CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35978/02
by Petranka Ivanova MIHAILOVA
against Bulgaria

The European Court of Human Rights (First Section), sitting on 9 September 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 19 September 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Petranka Ivanova Mihailova, is a Bulgarian national who was born in 1975 and lives in Dobrich.

A. The circumstances of the case

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

The applicant married in June 1994. On 28 November 1995 she gave birth to a girl.

In 2000 the applicant instituted divorce proceedings.

On 14 July 2000 the applicant and her husband separated. It appears that the applicant moved out of the apartment where the family used to live. It further appears that her husband also moved out, together with their daughter, and returned to his parents' house. The applicant's parents-in-law and her husband looked after the applicant's daughter.

On 18 April 2001 the Dobrich District Court pronounced the couple's divorce. The court approved the parties' agreement whereby the applicant would have custody of their daughter but the child would remain with her father until 24 May 2001 so as to allow her to continue to attend the local elementary school. The agreement further stated that the child would move in with the applicant at 8 a.m. on 25 May 2001. Thereafter, the father would take the child at his home every second weekend and every year during the following holiday periods: 8-24 June, 1-19 August, 24-30 December and during half of the spring school break. The father undertook to pay alimony.

On 25 May 2001 an argument erupted when the applicant came to collect her daughter. The child was terrorised and the attempt to enforce the District Court's decision was abandoned.

On 29 May 2001 the applicant instituted enforcement proceedings before the enforcement judge at the Dobrich District Court.

On 7 June 2001 the applicant complained to the enforcement judge that nothing had been done in the case, the respondent (the applicant's former husband) not having been summoned.

On 14 June 2001 the applicant complained to the Dobrich Regional Court about delays in the enforcement proceedings.

On 22 June 2001 the applicant's former husband requested a postponement of the enforcement of the custody decision as the child was ill. He submitted a medical certificate showing that the child was suffering from influenza.

There was an attempt to summon the parties on 25 June 2001. However, the summons sent to the respondent father could not be served for reasons which are unclear.

On an unspecified date the enforcement judge appointed medical experts to examine the child.

On 25 June 2001 the applicant wrote to the enforcement judge stating that a medical examination was unnecessary. On the same date she complained about the inactivity of the enforcement judge.

On 28 June 2001 the Dobrich Regional Court examined the applicant's appeal against delays in the enforcement proceedings and found that there had been unjustified delays. In particular, insufficient efforts had been made to effect a valid service of the summons. Furthermore, it had not been necessary to appoint medical experts. The Dobrich Regional Court also noted that the respondent's mother, in whose house the child lived with her father, worked with the clerical staff at the Dobrich District Court. The court ordered the enforcement judge to speed up the proceedings.

On 28 June and 11 July 2001 the applicant complained to the local prosecutor. On 11 July 2001 she was informed that on 6 July 2001 her former husband had received a police warning to comply with his obligation to transfer custody of the child to her mother.

On 12 July 2001 the applicant's lawyer complained to the police about the respondent father, his mother and the enforcement judge, stating that certain documents were missing from the file. The lawyer also stated that the child needed police protection.

On 17 July 2001 the police replied that the case did not fall within the scope of the regulations on police protection of children.

The transfer of the child was scheduled for 20 July 2001, but the father could not be summoned. The officer responsible for serving the summons was given two addresses for the respondent father. However, the officer noted that the father could not be located at either address and, according to a neighbour, he had left on holiday.

The applicant filed another appeal against the delays in the enforcement proceedings. She also complained to the local prosecutor.

On 20 July 2001 the applicant filed an official request for police protection of her child.

On 25 July 2001 the Dobrich Regional Court examined the second appeal against delays. The court found that insufficient efforts had been made to locate the respondent and that attempts should be made to summon him at his place of work.

On 30 July 2001 the applicant's request for police protection of her child was refused. There was no indication that the child had disappeared or was in danger: she was on holiday with her father.

An attempt was made to serve a summons on the respondent father ordering him to appear on 30 July 2001. For that purpose, two court officers and a police officer visited three addresses indicated by the applicant including her former husband's workplace. It was established that he was on holiday until 1 August 2001.

On 7 August 2001 a summons was served on the respondent father ordering him to transfer the custody of the child on 23 August 2001.

On the same day the father submitted to the enforcement judge a request that Mrs N., a psychiatrist who had monitored his daughter's health, be present during the transfer of custody on 23 August 2001. He enclosed a certificate dated 1 August 2001 issued by the psychiatrist. Mrs N. had been told, apparently by the father, that the child had become nervous, had no appetite, could not sleep well, tended to remain alone and cried as a result of her "separation from close family". Having seen the child several times in June and July 2001 and having held therapeutic sessions with her, the psychiatrist stated that an improvement was noted. However, the psychiatrist considered that it was essential to avoid future situations which could cause the child psychological trauma.

On 16 and 17 August 2001 the applicant requested further psychiatric examinations of the child. She also stated that a paediatrician and Mr. K., an employee of the local child protection service who had previously seen her daughter, should also be present during the transfer of custody on 23 August 2001.

On 23 August 2001 the enforcement judge heard the applicant, her former husband, the child, Mrs N., Mr K. and the parties' lawyers. The applicant was excluded from the proceedings when the child was being heard.

According to the minutes, the child stated that she wanted to be with her mother, but also wanted to be with her father and preferred to stay with her father and to pay visits to her mother. The father stated that the mother had not sought to see her daughter. The applicant stated that her former husband was trying to hide.

Mrs N., the psychiatrist, stated that the child needed to spend more time with her mother and that favourable conditions had to be created so as to avoid any traumatic incidents for the child, who was suffering as a result of the conflict between her parents. The child needed to receive more affectionate attention from her mother. Changes in the child's home and school environment could be dangerous.

Mr K, the social services employee, stated that the child was not at risk with her father. She enjoyed a good social environment and her situation would continue to be monitored by the social services.

The father's lawyer stated that an assessment should be made of the applicant's ability to provide satisfactory conditions for her daughter.

The enforcement judge instructed Mrs N. and Mr K. to provide additional information in writing before 30 August 2001 and adjourned the proceedings.

On 24 and 27 August 2001 the applicant complained to the health authorities about Mrs N., to the social services about Mr K., to the police about her former husband and to the District Court about the enforcement

judge. She also filed a formal appeal against the adjournment of the proceedings and requested the withdrawal of the enforcement judge from the case.

On 29 August 2001 Mrs N., the psychiatrist, filed additional assessments.

In reply to the applicant's enquiry as to whether Mrs N. had in fact seen her daughter repeatedly, as stated by Mrs N, the local health service replied that there had been a consultation on 10 July 2001.

On 11 September 2001 the applicant complained about the delay in the enforcement proceedings.

On 17 September 2001 the Dobrich Regional Court found that there were no undue delays in the proceedings in August and September 2001. The court nevertheless gave instructions that a careful examination should be made of the applicant's request for the removal of the enforcement judge.

It appears that an attempt to summon the applicant's former husband at the end of September or the beginning of October 2001 was unsuccessful.

In September and October 2001 the applicant complained to the education authorities that her daughter attended an elementary school chosen by her father. She stated that that school was too far from her home and that she had the right, as the parent vested with the custody of the child, to decide which school the girl should attend.

In mid-October 2001 a hearing in the enforcement proceedings was scheduled for 29 November 2001. The applicant complained, stating that this long delay was unnecessary.

On 29 November 2001 the applicant, her former husband, their daughter, their lawyers, two employees of the child protection service and a police officer appeared before the enforcement judge. The applicant invited journalists from the local television station.

The applicant spent an hour alone with her daughter. Thereafter, the hearing resumed. The enforcement judge decided that the applicant should take her daughter and the hearing was closed.

As the parties walked out of the courtroom, the applicant's former husband grabbed the child and ran away. A police officer who was present allegedly did not intervene.

The applicant complained to the prosecution authorities about the enforcement judge and the police. By decisions of 15 and 18 February 2002 they refused to open criminal proceedings.

On 6 December 2001 the applicant complained to the Dobrich Regional Court that the father had taken the child away.

On 10 January 2002 the complaint was rejected on unspecified grounds.

On 7 February 2002 the District Court issued directions regarding the enforcement of the custody measures in respect of the applicant's child. The applicant has not provided details of these directions.

Upon the applicant's complaints to the child protection agency, on 9 March 2002 she was informed that the employees of the agency had been

instructed to do what was necessary to facilitate the transfer of the custody of the child. This included, in particular, meetings between the child and the parent in the presence of agency employees, consultations with a psychologist, hearing the child and issuing directions to the father.

On an unspecified date all of the enforcement judges at the Dobrich District Court withdrew from the case, which was then transmitted to the Balchik District Court.

In April and May 2002 the applicant complained that the judicial decision on the custody of her daughter had not been enforced. On 11 May 2002 the Regional Court found that there had been no unjustified delays.

A hearing in the enforcement proceedings was listed for 22 May 2002. The applicant was busy with her studies and was unable to attend. The case was adjourned until 20 June 2002.

On 20 June 2002 the applicant and her former husband appeared. As the father had not brought the child, the parties and the enforcement judge went to the father's home. The judge, the applicant and the child had a conversation. The child refused to follow her mother, allegedly as a result of pressure exerted by the father.

On an unspecified date the case was transferred to the Kavarna District Court. The enforcement judge at that court fined the applicant's former husband for failure to abide by a final judgment. The amount of the fine was 200 Bulgarian levs ("BGN") (approximately 100 euros). On 9 July 2002 the applicant complained to the Regional Court that the fine had not been enforced.

On 31 July 2002 the Regional Court issued a decision on the course of the proceedings. The applicant has not provided details of this decision.

On an unspecified date the applicant's former husband appealed against the fine stating, *inter alia*, that the applicant had been absent and he had been unable to prepare the child for the transfer.

On 5 September 2002 the applicant complained of delays in the proceedings.

The enforcement judge scheduled the transfer of the child for 20 September 2002. The applicant's former husband did not comply. On 1 October 2002 he was ordered to pay another fine of BGN 200.

On an unspecified date the applicant's former husband instituted proceedings to have the custody measures and contact arrangements modified in respect of his daughter.

During the relevant period the applicant saw her daughter several times when she visited her at her elementary school. The applicant submits that since the beginning of 2002 she has been prevented from speaking to her daughter on the telephone.

On 3 February 2003 the applicant wrote to the District Prosecutor stating that on 30 January 2003 she had visited her daughter at her school, whereupon her former husband had appeared, shouting offensive

expressions. He had hit her and threatened to batter her if she continued seeing their daughter. On 11 February 2003 the applicant's former husband was summoned by the police and was ordered to cease obstructing the exercise of the applicant's parental rights.

B. Relevant domestic law and practice

1. General legal regime

The Code of Civil Procedure, which governs, *inter alia*, execution of final judgments, does not contain provisions specifically applicable to transfer of custody of children. As a result, the general procedural rules on execution of judgments are applicable *mutatis mutandis*.

Specific guiding principles have emerged in the judicial practice, summarised by decision No. 4 of 1962 of the plenary Supreme Court (4-62-PPVS). According to these principles, transfer of child custody decisions must be very carefully enforced by the competent enforcement judge, with the assistance, where necessary, of local social services. The interests of the child are paramount. The child should not be coerced but should be prepared for the change so as to avoid psychological trauma. Each case must be treated on an individual basis, with due regard to the child's age, personal circumstances and emotional links with his or her parents. All possible methods of persuasion must be exhausted. Parents should be warned that refusal to co-operate may result in a modification of custody and contact orders. Police assistance should be used as a last resort, and only where the interests of the child require immediate execution.

In exceptional cases, where the custody order has not been enforced for a long time and the relevant circumstances have changed, the enforcement judge may adjourn the case and propose to the competent court to re-examine the custody order.

In cases where a parent's refusal to comply constitutes a criminal offence, the matter should be referred to the prosecution authorities.

2. The Child Protection Act

The Child Protection Act, in force since June 2000, provides that social service employees shall take part in proceedings affecting children's rights. It also provides that children under 10 years of age may be heard in respect of any measure affecting them, subject to a reasoned assessment of the child's maturity.

In practice, employees of the local social services, who act under the supervision of the National Child Protection Agency, are always summoned in child custody proceedings.

3. Measures under penal law

Failure to abide by a final decision concerning custody of children may be punishable under Article 182 of the Penal Code.

COMPLAINTS

The applicant complained that the final judgment concerning the custody of her daughter had not been enforced, that the proceedings were excessively lengthy and that there had been numerous violations of a procedural nature. The applicant stated that, as a result, there had been a violation of her right to respect for her family life. She invoked Article 6 of the Convention.

The applicant also complained, on behalf of her daughter, that the child had suffered distress as a result of numerous interrogations and the inadequate and protracted procedure as a whole and that the authorities had failed to protect her against the psychological pressure exerted by her father.

THE LAW

1. The applicant complained that the final judgment concerning the custody of her daughter had not been enforced, that the proceedings were excessively lengthy and that there had been numerous violations of a procedural nature. The applicant stated that, as a result, there had been a violation of her right to respect for her family life. She invoked Article 6 of the Convention.

The Court considers that the above complaints fall to be examined under Articles 6 and 8 of the Convention which provide, in so far as relevant:

> Article 6
>
> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."
>
> Article 8
>
> "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."

The Court notes that the time-limit for the submission of the Government's observations on the admissibility and merits of the case expired after two extensions and that no observations have been received.

The Court further considers that the above complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Therefore, the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicant also complained, on behalf of her daughter, that the child had suffered distress as a result of numerous interrogations and the inadequate and protracted procedure as a whole and that the authorities had failed to protect her against the psychological pressure exerted by her father.

The Court considers that the above complaint falls to be examined under Article 8 of the Convention.

The Court notes that the time-limit for the submission of the Government's observations on the admissibility and merits of the case expired after two extensions and that no observations have been received.

The Court further considers that the above complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits.

The Court concludes, therefore, that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudicing the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President