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

THIRD SECTION

DECISION

Application no. 13993/20
Konstantinos TSIPIRAS
against Greece

The European Court of Human Rights (Third Section), sitting on 14 March 2023 as a Committee composed of:

Yonko Grozev*, President*,
Peeter Roosma,
Ioannis Ktistakis*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 13993/20) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 February 2020 by a Greek national, Mr Konstantinos Tsipiras ("the applicant"), who was born in 1956 and lives in Athens and who was represented by Mr V. Chirdaris, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government ("the Government"), represented by their Agent's delegate, Ms O. Patsopoulou, Senior Adviser at the State Legal Council;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the non-enforcement of a court decision setting a schedule of defined contact between the applicant and his twin children born in March 2010.

2. Following the applicant's separation from the mother of his children, E.I., in 2006, the applicant and E.I. lodged opposing applications for custody of and contact with the children in the domestic courts. In interim order no. 2169/2017 given in March 2017, the Athens One-Member Court of First

Instance assigned custody temporarily to E.I. and set out a schedule of defined contact between the applicant and his twin children. The applicant would see his children on Monday, Wednesday and Friday afternoons for three hours (5 p.m. to 8 p.m.), two weekends per month, one week during the Christmas and Easter holidays and fifteen days during the summer holidays.

3. Two months after that order, in May 2017, the applicant lodged a new application, again requesting custody of the children and the variation of the contact schedule. The application was rejected by decision no. 768/2017 of the Athens One-Member Court of First Instance in November 2017. The domestic court held that it had not been proved that E.I. had obstructed the applicant's contact with his children; on the contrary, it had been established that both parents had a good relationship with their children. As regards the applicant's request to see his children from 1.15 p.m. to 4.15 p.m. (instead of 5 p.m. to 8 p.m.) so that his contact hours would not coincide with the children's after-school activities, the court held that it would not be possible, as the children would need to get back home from school and rest before going out again. It concluded that there had not been the significant change of circumstances that would be required for a variation of the interim order that set the contact schedule.

4. In February 2018 a further application by the applicant making the same requests was heard together with an opposing application by E.I. Both applications were dismissed by decision no. 5810/2018 given in August 2018 by the Athens One-Member Court of First Instance, which considered that there had not been the significant change of circumstances that could lead to a variation to the contact schedule and rejected the applicant's request.

5. In January 2018 the applicant lodged a criminal complaint against E.I., claiming that she had arranged the children's after-school activities to coincide with the days and times of his contact rights, thus impeding communication between him and the children, in breach of order no. 2169/2017 of the One-Member Court of First Instance. By decision no. 5465/2019, the mother was acquitted because the offence had not been proved («*αθώωση λόγω αμφιβολιών*»). In particular, the domestic court held that the children's after-school activities had been agreed on by the parents before the publication of the order defining the contact schedule with the applicant. In addition, the applicant had complained of a lack of contact on four different dates between November 2017 and January 2018, three Mondays and one Wednesday; during that period there were many other dates when he had had the right to see his children pursuant to order no. 2169/2017, including during the Christmas holidays, about which no complaint had been raised. The defendant was therefore acquitted. The applicant asked the public prosecutor to lodge an appeal; that request was rejected because the prosecutor considered the reasoning of the court to have been appropriate.

6. A second complaint brought by the applicant on the same grounds in relation to several dates between March to July 2017 was heard in February

2020. The domestic court acquitted E.I. in decision no. 1236/20. It found that she had not committed the offence of not complying with a court order, as on the dates mentioned by the father in his complaint the children had been attending after-school activities, about which the applicant had been informed and to which he could accompany them. The applicant was, in any event, living on the floor above his children and had admitted that he met them regularly. It had therefore not been proved that E.I. had deliberately breached the order granting the applicant contact rights.

7. By judgment no. 4496/2021 of 19 April 2021 of the Athens Court of Appeal, the custody of the children was granted definitively to the mother. The applicant requested, among other things, that he meet with his children either from 1.30 p.m. to 4.30 p.m., when they had no after-school activities, or from 5 p.m. to 8 p.m. but on the condition they would not attend any after-school activities on contact days. The domestic court ordered the second timetable suggested, disregarding the children's activities, which it considered had not been scheduled in order to alienate the applicant from the children. It also considered that the applicant could accompany the children to the activities so as to reinforce their emotional bond and also to encourage their personal development. The applicant appealed against that decision and his appeal appears to still be pending.

8. The applicant complained before the Court that the authorities had not effectively assisted him in his efforts to see his children, despite his criminal complaints against E.I., in violation of their positive obligations under Article 8 of the Convention.

THE COURT'S ASSESSMENT

9. The Court takes note of the Government's preliminary objection that the application is premature. It considers, however, that it is not necessary to examine it, as the application is in any event inadmissible for the following reasons.

10. The relevant principles regarding the State's positive obligation under Article 8 of the Convention in cases concerning the enforcement of contact rights are summarised in the case of *K.B. and Others v. Croatia* (no. 36216/13, §§ 142-44, 14 March 2017). The Court's task consists of examining whether the domestic authorities took all necessary steps that could reasonably be demanded in the specific circumstances to facilitate contact between the applicant and his child, and in particular keeping in mind the best interests of the child as a primary consideration.

11. The Court will first define the scope of its examination of the present application. It notes that the applicant's complaint mainly refers to the criminal proceedings for the alleged breach of order no. 2169/2017 of the One-Member Court of First Instance and E.I.'s acquittal in those proceedings, which he perceived as a refusal of the domestic authorities to enable him to

enforce the above-mentioned order. No other action through which the applicant has tried to enforce that order has come to the Court's attention, though he has raised similar arguments in all the subsequent proceedings concerning custody and contact. The Court will refrain from commenting on the applicant's grievances stemming from judgment no. 4496/2021 granting custody to E.I. as those proceedings are still pending before the national courts and are not the subject matter of the present application (see paragraph 7 above). Lastly, the Court notes that even though the applicant referred in his application form to other criminal complaints he had lodged against E.I., he has not adduced any additional information with respect to those proceedings, which appear to be still pending in the national courts. The Court will therefore limit its examination to the criminal complaints that were determined in decisions nos. 5465/19 and 1236/20 acquitting the mother of breaching the defined contact orders (see paragraphs 5 and 6 above).

12. The Court observes in this connection that the applicant lodged two criminal complaints for breach of the defined contact schedule set by the above-mentioned order no. 2169/2017. Both courts examined the applicant's allegations of obstruction of his contact rights (see paragraphs 5 and 6 above). In particular, the domestic courts made a thorough assessment of the situation between the applicant and his children and concluded that E.I. had not tried to impede their communication and that no estrangement had taken place between them. On the contrary, the Court notes that in his testimony before the criminal courts the applicant confirmed that he and the children did various activities together and that they sometimes saw each other in the mornings before school, that is to say, outside the contact hours set by order no. 2169/2017. As the domestic courts noted, the fact that the children were engaged in various activities after school could not be said to be aimed at alienating the applicant from his children, nor does it appear that those activities took place to such an extent that the relationship between the applicant and his children was effectively curtailed. The refusal of the public prosecutor to lodge an appeal against decision no. 5465/2019 was within the prosecutor's discretion (compare with *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 42, 20 March 2009).

13. The same considerations apply to the civil proceedings that followed order no. 2169/2017, concerning the two requests by the applicant for review of the contact schedule (see paragraphs 3 and 4 above). Both courts examined the applicant's allegations and rejected them by a reasoned decision in adversarial proceedings in which the applicant actively participated. The fact that the domestic authorities, after undertaking their examination, reached conclusions which were unfavourable to the applicant is not indicative of a deficiency in the system, given that their examination appears to have been thorough and comprehensive.

14. The Court reiterates that the State's obligation to take positive measures to facilitate contact is not an obligation as to results to be achieved

but as to means to be employed (see *Răileanu v. Romania* (dec.), no. 67304/12, § 42, 2 June 2015, with further references) and concludes that the national authorities have taken all the steps necessary to facilitate the exercise of contact rights that could reasonably be expected of them, given the specific circumstances of the case.

15. Consequently, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto.

16. Accordingly, the application is 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 6 April 2023.

Olga Chernishova Deputy Registrar	Yonko Grozev President