

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

FOURTH SECTION

# CASE OF LOIRY v. ROMANIA

*(Application no. 20425/20)*

JUDGMENT

STRASBOURG

17 May 2022

*This judgment is final but it may be subject to editorial revision.*



**In the case of Loiry v. Romania,**

The European Court of Human Rights (Fourth Section), sitting 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. 20425/20) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 May 2020 by a French national, Mr Cyril Loiry, born in 1978 and living in Nogent sur Marne ("the applicant") who was represented by Mr G. Thuan Dit Dieudonné, a lawyer practising in Strasbourg;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs;

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 in private on 26 April 2022,

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

## SUBJECT MATTER OF THE CASE

1. The application concerns the non-enforcement of a final court decision ordering the return of the applicant's children to the place of their habitual residence, in France. It raises issues under Article 8 of the Convention.

2. From 2009 to April 2016 the applicant lived with a Romanian national, Ms Voica (see *Voica v. Romania*, no. 9256/19, 7 July 2020). They had two sons together: Y, born in 2012, and Z, born in 2015. The family was living in France.

3. In the summer of 2017 Ms Voica moved to Romania with the children without the applicant's consent. On 19 August 2017 she communicated their new address to the applicant.

4. Acting on an application lodged by the applicant on 27 March 2018 under the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"), the Bucharest County Court (decision of 30 April 2018) and the Bucharest Court of Appeal (final decision of 9 August 2018) ordered the children's return to France (for further details, see *Voica*, cited above, §§ 13-15 and 18-23).

## ENFORCEMENT PROCEEDINGS

5. Unable to take the children back to France, on 29 November 2018 the applicant contacted a bailiff's office for assistance. On 5 December 2018 the Bucharest District Court allowed the bailiff's request to start enforcement proceedings. On 14 December 2018 the bailiff invited Ms. Voica to a meeting in his office and asked the Bucharest Directorate General for Social Welfare and Child Protection ("the child-protection authority") to assist with the enforcement.

6. On 7 and 23 January 2019 Y, Z and their mother met the applicant in the bailiff's office. A psychologist from the child-protection authority was also present. Ms Voica argued that the enforcement proceedings were abusive and explained that the applicant had refused to keep in contact with the children. Y and Z expressed their unwillingness to return to France with their father. Consequently, the child-protection authority asked the Bucharest District Court to place the children in a psychological counselling programme (Article 913 § 2 of the Code of Civil Procedure, "the CCP"; for further details concerning the enforcement procedure, see *Voica*, cited above, § 37).

7. On 12 February 2019 the bailiff ordered Ms Voica to pay the enforcement costs to the applicant and on 14 March 2019 he seized her bank accounts in order to extract one third of her monthly income.

8. On 5 April 2019 the District Court ordered two months of psychological counselling to take place with the child-protection authority. It also advised the parents to participate in counselling themselves to re-establish communication and resolve their conflicts and dysfunctional relationship. A psychologist was contacted by the child-protection authority on 17 May 2019 and several sessions took place starting from 24 May 2019. On 10 July 2019 Ms Voica informed the child-protection authority that she would no longer bring the children to counselling, because of the stay of the enforcement proceedings (see paragraph 10 below). She also accused the psychologist of professional misconduct and requested that a new therapist be assigned to the case. The programme was suspended on 9 July 2019 and was never completed, as no final report was ever submitted by an appointed psychologist to the child-protection authority, to the bailiff and to the court, as required by Article 913 § 3 of the CCP.

## OBJECTION TO THE ENFORCEMENT

9. On 3 January 2019 Ms Voica lodged an objection with the County Court seeking the suspension and annulment of the enforcement proceedings.

10. On 24 June 2019 the District Court ordered the stay of the enforcement proceedings until the request for annulment would be decided. The applicant appealed and on 13 November 2019 the County Court reversed that order on the grounds that it deprived the decision on the children's return

of any practical effect. It also reiterated that any delay in the enforcement risked causing irreversible prejudice to the relationship between the applicant and the children.

11. Meanwhile, on 28 October 2019 the County Court dismissed the request for annulment on the grounds that the proceedings had been lawful.

## NEW ENFORCEMENT ATTEMPTS

12. On 19 November 2019, 3 July and 18 August 2020 Ms Voica failed to attend new meetings in the bailiff's office.

13. On 31 July 2020 she was ordered to pay enforcement costs and other expenses amounting to one third of her monthly income. On 24 March 2020 she was also ordered by the County Court to pay a daily fine of 1,000 Romanian Lei (RON) to the applicant for the delays in the enforcement of the return order.

14. On 6 January 2021 the applicant asked the bailiff to resume enforcement, but on 19 January 2021 the bailiff refused on the grounds that the counselling programme had not been completed (see paragraph 8 above), and therefore, in the absence of a psychologist report, the enforcement could not be resumed, in accordance with Article 913 § 4 of the CCP.

15. On 14 December 2021 the applicant lodged a criminal complaint against Ms Voica because of her alleged opposition to the enforcement of the return order. Up to the date of the latest communication from the applicant on this matter (10 May 2021), he had not received any answer from the authorities.

## CURRENT SITUATION

16. On 22 October 2019 the Paris Court of Appeal set the children's residence with their father (for details, see *Voica*, cited above, §§ 32-35) and on 14 January 2021 the French Court of Cassation upheld that decision which thus became final.

17. Ms Voica lodged several requests with the Romanian courts seeking to have the children's residence set with her in Romania. They were all dismissed on the grounds that the Romanian courts did not have jurisdiction to decide on the matter (final decisions of 7 August and 5 September 2019 of the Bucharest Court of Appeal; final decision of 27 November 2019 of the Dâmboviţa Court of Appeal; and decision of 18 November 2019 of the Bucharest County Court).

18. According to the applicant, at the date of his latest submission (10 May 2021) Ms Voica was working and living in Belgium alone, while the children were living in Romania with the maternal grandparents. The applicant brought this information to the attention of the domestic authorities, which failed to take measures in order to enforce the return order.

# THE COURT'S ASSESSMENT

19. The applicant complained under Article 8 of the Convention that the non-enforcement of the final decision of 9 August 2019 ordering the return of his children to France violated his right to respect for his family life.

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

21. The general principles concerning the domestic courts' orders and their implementation in respect of custody and/or contacts between a parent and his child, including a return order issued under the Hague Convention have been summarised, *inter alia*, in, *Sommerfeld v. Germany* [GC] (no. 31871/96, §§ 64-65, ECHR 2003-VIII (extracts), *Shaw v. Hungary* (no. 6457/09, §§ 63-68, 26 July 2011), and *Strumia v. Italy* (no. 53377/13, §§ 110-11, 23 June 2016).

22. In the present case, although the courts ordered the children's return to France on 9 August 2018 (see paragraph 4 above), that decision remained unenforced at least until 10 May 2021 (see paragraph 18 above), despite the applicant having actively pursued enforcement proceedings and having sought assistance from various authorities (see paragraphs 5, 15 and 18 above).

23. The measures taken so far by the authorities involved have not been sufficient, timely or adequate, to secure the children's return to France.

24. The bailiff did little more than organise meetings between the parties (see paragraphs 6 and 12 above) despite the clear opposition to the enforcement manifested by the children's mother (see paragraph 6 above). Notwithstanding the urgency inherent in the matters concerning relations between the parents and their children (see *Ignaccolo-Zenide v. Romania,* no. 31679/96, § 102, ECHR 2000-I, and *Sylvester v. Austria*, nos. 36812/97 and 40104/98, §§ 66-69, 24 April 2003), the bailiff allowed long periods of time to pass between those meetings. Admittedly, he took effective measures to secure the reimbursement of costs (see paragraphs 7 and 13 above), but those actions cannot by themselves bring about the enforcement of the obligation of return (see, *mutatis mutandis*, *Ignaccolo-Zenide*, cited above, § 111).

25. Moreover, except for the imposition of a fine (see paragraph 13 above) the bailiff failed to seek coercive actions against Ms Voica although several options were available under Articles 188, 905 and 911-913 of the CCP, such as, for instance, restrictive measures against the debtor, assistance by police and child-protection experts or psychologists during the enforcement acts (see also *Raw and Others v. France*, no. 10131/11, § 93, 7 March 2013, and *Kuppinger v. Germany*, no. 62198/11, § 107, 15 January 2015). On this latter point the Court notes that the criminal complaint lodged against Ms Voica has been left unanswered so far (see paragraph 15 above).

26. It took the courts almost eleven months to decide on Ms Voica's objection to the enforcement (see paragraphs 9 and 11 above), thus causing a stay of the enforcement for a period of almost five months (see paragraph 10 above). After that objection was dismissed, no measures were taken by the authorities to secure the submission to the court and to the other competent authorities of a report by an appointed psychologist, finalising thereby the counselling programme (see paragraph 8 above, *in fine*). No justification was provided for such inaction, which ran counter to the authorities' obligation to take, without delay, useful measures aimed at establishing effective contact between the applicant and his estranged children. Equally important, the non-completion of the counselling programme was later on used by the bailiff to refuse resuming the enforcement proceedings, thus causing additional hardship to the applicant in his efforts to obtain the return of his children to France.

27. There has accordingly been a violation of Article 8 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage, EUR 45,751.25 in respect of costs and expenses incurred before the domestic courts and EUR 7,200 for those incurred before the Court.

29. The Government considered the above claimed sums unjustified and excessive and argued that the finding of a violation should constitute sufficient just satisfaction.

30. The Court considers that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage.

31. Having regard to the documents in its possession and to its case-law in the matter, and reiterating that an applicant is only entitled to the reimbursement of costs and expenses found to have been actually and necessarily incurred and to be reasonable as to quantum (see *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, §§ 61-63, 12 December 2017 and *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, §§ 157-61, ECHR 2010) the Court considers it reasonable to award EUR 2,400 for costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses in the proceedings before the Court;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Ilse Freiwirth<br>Deputy Registrar | Gabriele Kucsko-Stadlmayer<br>President |