating contact and negotiating solutions, with a view to promoting the child's best

interests. The authority's counsellors assessed the situation and held discussions with the parents and the child (see paragraphs 6 and 7 above). They advised the parties to seek counselling (see paragraph 8 above), obtained their inclusion in the counselling programme (see paragraph 9 above) and provided counselling as ordered by the court (see paragraph 12 above). The child-protection authority thus acted efficiently and within the scope of its power.

21. In their responses to the applicant's requests for assistance, the authorities took into account the situation as a whole, including the fact that the child suffered from alienation and psychological abuse, but without neglecting the important role played by the parents' own inability to properly manage the situation (see paragraphs 11 and 12 above).

22. The Court reiterates that the State's obligation to take positive measures to facilitate contact is not one as to results but one as to means (see *Răileanu v. Romania* (dec.), no. 67304/12, § 42, 2 June 2015, with further references), and concludes that the national authorities have taken all the steps necessary to facilitate the exercise of contact rights that could reasonably be expected from them, given the specific circumstances of the case.

23. Consequently, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

24. Accordingly, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 March 2022.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President