

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

THIRD SECTION

DECISION

Application no. 53241/09
Gabriel MEREUŢĂ
against Romania

The European Court of Human Rights (Third Section), sitting on 10 April 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Mihai Poalelungi,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 20 August 2009,

Having regard to the decision taken by the President of the Chamber to appoint Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), as Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Gabriel Mereuţă, is a Romanian national who was born in 1966 and lives in Piatra Neamţ. The Romanian Government ("the

Government") are represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

3. The applicant and D.O. have a child who was born on 26 August 2003. In April 2006, the couple split up and the applicant returned to live with his parents. At that time the child was cared for by the paternal grandparents. Soon after the separation, D.O. married M.V.B. and then changed her workplace to Bicaz, some twenty kilometres away from their former residence.

4. Relations between the applicant and D.O. deteriorated significantly after their separation. They engaged in extensive litigation concerning the division of property they had acquired during their relationship.

In addition, both parents filed for custody of the child. On 1 August 2006 the applicant asked for temporary custody pending the outcome of the main proceedings. On 24 August 2006 the Piatra Neamţ District Court granted him that right. A similar request lodged by the mother was dismissed by the same court on 22 September 2006.

5. From 15 September 2006 the applicant enrolled the child at School no. 6, at kindergarten level, where he remained until 7 December 2007 when his mother enrolled him at a kindergarten in Bicaz, closer to her work place and that of her husband. At that time D.O. was a judge at Bicaz District Court and subsequently a prosecutor in the Prosecutor's Office attached to that district court. Her new husband was a prosecutor in the same office.

6. On 15 January 2007 the Piatra Neamţ District Court examined the merits of the requests for custody lodged by the two parents and found in favour of the mother. It granted visiting rights to the applicant. The court noted that most of the mutual allegations of lack of interest in the child and unfitness to take care of him remained unsubstantiated, the only proven fact being the extreme animosity between the parents.

7. The applicant appealed and on 2 October 2007 the Neamţ County Court upheld the custodial decision and set a visiting schedule for the applicant, who was entitled to take the child to his home as follows: every first and third weekend of the month, from 12 p.m. on Friday to 8 a.m. on Monday; the first week of every school holiday; and one month during the summer holidays. The child was to be picked up by the applicant from "Kindergarten no. 6".

8. The applicant appealed on points of law, reiterating his request for custody; he agreed to the pick-up point set by the court as "Kindergarten

no. 6". In a final decision of 19 March 2008 the Bacău Court of Appeal took note that the applicant had retracted his appeal.

9. Between December 2007 and July 2009, in accordance with the visiting schedule, the applicant went to the kindergarten where his child used to be enrolled allegedly "at least forty-five times", but the mother never showed up.

10. In February 2008 he initiated enforcement proceedings, without success; the bailiff compiled several reports (dated 8 February, 22 February, 7 March, 4 April, 6 June, 4 July, 5 September, 19 September, 10 October, and 21 November 2008) confirming the mother's failure to comply with the provisions of the county court decision.

11. Starting from 25 December 2007, several criminal complaints (allegedly twenty-five) were lodged by the applicant against D.O for non-compliance with the provisions of the final enforceable decision. The Prosecutor's Office attached to the Bacău Court of Appeal joined the examination of the various complaints and on 9 June 2008 decided not to prosecute on the ground that the alleged crimes had not occurred; the prosecutor also noted that the applicant had had numerous opportunities to see the child, but he had failed to keep the appointments and preferred instead to lodge various complaints against the mother.

The prosecutor's decision was communicated to the applicant on the same day.

12. The applicant objected to the prosecutor's decision, but on 16 December 2008 the Galaţi Court of Appeal upheld it. The court noted that the applicant had not respected the pick-up point set by the courts: he had gone with the bailiff to the child's former kindergarten, School no. 6, whereas the mother had gone with the child to Kindergarten no. 6, which was located at a different address, as ordered by the final court decision. It also considered that the applicant's intention was to find fault with the mother and pointed out, based on the evidence adduced before it, that the applicant had only visited the child in his new kindergarten, in Bicaz, once, accompanied by the bailiff, and on that occasion he had tried to take the child with him by force, causing a scene which had traumatised the child.

13. In a final decision of 27 February 2009 the High Court of Cassation and Justice upheld the prosecutor's decision.

14. On 13 October 2009 the applicant filed for the clarification of the county court decision of 2 October 2007. On 10 November 2009 the Neamţ County Court sitting *in camera* granted his request and acknowledged that "Kindergarten no. 6" was to be understood to be "the kindergarten belonging to School no. 6". The parties were not summoned to the proceedings.

15. Several other criminal complaints lodged by the applicant against D.O. were dismissed by the prosecutor on 9 June 2009, 30 April 2010 and

14 June 2010 for the same reasons as those provided in the decision of 9 June 2008.

B. Relevant domestic law

16. The relevant domestic legal provisions are set out in the Court's judgments in *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 Law no. 272/2004 on Child Protection are described in the judgment in *Amanalachioai v. Romania*, (no. 4023/04, §§ 56 and 59, 26 May 2009).

COMPLAINTS

17. The applicant complained, under Article 8 of the Convention, that his right to a family life had been infringed by reason of the non-enforcement of the final judgments allowing him to have personal contact with his child.

18. He also complained under Article 6 of the Convention about the outcome of the criminal complaints lodged by him with respect to D.O.

THE LAW

A. Complaint raised under Article 8 of the Convention

19. The applicant alleged an infringement of his right to respect for his family life. 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."

20. The Government contested the allegations and averred that the State institutions (notably courts and bailiff) had complied with their positive obligations under Article 8 in respect of the applicant, taking prompt action

in assisting him. The latter, however, had failed to show diligence in asserting his rights. In particular he had not manifested a real interest in the well being of his child, and had failed to seek speedily clarification of the address where the child was to be picked up but continued to go with the bailiff to the wrong address, even after the prosecutor had alerted him to the mistake; lastly, he had not asked for assistance from the social services.

They therefore asked the Court to declare the complaint manifestly ill-founded.

21. The applicant argued that the mother had known where the pick-up point had been meant to be and that she had used the confusion created by the existence of two kindergartens with almost identical names in order to prevent him from maintaining contact with the child. He reiterated that despite of his and the bailiff's efforts, the attempts to enforce his visiting rights had failed because of the mother's opposition. He argued that he had complained about D.O.'s and her new husband's "criminal behaviour" both to the Superior Council of Magistrates and to the social services, but to no avail.

22. The Court has already had occasion to examine, under Article 8 of the Convention, the State's positive obligations in ensuring mutual enjoyment by parent and child of each other's company. It makes reference to the basic principles established in such cases (see, among many other authorities, *Monory v. Romania and Hungary*, no. 71099/01, 5 April 2005; *Keegan v. Ireland*, 26 May 1994, Series A no. 290; *Ignaccolo-Zenide v. Romania*, no. 31679/96, ECHR 2000-I; *Hokkanen v. Finland*, 23 September 1994, Series A no. 299-A; and *Nistor v. Romania*, no. 14565/05, 2 November 2010). In particular, it reiterates that in matters relating to their custody, the interests of children are of paramount importance and that 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 *Płaza 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). As for the State's positive obligation to act promptly for the implementation of the contact rights of one of the parents, the Court has long established that it is an obligation of means and not of result and 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).

23. Bearing in mind the above principles, the Court turns to the facts of the present case and notes that the applicant was separated from his four-year-old son and granted contact rights. His numerous attempts to

enforce those rights remained unsuccessful, despite the uncontested assistance by the bailiff. It has been established by the domestic authorities that there has been confusion concerning the address of the pick-up point, as there were two "kindergartens no. 6" in town, and that each of the parties went to a different kindergarten no. 6.

24. The Court notes that the authorities gave prompt answers to the applicant in his appeals. The domestic proceedings on custody were expeditious, the bailiff assisted the applicant on each occasion in his efforts to obtain enforcement of the custody order and the prosecutor investigated without delay the numerous criminal complaints lodged by the applicant against D.O. There is, therefore, no particular issue concerning the assistance afforded by the authorities in the matter.

25. While it is true that the enforcement attempts were not successful, the Court notes that the attitude of the mother, even though significantly contributing to preventing the child from seeing his father, was not the only reason for the failed visits. In particular, although the mother failed systematically to appear in front of "kindergarten no. 6", the applicant did not acknowledge the possible misunderstanding concerning the address and failed to contact the mother for clarification or seek prompt assistance from the authorities to settle the issue. Furthermore, although he was made aware of the problem with the address where the child was to be picked up by the latest on 9 June 2008 (the prosecutor's decision), he continued to go with the bailiff to the old address five more times over the course of the following four months. It also took him sixteen months to file for the clarification of the court order in respect of the address of the pick-up point. During this time, however, the applicant continued to lodge criminal complaints against the mother.

The Court also notes that although he quickly became aware that the child had changed kindergarten after the mother had been granted custody, the applicant failed to visit his son in the new institution.

26. The Court is aware of how delicate situations such as that at issue in the present case may be, and acknowledges that the matter may have been complicated in the present case by the difficult relations between the applicant and D.O. However, it can but note that the applicant's efforts in the case appear to have been focused more on obtaining recognition of the alleged criminal behaviour of the mother than on maintaining meaningful contact with his son (see *Sbârnea v. Romania*, no. 2040/06, § 137, 21 June 2011).

27. The Court further notes that the applicant failed to substantiate his allegations of having informed the social services of the situation. The Court has already established that assistance by the social services may prove to be effective in cases pertaining to enforcement of contact rights (see *Lafargue*, cited above, § 97, and *Fuşcă v. Romania*, no. 34630/07, § 44, 13 July 2010; and, *mutatis mutandis*, *Nistor*, cited above, §§ 105-107).

28. In view of the above, the Court concludes that the failure to exercise the contact rights was caused to a great extent by the applicant himself and that the authorities have disposed reasonably of their positive obligations in assisting the applicant to their best abilities in his efforts towards enforcing those rights.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint raised under Article 6 of the Convention

29. The applicant complained about the manner in which the prosecutor decided upon the criminal complaints lodged by him against D.O. He relied on Article 6 of the Convention, which reads as follows in so far as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

30. However, even assuming that Article 6 is applicable under its civil head, 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.

It follows that this complaint 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.

Santiago Quesada
Registrar

Josep Casadevall
President