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

THIRD SECTION

DECISION

Application no. 55345/14
Mikhail Serezhayevich OVAKIMYAN
against Russia

The European Court of Human Rights (Third Section), sitting on 13 December 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 16 July 2014,

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 Mikhail Serezhayevich Ovakimyan, is a Russian national who was born in 1974 and lives in Balakovo, a town in the Saratov Region. He was represented before the Court by Mr T. Kalmykov, a lawyer practising in Kharkov.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

A. The circumstances of the case

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

1. Background to the case

4. On 14 October 2011 the applicant married A.V. The couple settled in Saratov.

5. On 4 February 2012 A.V. gave birth to a son, S.

6. On 17 October 2012 A.V. left the applicant. Together with the child she moved to her parents' house in Kirsanov, a town in the Tambov Region. The applicant was prevented from seeing the child.

7. Following an application by A.V., on 26 November 2012 the Justice of the Peace of Kirsanov dissolved the marriage between the applicant and A.V.

2. Proceedings to determine the terms of the applicant's contact with his son

8. On 2 November 2012 the applicant brought court proceedings against A.V., seeking to have the terms of his contact with his son determined.

9. On 29 January 2013 the Kirsanovskiy District Court of the Tambov Region ("the District Court") granted the applicant's claims in part. The District Court held that contact sessions between the applicant and his son should take place in the presence of A.V. twice a month on the first Saturday and third Sunday of the month from 10 a.m. to 2 p.m., either at the child's place of residence or in public recreation facilities. The judgment was not appealed against and became final on 4 March 2013.

10. Regardless of the above judgment, A.V. continued to hinder the applicant's contact with the child.

11. On 20 May 2013 the applicant brought court proceedings against A.V., seeking to have the obstacles to his contact sessions with S. removed and the terms of his contact with his son revised, in particular so as to allow him to take the child on summer holidays both in Russia and abroad, to spend public holidays with him, and to spend birthdays with him (those of the child, the applicant and the paternal grandmother).

12. On 8 November 2013 the District Court obliged A.V. not to hinder the exercise of the applicant's contact rights. It further held that the contact sessions between the applicant and his son should take place in the presence of A.V. twice a month, on the first Saturday and third Sunday of the month, from 9 a.m. to 1 p.m., either at the child's place of residence or, if the weather permitted, outside. A.V. was also obliged to give the applicant monthly updates about the child's health and the choice of pre-school and school facilities for him. The District Court rejected the remainder of the applicant's claims, finding, with reference to the local authority child

services report, that the above contact schedule would be appropriate considering the young age of the child, his attachment to his mother, and the importance of maintaining his routine. The District Court further took into account the extremely tense relationship between the applicant and A.V. and their inability to reach a mutual agreement on the matter. The applicant appealed.

13. On 15 January 2014 the Tambov Regional Court ("the Regional Court") upheld the above judgment on appeal, having considered that, in the circumstances of the case, the established contact schedule was appropriate, and that the frequency and the length of the contact sessions between the applicant and the child were reasonable, sufficient and in accordance with the child's best interests.

14. The applicant lodged a cassation appeal with the Presidium of the Regional Court, asking it to quash the judgment of 8 November 2013, as upheld on appeal on 15 January 2014.

15. On 20 March 2014 a judge of the Regional Court decided not to refer the case for consideration by the Presidium of that court.

3. Enforcement proceedings and further developments

(a) First set of enforcement proceedings

16. On 3 February 2014 the District Court issued a writ of execution in respect of the judgment of 8 November 2013.

17. On 6 March 2014 the applicant applied to the Kirsanovskiy District Bailiffs Service ("the District Bailiffs Service") for institution of the enforcement proceedings.

18. On 18 March 2014 a bailiff from the District Bailiffs Service began the enforcement proceedings and appointed an officer to be present at each scheduled meeting between the applicant and his son, to eliminate the obstacles to the applicant's contact with the child which A.V. could create.

19. According to the applicant, in the period between 5 April and 2 August 2014 when he tried to see his child without the assistance of the bailiff, A.V. prevented him from doing so on three occasions (on 22 May, 24 May and 24 July 2014), and either she or her parents interfered with his contact on three occasions (on 15 June, 23 July and 1 August 2014).

20. According to the Government, between 5 April and 2 August 2014, with the assistance of the bailiff, the applicant met his child on days determined by the judgment of 8 November 2013.

21. The bailiff's report on the applicant's meeting with his son on 20 April 2014 mentions that the applicant used abusive language in the presence of the child.

22. The bailiff's reports of 1 June, 7 June, 5 July and 6 July 2014 mention that the applicant did not attend the meetings.

23. On 15 June 2014, while out walking with his son, the applicant took the child by the hand, went to his car and drove off with him without the bailiff's permission. The bailiff followed the applicant. The applicant tried to take the child to the house of some of his acquaintances, but the bailiff stopped him. After that, the applicant kept the child in his car for one hour. He insulted the child's mother and the bailiffs. Later, A.V. called the police. The applicant's contact session ended at 6 p.m. in the police station.

24. On 19 July, 20 July and 2 August 2014 the applicant drove off with his son in an unknown direction and in the absence of the mother. While driving off, he insulted the bailiffs and argued that their presence was hindering his contact with the child.

25. On 2 August 2014 the bailiff took a decision to terminate the enforcement proceedings and return the writ of execution to the applicant, because his actions were preventing the enforcement. In particular, the applicant had gone off with the child in an unknown direction and had had contact with him in the absence of A.V., in breach of the judgment of 8 November 2013, following which he had refused to return the child to the mother at the prescribed time. The applicant challenged the lawfulness of the bailiff's decision to terminate the enforcement proceedings.

26. On 25 September 2014 the District Court dismissed the applicant's appeal.

27. On 1 December 2014 the Regional Court upheld the above decision on appeal.

(b) Second set of enforcement proceedings

28. On 19 August 2014 the enforcement proceedings were reopened following the resubmission of the writ of execution by the applicant.

29. On 6 and 7 September 2014, when the applicant was supposed to meet his son, A.V. and the child were not at home.

30. In this connection, on 9 September 2014 A.V. was found administratively liable under Article 5.35 § 2 of the Russian Code of Administrative Offences. The bailiff gave her an administrative fine in the amount of 2,000 Russian roubles (RUB).

31. Furthermore, the bailiff obtained explanations from A.V. for her failure to let the applicant meet his son on 6 and 7 September 2014. A.V. explained that she had hindered the applicant's meeting with the child because, during the previous meetings, he had tried to hide the child in the house of his acquaintances and she had only managed to get her son back with the help of the police. Besides, the applicant regularly got into fights or arguments in the presence of the child and was aggressive towards her. In particular, on 22 May 2014, under Article 116 § 1 of the Russian Criminal Code, the District Court had found the applicant guilty of beating A.V. The proceedings had subsequently been terminated as a result of the parties reconciling. On 19 November 2012 the Justice of the Peace of the 1st Court

Circuit of the Kirsanovksiy District of the Tambov Region had found the applicant administratively liable under Article 20 § 1 of the Code of Administrative Offences, because on 17 November 2012, upon arriving at A.V.'s house to visit his son, he had behaved aggressively and used abusive language. On 19 December 2012 the District Court had upheld the above judgment on appeal. The applicant had subsequently been found administratively and criminally liable on 14 February, 21 March and 27 July 2014 for inflicting physical injuries on A.V., and insulting both her and her mother.

32. During his meeting with his son on 15 November 2014 the applicant went off with the child in an unknown direction and never returned him to A.V.

33. On 19 November 2014 the bailiff entrusted the Saratov Regional Bailiffs Service with establishing that the child was at the applicant's place of residence.

34. On an unspecified date the Saratov Regional Bailiffs Service informed the District Bailiffs Service that the applicant and the child did not reside at the address in the Saratov Region indicated in the enforcement document.

35. On 30 December 2014 the bailiff received a request from the applicant for return of the writ of enforcement without execution.

36. On the same day the enforcement proceedings were terminated.

4. Proceedings to determine the child's place of residence

37. A.V. brought court proceedings against the applicant, seeking to have it determined that her son should reside with her.

38. On 4 June 2015 the Balakovskiy District Court of the Saratov Region granted her claim and held that the child should reside with her.

39. Regardless of the above judgment, the applicant continues to retain the child.

B. Relevant domestic law and practice

1. The Family Code of the Russian Federation

40. A parent living apart from his or her child is entitled to maintain contact with the child and participate in his or her upbringing and education. The parent with whom the child resides may not hinder the child's contact with the other parent, unless such contact undermines the child's physical or psychological health or moral development (Article 66 § 1).

41. The parents have the right to conclude a written agreement on the way the parent living apart from the child may exercise his parental duties. If the parents cannot reach an agreement, the dispute must be resolved in court with the participation of the childcare authority, upon a claim lodged

by the parents (or one of them). In the event of non-compliance with the court decision, measures set out in the civil procedural legislation are applied to the parent guilty of non-compliance. In the event of persistent non-compliance with the court decision, the court may, upon a claim by the parent living apart from the child, take a decision to place the child in his or her care, based on the child's interests and taking into account the child's opinion (Article 66 §§ 2-3).

42. Judgments in cases involving issues relating to the upbringing of children are enforced by a bailiff in conformity with the procedure laid down by the civil procedural legislation. If one of the parents (or another person in whose charge the child is) obstructs the enforcement of the court judgment, measures stipulated by the civil procedural legislation will be applied to him or her (Article 79 § 1).

2. The Federal Law on Enforcement Proceedings of 2 October 2007 ("the Enforcement Proceedings Act 2007")

43. A bailiff must issue a decision to open enforcement proceedings or to refuse to open proceedings within three days of receipt of a writ of execution (section 30).

44. A writ of execution which has not been enforced or which has been enforced in part shall be returned by the bailiff to the person in whose favour a judgment has been made if the latter prevents enforcement by his own actions. The bailiff shall draft a report outlining the circumstances warranting the return of the writ of execution to that person, which shall be approved by the chief bailiff or his deputy. After that, the bailiff shall make a decision on termination of the enforcement proceedings and the return of the writ of execution to the person in whose favour the judgment was made (section 46(1) and (6), 46(2) and 46(3)).

45. The return of the writ of execution to the person in whose favour a judgment has been made does not prevent that person from resubmitting the writ of execution for enforcement within the time-limit provided for by section 21 of the present law (section 46(4)).

46. The enforcement of a writ of execution concerning contact rights consists of the bailiff securing free contact between the person in whose favour a judgment has been made and the child, in accordance with the schedule determined by the court (section 109.3(3)).

47. In the event of a breach of enforcement proceedings by the person against whom a judgment has been made, that person shall be found administratively or criminally liable in accordance with Russian law (section 113).

48. The decisions, actions or inaction of the bailiff can be challenged by the parties to the enforcement proceedings before the bailiff's superiors or before a court (section 121(1)).

3. The Code of Administrative Offences of the Russian Federation, in force from 4 May 2011

49. Violations by parents or other legal representatives of the rights and interests of minors by preventing the minors from having contact with their parents or other close relatives, provided that such contact is not contrary to the interests of the child; deliberately concealing minors' whereabouts; and non-compliance with court judgments determining minors' places of residence are all punishable by an administrative fine ranging from RUB 2,000 to RUB 3,000, and an administrative fine of up to RUB 5,000 or administrative arrest for up to five days in the case of a repeat offence (Article 5.35 §§ 2-3).

COMPLAINT

50. The applicant complained under Article 8 of the Convention regarding the failure of the domestic authorities to secure his contact with his son in accordance with the schedule determined by the domestic court.

THE LAW

51. The applicant alleged that the domestic authorities had failed to take all the measures they could reasonably have been expected to take to secure his contact with his son in accordance with the contact arrangement determined by the domestic court without undue delay. He relied on Article 8 of the Convention, which reads:

> "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."

A. The parties' submissions

52. The Government submitted that the applicant had failed to exhaust domestic remedies before bringing his complaint before the Court. In particular, he had not challenged the lawfulness of how the bailiffs had handled the enforcement proceedings. In the alternative, the Government submitted that the complaint was manifestly ill-founded. There had been no

omissions or delays in the conduct of the enforcement proceedings. The domestic authorities had assisted the applicant in every meeting with his son. The applicant, on the contrary, had himself hindered the enforcement of the contact arrangement determined by the domestic court, and had eventually abducted the child. In conclusion, the Government submitted that the domestic authorities had therefore discharged their positive obligation under Article 8 of the Convention, and had taken all the necessary steps which they could reasonably have been expected to take to facilitate the enforcement of the contact arrangement in the difficult circumstances of the present case.

53. The applicant argued that he had had no effective domestic remedy against the bailiffs' failure or unwillingness to secure his contact rights, and that his recourse to a domestic court in connection with the bailiffs' actions or inaction had proved to be ineffective and had been devoid of any prospect of success. The bailiffs' service and the local police had been prejudiced against him because A.V.'s aunt was the President of the District Court. The enforcement proceedings had not been expeditious. The domestic authorities had failed to use available legal mechanisms to secure the proper enjoyment of his contact rights. Despite the fact that A.V. had systematically impeded his contact with his child, the bailiff had found her administratively liable only once. Furthermore, the bailiff had terminated the enforcement proceedings on 2 August 2014 with reference to the applicant's actions preventing the enforcement, whereas it should have been clear to the bailiff that his conduct had stemmed from the lack of clarity in the judgment of 8 November 2013 as to whether his contact sessions with his child outside of the child's home were to take place in the presence of A.V. or not. By behaving as he had done, he had only wished to have contact with his child in a private and comfortable environment. By terminating the enforcement proceedings, the domestic authorities had deprived him of any opportunity to maintain contact with his son, which is why he had decided to take the matter into his own hands and take his son to live with him. The applicant further submitted that the conflict between himself and the child's mother should not have been an obstacle for the domestic authorities with regard to securing his minimum level of contact with his child, yet nothing had been done by the domestic authorities to employ the available legal mechanisms and change the situation for the better.

B. The Court's assessment

1. Relevant principles

54. The Court reiterates that the essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by the

public authorities. There may also be positive obligations inherent in an effective "respect" for family life (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290). In cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A, and *Zawadka v. Poland*, no. 48542/99, § 55, 23 June 2005), the Court's case-law has consistently held that this Convention provision includes, among other things, a right for parents to have measures taken with a view to their being reunited with their child, and an obligation on the national authorities to take such measures.

55. At the same time, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately, and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned are always important ingredients. Whilst the national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be taken into account, as should be, more particularly, the best interests of the child and his or her rights under Article 8 of the Convention (see *P.P. v. Poland*, no. 8677/03, § 82, 8 January 2008; *Hokkanen*, cited above, § 53; and *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 96, ECHR 2000-I). The adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent (see *P.P. v. Poland*, cited above, § 83).

2. Application of the above principles to the present case

56. The Court does not consider it necessary to answer the Government's objection concerning the non-exhaustion of domestic remedies by the applicant, as the present complaint is in any event manifestly ill-founded for the following reasons.

57. The Court notes at the outset that it is common ground that the tie between the applicant and his son falls within the scope of "family life" within the meaning of Article 8 of the Convention.

58. It further notes that, by the judgment of 8 November 2013, as upheld on appeal on 15 January 2014, the District Court obliged the applicant's ex-wife not to hinder the applicant's contact with his son, and determined that his contact sessions with the child were to take place in the presence of the child's mother twice a month, on the first Saturday and third Sunday of the month, from 9 a.m. to 1 p.m. at the child's place of residence or, if the weather permitted, outside. On 6 March 2014 the applicant applied to the District Bailiffs Service for institution of the enforcement proceedings. The

enforcement proceedings were opened without delay on 18 March 2014, and a bailiff was appointed to facilitate the meetings between the applicant and his son.

59. The Court observes that between 5 April and 2 August 2014 the bailiff accompanied the applicant during each meeting with his son on the days determined by the judgment of 8 November 2013. During that period, however, on four occasions the applicant did not attend the meetings. The applicant disregarded the contact arrangement several times during the meetings which did take place by: driving off with the child in an unknown direction, which on at least one occasion required the involvement of the police to bring the child back; seeking contact outside the schedule determined by the judgment of 8 November 2013; and behaving offensively in the presence of the child by insulting the child's mother and the bailiffs (see paragraphs 19-24 above). In this connection, the Court notes that on several occasions the domestic courts found the applicant administratively and criminally liable for aggressive behaviour and abusive language in the context of the ongoing conflict with his ex-wife (see paragraph 31 above). The above circumstances resulted in the decision of the bailiffs' service of 2 August 2014 to terminate the enforcement proceedings and return the writ of execution to the applicant.

60. The Court further observes that the bailiffs' service resumed the enforcement proceedings on 19 August 2014, following the resubmission of the writ of execution by the applicant. Since the child's mother prevented the applicant's contact sessions with the child on 6 and 7 September 2014 by being absent from home at the prescribed time, the bailiff gave her an administrative fine and obtained her explanations in connection with the non-compliance with the judgment of 8 November 2013.

61. Lastly, the Court observes with concern that, during the meeting with his son on 15 November 2014, the applicant breached the contact arrangement once again, went off with the child in an unknown direction and never returned him to the mother.

62. Having regard to the foregoing, the Court considers that, despite the extremely bitter and tense relationship between the applicant and his ex-wife, the domestic authorities made genuine efforts to make contact between the applicant and his son possible, and that the failure of the measures which they implemented to that end was largely due to the applicant's behaviour, which at no stage can be said to have been constructive or respectful of the child's best interests.

63. In so far as the applicant argued that the bailiff had only once found the child's mother administratively liable for non-compliance with the contact arrangement, the Court reiterates that it is not its role to substitute its assessment for that of the relevant national authorities regarding the measures which should have been taken. The authorities are in principle better placed to carry out such an assessment, in particular as they have

direct knowledge of the context of each case and the parties concerned (see *Gnahoré v. France*, no. 40031/98, § 63, ECHR 2000-IX).

64. In the light of the foregoing, the Court considers that the national authorities cannot be said to have failed to take all the necessary steps which could reasonably have been required to enforce the contact rights in the very difficult family conflict they had to deal with.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2017.

Stephen Phillips
Registrar

Luis López Guerra
President