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

THIRD SECTION

DECISION

Application no. 55368/18
Karl-Reiner RIEDLINGER
against Germany

The European Court of Human Rights (Third Section), sitting on 21 September 2021 as a Committee composed of:

Georgios A. Serghides, *President,*
Anja Seibert-Fohr,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 November 2018,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Karl-Reiner Riedlinger, is a German national, who was born in 1957 and lives in Hamburg.

A. The circumstances of the case

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

3. The applicant was assisting a Roma family with seven children (born in 1998, 1999, 2000, 2002, 2003, 2005, 2006) in legal and administrative matters, in particular dealing with the youth office or law enforcement authorities.

4. After the mother of the children had died in 2014, her partner (hereinafter: “the father”), who was the father of the six eldest children, had sole custody for all seven children.

5. In January 2016 the Hamburg Public Prosecutor’s Office informed the Hamburg-Bergedorf District Court that there were indications that the children’s well-being was at risk, even though criminal proceedings against the applicant concerning allegations of sexual abuse had been discontinued

for lack of evidence. In particular, a search of the applicant's laptop and mobile phones had not confirmed the suspicion of the sexual abuse of one of the children that a hearsay witness had described.

6. On 12 February 2016 the District Court prohibited any form of contact between the applicant and the children by an interim order. Referring to section 1632 §§ 2 and 3 of the Civil Code, it found that the father of the children had the right to determine the contact of third parties with the children. In a situation like the present case, the court could order a contact ban upon the application of the father. According to the investigations to date, the applicant was suspected of having sexually abused the children.

7. On 15 February 2016 the father applied in person at the District Court for a contact ban against the applicant. He submitted that the applicant had been a friend of the family for a long time, but he wished that the children had no longer contact with the applicant. He had been informed by the youth office that the applicant was suspected of having sexually abused the children. He further stated that the applicant was regularly meeting the children without his knowledge in hotels and the children were also receiving money from the applicant. The youth office had asked him *("mir auferlegt")* to apply for a contact ban.

8. On 21 February 2016, after a meeting with the applicant, the brother of the father stated in a sworn written testimony that the father had always been in favour of the contact of the applicant with the children. The father had been forced – by threats to take his children into state care – to sign the application for a contact ban.

9. On 17 March 2016, in the report for the District Court, the guardian *ad litem* (*Verfahrensbeistand*) submitted that the children had denied having been engaged in sexual activities with the applicant. Nevertheless, the applicant had interfered repeatedly with measures by the authorities to help the children, which had been detrimental for the children's development. The father also wished the contact ban in order to prevent the applicant from interfering with the support measures.

10. On 28 March 2016 the eldest child stated in writing that he wished to have contact with the applicant, that the youth office had forced his father to apply for the contact ban and that the applicant had been helping him and his siblings in the past. It is unclear whether this letter was submitted to the District Court.

11. On 6 April 2016 the applicant commented on the report of the guardian *ad litem*.

12. Subsequently, the applicant lodged a motion for bias against the district court judge, which was ultimately rejected.

13. On 12 October 2016 the District Court held a hearing in the presence of the applicant.

14. On 28 October 2016 the district court judge heard the children. The two eldest children confirmed that the applicant had helped them in the past when they had had problems with the authorities. They denied having been engaged in sexual activities with the applicant. Further, they did not care whether they would have contact with the applicant in the future. The younger children stated that they had had no or little contact with the applicant in the past. They were therefore not interested in having contact or wished no contact with the applicant in the future. The judge also informed the eldest child that the contact ban was no longer valid in respect of him because he had attained the age of majority.

15. On 3 November 2016 the applicant commented on the minutes of the hearing of 12 October. He also announced that he would consider the interim order to be obsolete if he was not provided with reliable reasons by 11 February 2017.

16. On 22 February 2017 the applicant notified the District Court that he no longer accepted the contact ban because the court had not replied to his submissions. He repeated, *inter alia*, his allegations that the authorities continued to persecute him and members of the Roma community arbitrarily.

17. On 1 March 2017 the District Court decided to maintain the interim contact ban. It found that it transpired from the entire court file that any contact between the children and the applicant jeopardised the well-being of the children. While the father and the children were willing to accept the support measures of the youth office (*Jugendhilfemaßnahmen*), their implementation was significantly hindered or likely to fail whenever the applicant got involved in the matters of the family. The applicant's written submissions revealed that he was neither willing nor able to see the necessity and benefit of those measures. The court found that the children had not expressed a wish to see the applicant. In the situation, it was also necessary to prohibit any contact with the younger children, because the applicant expected that he would have contact with them, too.

18. On 31 May 2017 the applicant commented on the decision to maintain the interim contact ban.

19. On 20 June 2017, in the main proceedings, the District Court prohibited any contact between the applicant and the four youngest children until 31 December 2019 and in respect of the third eldest child until the latter's 18th birthday in October 2018. A contact ban in respect of the second eldest child, born in 1999, was not necessary because the age of majority would be attained shortly. In case of non-observance of the contact ban a penalty of up to EUR 25,000, alternatively up to six months' imprisonment could be imposed on the applicant. The District Court refrained from holding a fresh oral hearing because it did not expect to obtain new information different from the one of the hearing of 12 October 2016.

20. In its reasoning the District Court referred to section 1632 §§ 2 and 3 of the Civil Code - in the alternative also to section 1666 of the Civil Code - and reiterated its reasoning of 1 March 2017. It confirmed that the father had the right to determine the contact of third parties with the children and to obtain a corresponding court order. It was further immaterial whether the applicant had had contact with the children in a manner constituting criminal conduct. It was decisive that the contact between the applicant and children would cause the failure of the support measures because the applicant considered the measures to be unnecessary state interference and persecution of members of the Roma community. However, it was necessary to limit the contact ban in time. Such a temporary contact ban did not interfere with the applicant's rights in a disproportionate way because of the urgent need of the family to have support measures and the applicant's unwillingness to accept such measures.

21. On 20 July 2017 the applicant appealed against the contact ban in the main proceedings arguing essentially that the reasoning was not sufficient, in particular that the well-being of the children was not jeopardised.

22. On 24 September 2017 the applicant submitted his comments on the observations of the other parties.

23. On 16 January 2018 the applicant raised an objection to delay pursuant to section 198 § 3 of the Courts Constitution Act (*Verzögerungsrüge*) complaining about unduly delayed appeal proceedings.

24. On 2 February 2018 the Hamburg Court of Appeal informed the applicant of its intention to reject the appeal without a hearing. Following a preliminary assessment, it found that the applicant's appeal was ill-founded. The father, who had custody of the children, was entitled to determine the contact of third parties with the children pursuant to section 1632 § 2 of the Civil Code. No additional reasons were thus required to issue a contact ban against the applicant. It was necessary to have valid reasons only in relation to the children, taking into account their level of maturity and their general interest. The applicant had therefore no standing to challenge those reasons or to argue that the contact ban was against the wishes of the children. Moreover, in view of the applicant's former place of residence in Switzerland and his unknown whereabouts at the time of the decision, it could not be assumed that the contact ban imposed a particular burden on the applicant.

25. On 27 February 2018 the applicant submitted his comments on the Court of Appeal's intention to reject the appeal.

26. On 6 March 2018 the Court of Appeal rejected the applicant's appeal relying on its assessment of 2 February 2018.

27. On 19 April 2018 the applicant lodged a constitutional complaint arguing that the court decisions on the contact ban violated his rights, in particular his right to have impartial and fair proceedings and to obtain a decision which was not arbitrary. He conceded that the Court of Appeal had

given him the opportunity to submit his arguments and had also examined his submissions, but it had rendered a wrong and manifestly unreasonable decision.

28. On 16 May 2018 the Federal Constitutional Court declined to consider the constitutional complaint without giving any reasons (no. 1 BvR 857/18).

B. Relevant domestic law and practice

1. *Civil Code*

29. Section 1632 § 2 of the Civil Code stipulates that custody (*Personensorge*) includes the right to determine who has contact with the child in question – also in respect of third parties. Under Section 1632 § 3 of the Civil Code, upon the application of a parent, the district court decides on disputes relating to contact rights.

30. Under section 1666 of the Civil Code, a district court may order the necessary protective measures if the child's physical, psychological or mental well-being is threatened by negligence and if the parents are unwilling or unable to take those measures themselves. The court measures include, *inter alia,* a prohibition to establish contact with the child.

2. *Courts Constitution Act*

31. The relevant domestic law concerning the compensatory remedy for protracted court proceedings under section 198 of the Courts Constitution Act is summarised in the judgment of *Kuppinger v. Germany* (no. 62198/11, § 86, 15 January 2015) and in the decision of *Garcia Cancio v. Germany* (no. 19488/09, §§ 26-35, 29 May 2012).

3. *Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction*

32. On 15 October 2016 the Act on Protracted Court Proceedings in Family Matters entered into force introducing a preventive remedy to accelerate family law proceedings, like contact rights proceedings, under sections 155 b and c of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*). This remedy provides an applicant with the right to raise a plea for accelerating the proceedings (*Beschleunigungsrüge*) and, in the event of non-compliance by the adjudicating court, the right to lodge a corresponding complaint with the appellate court.

33. No transitional provisions were adopted for proceedings already pending at the time of the entry into force of the Act on Protracted Court Proceedings in Family Matters. Domestic practice suggests that sometimes

the provisions of the preventive remedy were applied by analogy to pending proceedings (Bremen Court of Appeal, decision of 12 October 2017, file no. 4 UF 107/17).

COMPLAINTS

34. The applicant complained under Article 6 of the Convention that he had not been given a hearing within a reasonable time by an impartial tribunal. Moreover, his right to be heard had been violated.

THE LAW

A. Applicability of Article 6 § 1 of the Convention

35. The Court has already found that, regardless of whether the domestic legal order establishes a right of contact, Article 6 § 1 under its "civil" limb is applicable to a contact ban in the context of guardianship proceedings because there was a "dispute" over an "obligation" (see, *mutatis mutandis*, *Evers v. Germany,* no. 17895/14, §§ 13 and 68, 28 May 2020, concerning a contact ban for the protection of an adult person whose intellectual development corresponded to that of a four-year-old child).

36. Likewise, in the present case, the contact ban was issued in the framework of civil law proceedings and based on provisions of the Civil Code governing contact rights. Thus, the contact ban was civil in nature. Article 6 § 1 is therefore applicable in the case at hand.

B. The length of proceedings

37. The applicant argued that the proceedings before the Hamburg-Bergedorf District Court and the Hamburg Court of Appeal were unreasonable lengthy, which had particularly been onerous for him because he had been forced to live with the unfounded accusation of sexual abuse during that period of time.

38. The Court observes that the applicant did not allege any unreasonable delays in his constitutional complaint. He had only raised an objection to delay pursuant to section 198 § 3 of the Courts Constitution Act during the appeal proceedings, which would have been a prerequisite for the compensatory remedy for protracted court proceedings (see *Garcia Cancio*, cited above, §§ 26-39, with a comprehensive summary of the Act on Protracted Court Proceedings and Criminal Investigations).

39. However, the question of exhaustion of domestic remedies pursuant to Article 35 of the Convention may be left open, for the length complaint is in any event inadmissible for the following reasons.

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. Turning to the present case, the Court notes that the proceedings were of a certain complexity because they included an oral hearing, a report of the guardian *ad litem* and the hearing in person of seven children by the district court judge. As to the conduct of the applicant, the Court observes that the applicant regularly submitted comments during the proceedings which contributed to the length of the proceedings to some extent (see *Johanna Fröhlich v. Germany*, no. 16741/16, § 41, 24 January 2019). Between April and October 2016 there was a period of inactivity in the main proceedings. However, during this time the District Court had to decide on the applicant's motion of bias against the adjudicating judge, which was attributable to the applicant (see *Döring v. Germany*, no. 40014/05, § 68, 8 July 2010).

42. In view of the foregoing, the Court emphasises that the proceedings lasted from 12 February 2016 to 6 March 2018 at two levels of jurisdiction. There are no indications that the authorities' conduct caused any delays in the proceedings. Taking into account all the relevant factual and legal elements of the present case, in particular that contact rights of a third party and not those between parents and children were at issue, the Court considers that the duration of the proceedings was not excessive and that the reasonable time requirement has not been breached (see, *mutatis mutandis*, *Döring*, cited above, § 66, and *Schumacher v. Germany* (dec.), no. 14029/05, 26 February 2008; contrast, in the context of Article 8, *Prodělalová v. the Czech Republic*, no. 40094/08, §§ 62-64, 20 December 2011, and *Moog v. Germany*, nos. 23280/08 and 2334/10, § 88, 6 October 2016).

43. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. The conduct of the proceedings

44. The applicant argued that the Hamburg-Bergedorf District Court and the Hamburg Court of Appeal had not been impartial and had violated his right to be heard because they had ignored his arguments. The District Court had in particular obtained the application of the father retrospectively and the Court of Appeal had not taken into consideration that the father had not wished a contact ban and had only signed the corresponding application under threats of the youth office.

45. The Court notes that the applicant did not elaborate on his impartiality complaint, but rather argued that the domestic courts lacked impartiality because they had not agreed with his conclusions. There are no indications that the domestic courts lacked impartiality. The applicant thus failed to substantiate this part of his complaint.

46. With regard to the fairness of the proceedings, the domestic courts are under a duty to examine properly the submissions, arguments and evidence adduced by the parties (see, for example, *Dulaurans v. France*, no. 34553/97, § 33, 21 March 2000). However, it is not the Court's task to substitute its own assessment of the facts and the evidence for that of the national courts. It rather ascertains whether the proceedings as a whole were fair (see *Evers*, cited above, § 80 with further references).

47. The Court notes that in his constitutional complaint the applicant conceded that the Court of Appeal had given him the opportunity to submit his arguments and examined his submissions (see paragraph 27 above).

48. Turning to the allegation that the father had not wished a contact ban, the Court observes that the father maintained his respective application throughout the domestic proceedings. He did not only lodge his application with the District Court in person but also confirmed his wish for such a ban to the guardian *ad litem*. The father was free to withdraw his application at any time. However, as long as the father maintained that application, the District Court and subsequently the Court of Appeal were required to decide on the contact ban.

49. In respect of the applicant's claim, that the District Court obtained the application of the father only after it had issued the interim order, the Court notes that the District Court based the contact ban in its decision of 20 June 2017 not only on section 1632 §§ 2 and 3 but also on section 1666 of the Civil Code which empowered the court to order necessary protective measures also of its own motion.

50. Generally, it is not the Court's function to deal with errors of fact or law unless the domestic courts' decisions appear arbitrary or manifestly unreasonable (see, for example, *Carmel Saliba v. Malta*, no. 24221/13, § 62, 29 November 2016). In the present case, the District Court examined the applicant's attitude towards the support measures of the youth office and explained why any contact between the children and the applicant jeopardised the well-being of the children. In its reasoning, it was important that the children had not expressed a wish to see the applicant. Moreover, the District Court was aware of the interference with the applicant's rights and limited the contact ban in time. Such a temporary contact ban was considered to be proportionate because of the urgent need of the family to have support measures.

51. Taking the proceedings as a whole, the Court observes that the applicant was given ample opportunity to submit his arguments and to comment on the submissions of the other parties before the District Court

and the Court of Appeal. He was also able to argue his case at the hearing on 12 October 2016, at which he was present. In this context, the Court reiterates that there is no violation of the right to a fair hearing even if the domestic court did not invite the parties to comment on all points of law which it eventually considers to be relevant (see *Weber v. Germany* (dec.), no. 30203/03, 2 October 2007).

52. Further, Article 6 § 1 of the Convention does not guarantee a litigant a favourable outcome (see *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 201, Reports of Judgments and Decisions 1997 VI). The fact that the domestic courts did not follow the applicant's arguments neither rendered the domestic courts' reasoning arbitrary nor resulted in a lack of impartiality of the District Court or the Court of Appeal.

53. In conclusion, the Court finds no indications that the contact rights proceedings were unfair or otherwise contrary to Article 6 § 1 of the Convention.

54. It follows that this complaint is also manifestly ill-founded and must be rejected pursuant to 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 14 October 2021.

{signature_p_2}

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President