

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

FOURTH SECTION

CASE OF VLAD v. ROMANIA

(Application no. 1020/20)

JUDGMENT

STRASBOURG

5 July 2022

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



In the case of Vlad v. Romania,

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

Tim Eicke, *President*,

Faris Vehabović,

Pere Pastor Vilanova, *Judges*,

and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 1020/20) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 December 2019 by a Romanian national, Mr Ion Vlad, born in 1967 and living in Domnești ("the applicant") who was represented by Mr A. Grigoriu, a lawyer practising in Bucharest;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Co-Agent, Mr S.A. Purza, 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 examination of the application by a Committee;

Having deliberated in private on 14 June 2022,

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

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.

2. The applicant and X married in 2006 and in 2008 their daughter, Y, was born. On 14 November 2013 the Bucharest District Court pronounced the couple's divorce, awarded the parents joint custody of their daughter, set her residence with X, and granted the applicant contact rights, that is allowing him to see his child every other week on Saturday and Sunday from 9 a.m. to 8 p.m. The contact schedule was to be exercised in the mother's home until Y would turn eight years old, and outside the mother's home after that date.

3. On 20 January 2015 the applicant requested a bailiff office's help for the enforcement of the contact schedule, arguing that X was hindering his efforts to see his daughter. On 8 February 2016, unsatisfied with the bailiff's alleged inactivity, he ended the enforcement proceedings and contacted a new bailiff. The enforcement attempts made by the new bailiff also remained unsuccessful. In a report of 18 March 2016 the new bailiff concluded that Y refused to see the applicant.

4. Upon a request made by the Bucharest Directorate General for Social Welfare and Child Protection ("the child-protection authority"), based on the bailiff's report (see paragraph 3 above), on 27 September 2016 the Corneţu District Court ordered three months of psychological counselling for Y in order to help re-establish her relationship with her father. The court also ordered X to comply with the measures that the psychologist would indicate.

5. On 25 October 2016, following Y's eighth birthday, the Găeşti District Court, which had jurisdiction over the case following X and Y's change of residence, deciding on an application brought by the applicant, set a new contact arrangement extending the applicant's right to see the child to every other weekend, half of the school holidays and other significant days in the year. The applicant was allowed to exercise his contact rights at his home. The court considered that Y should start spending time with the applicant in order to develop harmonious relationships with both parents. It found that X had not sufficiently encouraged her daughter to maintain contact with her father. It observed that the child had been negatively affected by the conflict between her parents who did not refrain from fighting in her presence.

6. In January 2017 the child-protection authority in charge of the case (see paragraph 4 above) sent several invitations to X at four different addresses where she was registered in the towns neighbouring Bucharest and contacted her on her telephone. X refused to take the child to counselling, explaining, via telephone on 9 January 2017 and in writing on 10 February 2017, that the court decision of 14 November 2013 whose enforcement was sought, was no longer in force, as it had been replaced by the decision of 25 October 2016 (see paragraphs 2 and 5 above). On 20 and 21 February 2017 the child-protection authority informed the Corneţu District Court, the bailiff, and the applicant of X's position.

7. Relying on the decision of 25 October 2016, the applicant started new enforcement proceedings through the same bailiff, but remained unable to see his daughter. On 28 August 2017 the bailiff sought penalties for non-enforcement on the applicant's behalf, allowed by the Găeşti District Court on 25 April 2018.

8. On 3 November 2017 the Bucharest District Court stayed the enforcement proceedings at the mother's request. It found that X had not opposed contact between the applicant and the child, but that Y refused to see her father.

9. On 11 April 2018 the applicant lodged a new request, seeking to modify the contact schedule. These proceedings were pending on the date of the Government's observations on 15 January 2021.

10. On 18 April 2018 he sought an interim order setting the child's residence with him during the new proceedings, dismissed as lacking urgency by the Găeşti District Court.

11. On 7 April 2021 the applicant informed the Court that he had made further attempts to see Y, which had remained unsuccessful.

12. Relying on Article 8 of the Convention, the applicant complained that he had been unable to see his daughter and exercise his parental rights, because of a series of failures by the competent authorities.

THE COURT'S ASSESSMENT

13. The Court notes that this complaint 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.

14. 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.

15. In the present case, following the parents' separation, the courts set the contact schedule in the applicant's favour on two occasions, first in the decision of 14 November 2013 concerning the couple's divorce and then on 25 October 2016 when the child became older (see respectively paragraphs 2 and 5 above). The latter decision was still in force at least until 15 January 2021 (see paragraph 9 above). However, it appears that despite the applicant's efforts, he remained unable to see his child (see paragraph 11 above). Bearing in mind what was at stake in the case, that is maintaining a relationship between the applicant and his child, the Court will examine whether the assistance provided by the authorities throughout the two sets of enforcement proceedings, concerning both contact orders, was sufficient and complied with the State's positive obligation under Article 8 of the Convention in this field.

16. It thus appears that, between 20 January 2015, the date when the applicant first contacted a bailiff, and 18 March 2016 when the bailiff submitted a report to the child-protection authority (see paragraph 3 above), little had been done for the enforcement.

17. Additionally, although psychological counselling was ordered for a duration of three months based on the bailiff's report of 18 March 2016 (see paragraph 4 above), it has never been put in place. Notwithstanding the urgency inherent in the matters concerning relations between parents and their children (see *K.B. and Others v. Croatia*, cited above, § 142 *in fine*), the child-protection authority took three months before contacting X about the counselling programme (see paragraph 6 above). By that time, a new contact schedule had been put in place by the courts (see paragraph 5 above).

18. The Court observes that the applicant diligently pursued his efforts for enforcement, renewing his request for assistance for the enforcement of the second contact schedule with the same bailiff (see paragraph 7 above).

19. That said, although throughout the enforcement procedure it was unequivocally known that the child opposed seeing her father (see paragraphs 3 and 8 above), no measures were taken to identify the causes of such resistance and address them (see *K.B. and Others v. Croatia*, cited above, § 144), by, for instance, taking steps to restart the counselling programme (see paragraph 17 above).

20. Moreover, except for seeking penalties for non-enforcement (see paragraph 7 above) the bailiff failed to have recourse to other measures of gradual increasing intensity destined at enforcing the contact orders, including, as relevant, specific measures for cases of refusal of contact between the child and the estranged parent, which were available in particular under Articles 910-13 of the Romanian Code of Civil Procedure (see *Niţă v. Romania* [Committee], no. 30305/16, §§ 28-30, 3 July 2018 and *Voica v. Romania*, no. 9256/19, § 37, 7 July 2020), such as the imposition of a fine to the mother for blocking the proceedings, putting in place a psychological counselling programme for the benefit of the child, or assistance by police and child-protection experts.

21. The Government did not provide any justification for such inaction which ran counter to the authorities' obligation to take, without delay, useful measures aimed at ensuring effective contact between the applicant and his child.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage, EUR 1,484 in respect of costs and expenses incurred before the domestic courts and EUR 3,946 for those incurred before the Court.

24. The Government considered that the claims were unjustified and excessive and argued that the finding of a violation should constitute sufficient just satisfaction.

25. 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.

26. 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 *Michnea v. Romania*, no. 10395/19, §§ 61-62, 7 July 2020) the Court considers it reasonable to award EUR 2,641 for costs and expenses in the Court proceedings, 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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,641 (two thousand six hundred and forty-one euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 5 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Crina Kaufman	Tim Eicke
Acting Deputy Registrar	President