

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

FOURTH SECTION

CASE OF PAVLOVI v. BULGARIA

(Application no. 72059/16)

JUDGMENT

STRASBOURG

1 February 2022

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



In the case of Pavlovi v. Bulgaria,

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

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 72059/16) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 November 2016 by four Bulgarian nationals, relevant details listed in the appended table, ("the applicants") who were represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms V. Hristova, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 11 January 2022,

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

SUBJECT-MATTER OF THE CASE

1. The application concerns the alleged lack of respect for the applicants' family life, *inter alia*, as a result of lack of enforcement of final court decisions, granting the first, third and fourth applicants contact rights with the second applicant, who is their daughter or grand-daughter, respectively.

2. The first applicant and L., who is the second applicant's mother, lived together between 1999 and the end of 2010. The second applicant was born in 2006, out of wedlock, and lived with her parents until their separation. Thereafter, she remained to live with her mother. Under a court-approved 21 March 2012 agreement, the first applicant accepted contact rights with his daughter, custody of whom was to be held by L. Those contact rights, under which father and child were to spend two weekends a month together and some of the holidays, were expanded in a final decision of 17 April 2014 by the Sofia District Court.

3. In a decision of 12 March 2014, final on 23 April 2014, the Sofia District Court set the contacts between the child and her grandparents at two nights a month, finding that this was in the child's interest. The second applicant had had frequent contacts with her grandparents until August 2013 when L. had stopped taking the child to meet with the first applicant.

4. Starting in the autumn of 2013, the first applicant repeatedly sought the intervention of the social services, the police and the prosecution in order to have his contact rights enforced; so did the third and fourth applicants, starting in August 2014.

5. In May 2015 the first applicant brought judicial proceedings, seeking custody of the child. His request was granted at first instance on 1 September 2017 by the Sofia District Court, which found that his contact rights had not been respected since 2013. The attempts by the social services, the prosecution and the bailiff to ensure implementation of the contact rights had not yielded results. The child needed to communicate with her father, with whom contacts had been interrupted or seriously limited, yet she had developed a parental alienation syndrome as a result of L.'s conduct. The meetings between father and daughter had generally lasted only a few minutes at a time. L. had instilled a negative attitude in the child towards her father and had not assisted her to accept him in her life. Those had been the conclusions of all institutions involved in the case. On 25 October 2018, upon an appeal by L., the Sofia City Court confirmed the reversal of custody but expanded L.'s contact rights. As of February 2019 the change-of-custody proceedings were pending.

6. The applicants complained of a violation of Article 6 § 1 and Article 8 as a result of the authorities' failure, since 2013, to ensure compliance with the final judicial decisions on contact rights. Relying on Article 8, the first applicant complained of the length of the change-of-custody proceedings and of the court's refusal to grant his request for interim measures in that context. The applicants also complained under Article 13 of the absence of related effective domestic remedies.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

7. The applicants' main complaint concerns the prolonged lack of implementation of their contact rights as defined in the respective court decisions. Being the master of the characterisation to be given in law to the facts of a case, the Court will examine this complaint under Article 8 alone (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 83, 25 June 2019). The Court finds that, contrary to the Government's submissions, the ensuing judicial reversal of custody in favour of the first applicant (see paragraph 5 above) did not deprive the applicants of their victim status. Moreover, while the complaint is about the lack of enforcement as from 2013 when the authorities were first put on notice of the problem, the Court notes that insofar as the complaint relates to the 2012 decision (see paragraph 2 above), it only concerned partial lack of enforcement. The Court will have regard to that background but will concentrate its examination on the

complaint relating to the lack of implementation of the decisions of 12 March 2014 and 17 April 2014 (see paragraphs 2 and 3 above).

8. This complaint is admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds.

9. The general principles concerning the implementation of contact rights of one of the parents have been summarized in *Ignaccolo-Zenide v. Romania* (no. 31679/96, § 94, ECHR 2000-I), *Prizzia v. Hungary* (no. 20255/12, § 35, 11 June 2013), and *Vyshnyakov v. Ukraine* (no. 25612/12, §§ 35-36, 24 July 2018). The general principles concerning relations between grandparents and grandchildren can be found in *Marckx v. Belgium* (13 June 1979, § 45, Series A no. 31) and *Kruškić v. Croatia* ((dec.), no. 10140/13, §§ 108-11, 25 November 2014).

10. In the present case the Court observes that, although the child's father and grandparents saw her on occasion after they had obtained the court decisions of 12 March and 17 April 2014, they have been unable to exercise their contact rights for years, despite having actively pursued enforcement proceedings and sought related assistance from different authorities (see paragraphs 4 and 5 above). A number of institutions were involved during the period to varying degrees and with varying intensity. However, the measures taken were not sufficient, or adequate and timely, to bring about the decisions' implementation or to rebuild their relationship with the child, both of which were in the child's interest according to the different authorities starting with the courts.

11. The first, third and fourth applicants demonstrated patience and understanding, and cooperated with the authorities. The bailiff did not regularly fine L. for non-compliance with the court decisions. The police warned L. about her legal obligations and the prosecution, having considered each file separately, refused to open criminal proceedings on most occasions. In 2018 the Sofia District Court acquitted L. in three related criminal cases which had reached the court.

12. The Court considers that the social services could and should have played a decisive role in the particular circumstances. The Court attaches particular importance to the conclusions of a commission of the State Agency for Child Protection which evaluated their work on the case and in June 2016 found as follows: the social services had drawn up action plans and reports, been present at times when the bailiff had attempted to hand the child over, and organised meetings between social workers and psychologists, and the father, mother and child. The social services themselves had observed between June 2014 and November 2015 that the mother considered unnecessary for the child to stay with her father and grandparents, that she had frequently not taken the child to meet with social workers, that her unwillingness to encourage meetings between father and daughter was damaging for the child, that there was a serious risk for the child to develop

parental alienation syndrome, and that psychological work with the father alone was insufficient. The commission concluded that the prolonged ineffective use of social facilities, and absence of change in the social services' course of action despite a lack of progress, had allowed L. to postpone the implementation of the first applicant's contact rights and to increase the child's alienation from her father. The social services had waited too long to issue mandatory directions to L. in the face of her refusal to cooperate; they had failed to signal to the prosecution L.'s refusal to comply with the judicial decisions. The omissions had created conditions for breaches of the child's rights.

13. The Court considers that adequate preparatory measures were vital for ensuring the child's autonomous engagement with the situation, independently from L.'s decisive influence. This was critical early in the process, before alienation deepened, especially given the social services' specific findings: for example, in an April 2015 report that, while the child refused to follow the father, when briefly left alone with him she had relaxed and started talking to him freely; and in a June 2015 report that work only with the father was not enough and complex measures were needed involving mother and child. However, the relevant authorities failed to ensure that timely targeted support was effectively provided to the child, which was critical for her to accept to spend time with her father and grandparents, and that relevant measures were pursued in respect of L.

14. On this last point, in view of the particularly long period in which L. had not assisted the child in visiting her relatives, but in essence had obstructed contact between the applicants, those measures could have included coercive actions. However, the prosecution did not examine as a whole the numerous related complaints brought by the adult applicants and failed to draw relevant conclusions and pursue adequate and timely actions. The three sets of criminal proceedings eventually opened against L. (see paragraph 11 above) had no effect and L. continued to hamper enforcement in both cases. Although coercive measures in the sensitive context of relations with children are not desirable, the use of sanctions must not be ruled out faced with unlawful conduct by the parent who owes enforcement (see *Cengiz Kılıç v. Turkey*, no. 16192/06, § 131, 6 December 2011, and, *Karadžić v. Croatia*, no. 35030/04, § 61, 15 December 2005).

15. While the authorities remained involved with the situation throughout the period at stake, there is no indication of their acting with special diligence when handling the case. In sum, the authorities failed to take all measures which could reasonably be expected to implement the applicants' contact rights.

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

II. OTHER COMPLAINTS

17. The first applicant also complained under Article 8 of the length of the change-of-custody proceedings and of the court's refusal to grant his related request for interim measures. The applicants also complained under Article 13 of the absence of an effective related remedy in respect of their complaints.

18. The Court notes that these complaints are linked to the one examined above and must therefore likewise be declared admissible. Nevertheless, having regard to its finding under Article 8 as regards the main complaint of the applicants (see paragraph 16 above), the Court considers that it is not necessary to examine them separately.

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19. The applicants claimed 40,000 euros (EUR) each in respect of non-pecuniary damage. The first applicant also claimed EUR 120,712 in respect of pecuniary damage, which corresponded to the financial loss he had sustained during the hours he had spent between 2013 and 2017 with different institutions in an attempt to rebuild his relationship with his daughter. The applicants further claimed EUR 4,052.93 in respect of costs and expenses incurred before the Court.

20. The Government considered the above claimed sums unjustified and excessive.

21. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards EUR 5,000 jointly to the first and second applicants, and EUR 3,000 jointly to the third and fourth applicants in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicants.

22. Having regard to the documents in its possession, the Court considers it reasonable to award 3,200 EUR covering costs and expenses under all heads, plus any tax that may be chargeable to the applicants. As requested by the applicants, EUR 1,200 of this sum is to be paid to them, and the remainder – to the law firm of their representatives, Ekimdzhiev and Partners.

23. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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* that there is no need to examine the remaining complaints;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, jointly to the first and second applicants, and EUR 3,000 (three thousand euros), plus any tax that may be chargeable, jointly to the third and fourth applicants, in respect of non-pecuniary damage;
      (ii) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses; EUR 1,200 (one thousand two hundred euros) of this sum is to be paid to the applicants, and the remainder to the law firm of their representatives, Ekimdzhiev and Partners;
   (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Tim Eicke President

APPENDIX

List of applicants:

Application no. 72059/16

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	V. PAVLOV	1972	Bulgarian	Sofia
2.	A. PAVLOVA	2006	Bulgarian	Sofia
3.	L. PAVLOV	1945	Bulgarian	Sofia
4.	Y. PAVLOVA	1947	Bulgarian	Sofia