

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

THIRD SECTION

DECISION

Application no. 67304/12
Iorgu RĂILEANU
against Romania

The European Court of Human Rights (Third Section), sitting on 2 June 2015 as a Chamber composed of:

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Valeriu Griţco,
Iulia Antoanella Motoc,
Branko Lubarda, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 10 October 2012,

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 Iorgu Răileanu, is a Romanian national, who was born in 1959 and lives in Galaţi. He was represented before the Court by Ms N. A. Daghie, a lawyer practising in Galaţi.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. Visiting rights

4. On 30 April 2000 the applicant married E.R. On 7 September 2000 their daughter was born.

5. On 11 November 2006 the couple separated and their daughter remained with the mother. The applicant tried to maintain contact with his daughter, but his wife systematically hindered his attempts.

6. On 6 January 2009 the applicant brought proceedings in order to obtain rights of access to his daughter and on 9 June 2009 the Galaţi District Court allowed the request.

7. On 9 December 2009 the District Court's decision was amended by the Galaţi County Court which established a detailed visiting schedule for the applicant. The county court's decision became final on 29 April 2010 when the appeals on points of law lodged by the parties were dismissed by the Galaţi Court of Appeal.

8. On 23 November 2010 the couple divorced and the mother was granted custody of the child. The divorce court made no new arrangement for the applicant's contact rights.

2. Enforcement of visiting rights

(a) Proceedings through the Child Protection Agency

9. According to the applicant, E.R. claimed that their daughter did not want to go with her father and thus systematically refused to open the door when the applicant came to collect the child.

10. On 7 July 2009 the police informed the Galaţi Child Protection Agency (*Direcţia Generală de Asistenţă Socială şi Protecţia Copilului Galaţi*) about the applicant's situation. The police became aware of the case as the applicant had lodged a criminal complaint against his wife for failure to respect the visiting schedule. The Child Protection Agency proceeded to assess the situation.

11. On 24 July 2009 the applicant also lodged a complaint with the Child Protection Agency, stating that his wife refused to give him access to the child and was manipulating the child into rejecting him, under threat of punishment. E.R. forbade the child from communicating with her father, sitting close to him, holding hands with him, kissing him or going into his car. The child was to run immediately inside to warn her mother when her father came to see her playing in the yard.

12. The Child Protection Agency started investigating the case. It visited E.R.'s home and appraised the situation. On 30 July 2009 it interviewed E.R. and from August 2009 both parents benefitted from psychological counselling. The Agency advised the mother to help her daughter maintain personal relations with the father. It also organised counselling sessions with the child. On several occasions E.R. refused to bring the child for a psychological evaluation.

13. On 25 September and 23 November 2009 the applicant reiterated his request with the Child Protection Agency and complained that the mother hindered his visiting rights. The Agency counselled the mother regarding respect for the applicant's visiting rights and advised the applicant to address his complaints with the courts.

14. At the prosecutor's request, the child underwent a psychological evaluation by the Child Protection Agency. On 8 April 2010 the psychologist rendered her report. She concluded that the child was normally developed but showed signs of having been manipulated by her mother into not expressing any positive feelings towards her father. She advised the mother to encourage the child to maintain her relations with the applicant.

15. On 11 May and 12 June 2010 the parents and child attended two sessions of psychological counselling with the Child Protection Agency where the tense relations between the adults were confirmed.

16. In a new report which was drafted on 27 August 2010, the Agency's psychologist recommended that both adults undergo parental counselling to help them overcome the conflictual situation, that the mother encourage the child to maintain personal relations with the father and that both parents offer adequate emotional support to their child.

(b) Proceedings through the offices of the bailiff

17. On 5 January 2010 the applicant sent his wife a notification through the offices of a bailiff asking her to comply with the court order establishing the visiting rights. He informed E.R. that in case she refused, he would start enforcement proceedings against her.

18. On 20 August 2010 the applicant started proceedings to have the County Court's decision of 9 December 2009 enforced. On 19 April 2011 the Galaţi District Court dismissed an objection lodged by E.R., and found that she refused to comply with the court order.

19. On 8 September 2010 the bailiff, representative of the Child Protection Agency and the applicant met the child at her home.

(c) Court proceedings

20. On an unspecified date in 2010, the applicant lodged a request with the Galaţi District Court seeking to compel E.R. to bring their daughter to counselling. He argued that she was manipulating the child against him which rendered the exercise of his contact rights difficult.

21. The District Court rendered its decision on 2 November 2010. The court observed that, indeed, E.R. had failed to take her daughter to counselling. It reiterated that it was in the child's best interest to maintain harmonious relations with both her parents. The court ordered E.R. to establish, together with the Child Protection Agency, a weekly counselling schedule for her daughter and to comply with it.

22. E.R.'s appeal against the District Court's decision was dismissed by the Galaţi County Court on 2 June 2011. The court observed that most of the applicant's attempts to see his daughter according to the schedule set by court order had failed because of the mother's opposition or because of the conflicts between the parents, and that the child exhibited signs of being manipulated by her mother against her father.

(d) New proceedings through the Child Protection Agency

23. On 12 September 2011 the applicant asked the Child Protection Agency to comply with the above court order of 2 November 2010 and set a timetable for the counselling sessions. On 3 February 2012 E.R. informed the Agency that she had enrolled the child in a counselling programme with the school psychologist and deplored the Agency's attitude of blaming on her the conflictual situation between the adults. On 18 April 2012 E.R. went to the Agency's headquarters and invited a team of experts to her home to see that the applicant was there with the child exercising his visiting rights. Two days later she informed the Agency that she accepted counselling for her child.

24. Some counselling sessions were organised between 25 April and 12 July 2012, for both the child and the adults. As the counselling failed to improve the child's attitude towards her father, it was stopped. In the final report it was noted that the adults manifested hostility, lack of tolerance and respect towards each other and lacked any communication. Counselling for the child was considered futile so long as the parents remained in a conflictual situation. The psychologist recommended family and couple therapy, parental counselling and psychological counselling for the child.

25. In a letter addressed to the Agency on 13 August 2012 the applicant reacted to the conclusions of the report and asked E.R.'s parental rights to be withdrawn. The Agency expressed the view that there was no reason to withdraw E.R.'s parental rights.

(e) New custody proceedings

26. The applicant lodged a request with the courts to obtain full custody of the child. The proceedings are currently pending.

27. The Agency organised the child's psychological evaluation with its experts. After four sessions, the psychologist rendered the report. She concluded that the child's exposure to court proceedings and repeated hearings and evaluations were detrimental to her and could cause emotional suffering. The expert also noted that the child detached herself emotionally from the adults' problems and through her attitude tried to make them sort out on their own their conflicts.

28. The Agency presented its point of view in the proceedings. It reiterated its earlier assessment that there were no grounds to seek to deprive E.R. of her parental responsibility. It further noted that the child

refused to cooperate with the psychologist which rendered the counselling futile.

(f) Other attempts

29. The applicant lodged two criminal complaints against E.R. for non-compliance with a court order. They were both dismissed by the prosecutor's office attached to the Galaţi District Court ("the prosecutor") on 8 January 2010 and 25 June 2010 respectively. After hearing the two spouses, the prosecutor observed that the applicant managed to see his daughter occasionally, that on other times the child refused to see her father, or E.R. refused to give him the child, and that starting from March 2010 he had no longer exercised his visiting rights.

30. The applicant continued his attempts to see his child, lodged new criminal complaints against the mother, sought the Child Protection Agency's assistance, and the mother was fined by the court on 10 April 2012 for failure to respect the court order establishing the visiting schedule.

31. After the fine imposed on the mother on 10 April 2012, she allowed the applicant to see the child, but the latter refused to leave with her father.

32. Several other civil court proceedings have been engaged by the applicant against his former spouse and the Child Protection Agency in order to have the custody arrangements reassessed. The child underwent more psychological evaluations in the process, and the experts considered that the tense situation between the adults led the child to refuse contact with her father, but that she would not oppose seeing him at her home.

Consequently, the counselling efforts through experts of the Child Protection Agency continued throughout 2013.

B. Relevant domestic law

33. The relevant articles from the Family Code and the Code of Civil Procedure, applicable at the time of the facts of the present case, are presented in *Nistor v. Romania*, no. 14565/05, §§ 50-51, 2 November 2010.

COMPLAINTS

34. The applicant complained under Article 8 of the Convention about the authorities' failure to help him maintain contact with his daughter. He considered that the authorities did not respond adequately and swiftly to his requests for assistance, allowing thus the separation between father and child to deepen, with irreversible damage to their relationship.

35. Under Article 13 of the Convention he complained that the national law did not provide any effective remedy for the specific situation of family

rights. He also reiterated that there was no possibility for him to complain effectively about the length of the proceedings.

THE LAW

A. On the complaint raised under Article 8 of the Convention

36. The applicant complained that the authorities had failed to effectively assist him in exercising his parental rights. 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."

1. The parties' arguments

37. The Government accepted that the alleged non-enforcement of the court orders rendered by the domestic courts in the present case could constitute interference with the applicant's right to respect for his family life. However they contended that even should such interference have occurred, it had not been caused by actions or inactions of the authorities. In their view, the authorities had acted within the scope of their responsibility and diligently met their positive obligations.

38. They further pointed out that the Child Protection Agency took immediately the applicant's case and are still following it, but they are limited in their reach in so far as the applicant's daughter herself refuses to comply with the visiting schedule. They reiterated that in cases such as the present one the child's best interest must be at the core of the parties' preoccupations.

39. Lastly, they argued that the applicant had never entirely lost contact with his daughter.

40. The applicant reiterated that, although a visiting schedule had been set in place by court order, it had never been complied with. He considered that the Child Protection Agency had not offered him effective support in the case. He pointed out that a significant lapse of time had passed since he had first contacted the Agency in 2009 and that no progress had occurred ever since. He further put forward that the habitual means of enforcement of a court decision were not adequate for this type of situations.

2. The Court's assessment

(a) General principles

41. The Court notes at the outset that parties are in accord that the case falls within the scope of Article 8 of the Convention. It reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" (see *Cârstoiu v. Romania* (dec.), no. 20660/10, 7 May 2013). That being so, it must be determined whether there has been a failure to respect the applicant's family life. "Respect" for family life implies an obligation for a State to act in a manner calculated to allow these ties to develop normally (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII).

42. As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 includes a right for parents to have measures taken with a view to their being reunited with their children, and an obligation for the national authorities to take such measures. This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures, but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A). However, the State's obligation is not one as to results, but one as to means (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; *Hokkanen*, cited above, § 55; *Nistor v. Romania*, no. 14565/05, §§ 70, 109, 2 November 2010; and *Cristescu v. Romania*, no. 13589/07, § 57, 10 January 2012).

43. The Court has repeatedly held that in matters relating to child custody the interests of the child are of paramount importance. The child's best interests must be the primary consideration and may, depending on their nature and seriousness, override those of the parents. In particular, a parent cannot be entitled under Article 8 of the Convention to have measures taken which would harm the child's health and development (see *P.F. v. Poland*, no. 2210/12, § 54, 16 September 2014 with further reference).

44. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them. What is decisive is whether the national authorities have taken all necessary steps to facilitate reunion as can reasonably be demanded in the special circumstances of each case (see *Hokkanen*, cited above, § 58).

45. In this context, 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

who do not cohabit (see, *mutatis mutandis*, *Ignaccolo-Zenide*, cited above, § 102).

46. Finally, the Court has held that although coercive measures against children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the child lives (see *Ignaccolo-Zenide*, cited above, § 106; and *Eberhard and M.*, cited above, § 130).

(b) Application of those principles to the current case

47. The Court notes that after the couple's separation, on 11 November 2006, the mother opposed the applicant's maintained contact with their daughter. The authorities became aware of this situation and appropriately assessed it and its implications, on the basis of the evidence at their disposal. In particular, the Child Protection Agency became acquainted with the case in July 2009 and has since then assisted the parties involved. It offered counselling to the applicant and his former wife, tried to mediate their conflict and offered psychological support to the child and the parents (see paragraphs 12 and the following paragraphs as well as 23 and following paragraphs, above).

48. The courts acted diligently both in granting the applicant visiting rights and in ordering enforcement of those rights (see paragraphs 7 and 21 above). While it is true that it took the courts one year and three months to issue a final decision concerning the visiting schedule, the Court notes that the applicant could have started the enforcement proceedings already in January 2010 and not wait for almost a year before doing so (see paragraph 17 and following above). Moreover, he could have lodged an urgent request for a temporary attribution of visiting rights, pending the resolution in the main proceedings (*ordonantă preşedenţială*) which he failed to do.

As for the proceedings aiming at compelling E.R. to bring the child to counselling, which have lasted over a year, the Court notes that the applicant did not seek the services of a bailiff for the enforcement proceedings (see paragraph 49 below) and waited for few months before seeking the Child Protection Agency's help in the enforcement process (see paragraph 23 above).

49. The Court considers that the applicant could have made effective use of the services of a bailiff for enforcement proceedings (see *Mereuţă v. Romania* (dec.), § 24, 10 April 2012; and *Cârstoiu*, cited above, § 44). It would have been in his interest to try any possible legal means to bring about a swift implementation of his contact rights. The Court notes that in fact the applicant did start enforcement proceedings through the offices of a bailiff, but only four months after the court decision establishing the visiting schedule became final (see paragraph 18 above). Moreover, it is not clear from the applicant's submissions whether he continued these proceedings. The Court is however not convinced by the applicant's assertions that the

habitual means of enforcement, including, presumably, the bailiff's service, were not effective in the case. It therefore considers that the applicant should have used this means at his disposal concerning both the implementation of the visiting scheduled established set by the court on 9 December 2009 and the enforcement of the court order issued on 2 November 2010 that E.R. take their daughter to counselling.

50. The prosecutor thoroughly investigated the complaints lodged by the applicant including by ordering the psychological evaluations of the child (see paragraphs 14 and 29 above). The fact that the outcome of the criminal investigations was not always favourable to the applicant does not take away the effectiveness of the prosecutor's actions.

51. The Court notes that all authorities consistently noted the mother's opposition to the counselling process and advised or even coerced her into attending psychological session for herself or the child. She was fined for her refusal to comply with the court order (see paragraph 30 in fine), action which proved to be effective in the case (see paragraph 31 above).

52. The Court is therefore satisfied that the system at the applicant's disposal could have offered sufficient means to obtain enforcement of his visiting rights and that the authorities made a prompt and efficient response, commensurate with their jurisdiction, in the applicant's case. While their efforts remained fruitless, the Court reiterates that the obligation which lies on the authorities to assist the parents is not absolute (see paragraph 42 above).

53. It also takes note that the applicant has not lost all contact with his child (see paragraph 31 above) and that the child does not refuse in absolute terms to see him (see paragraph 32 above).

54. For these reasons, the Court concludes that the national authorities have taken all necessary steps to facilitate the exercise of contact rights that can reasonably be expected in the specific circumstances of the case.

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. On the complaint raised under Article 13 of the Convention

55. The applicant pointed to the alleged absence of an effective system to complain about his family situation and the length of the various proceedings engaged. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

56. The Government considered that the requirements of Article 13 had been met in the case. They reiterated that the recourse to the Child

Protection Agency represented an effective remedy according to the requirements of Article 13 of the Convention and that the applicant used it and received adequate support from that institution. They further reiterated that when accompanied by the bailiff, the applicant could see his daughter thus benefiting from effective support from the state organs and, accordingly, of an effective remedy. Lastly, they observed that the applicant had availed himself of the possibility to lodge appeals with the domestic courts and prosecutor which decided on the applicant's requests. Moreover, the Government pointed out that the case is currently still pending with the domestic courts which, in their view, renders the applicant's complaint premature in so far as it concerns his daughter's refusal to participate in counselling and the corresponding lack of support from the authorities.

57. The applicant contested the effectiveness of the remedies at his disposal and reiterated that the authorities had not offered sufficient and timely support. He pointed out that despite his consistent efforts, the lack of effective reaction on the part of the authorities had allowed for the total alienation of his daughter.

58. The Court has held on many occasions that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 131, ECHR 2014).

59. However, the Court has found above that the applicant's complaint under Article 8 was manifestly ill-founded (see paragraph 54 above). Consequently, he did not have an "arguable claim" for the purposes of Article 13 of the Convention.

It follows that the complaint raised under Article 13 of the Convention is also 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.

Done in English and notified in writing on 25 June 2015.

Stephen Phillips
Registrar

Josep Casadevall
President