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

FIRST SECTION

DECISION

Application no. 4699/16
Gergely VIRTYÓ
against Hungary

The European Court of Human Rights (First Section), sitting on 20 September 2022 as a Committee composed of:

Raffaele Sabato*, President,*
Péter Paczolay*,*
Davor Derenčinović*, judges,*
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 4699/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 January 2016 by a Hungarian national, Mr Gergely Virtyó, who was born in 1978 and lives in Balassagyarmat ("the applicant") who was represented by Mr D.A. Karsai, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 8 of the Convention that the Hungarian authorities had failed to enforce decisions in relation to his contact rights with his children.

2. In 2007 the applicant married A.S. The couple had three children: A., born in 2007; B., born in 2009; and C., born in 2010. On 25 May 2012 A.S. requested that the marriage be dissolved, that the children be placed with her and that the applicant pay child allowance. The applicant requested contact rights with A. and B. at least every other weekend between Friday at 10 a.m.

and Sunday at 6 p.m., and with C. at least every second Sunday until 4 p.m. at the mother's residence. Since the meetings did not take place, the applicant requested that his contact rights be amended.

3. On 12 July 2012 the Balassagyarmat District Court issued an interim decision granting the applicant contact with C. every Saturday between 10 a.m. and 12 noon at the place of residence of A.S., and with A. and B. every Saturday between 10 a.m. and 6 p.m. The applicant was also to pay child allowance, amounting to 13,000 Hungarian forints (HUF) per child monthly.

4. On 23 August 2012 the Balassagyarmat Guardianship Authority ordered the execution of the court's decision. It subsequently imposed a series of fines on A.S. for failing to comply with the court decision.

5. At a court hearing on 25 October 2012, A.S. sought to change the applicant's contact arrangement with his children to visits supervised by the child protection services. In his counterclaim the applicant requested that the children be placed in his custody, since the mother continued to deny him access to them. The court upheld the previous arrangement except that the applicant's mother would henceforth pick up the children from A.S.'s place of residence.

6. On 8 May 2013 the Guardianship Authority ordered the applicant to comply with the court ruling in respect of C., since he had failed to show up at the meetings with the youngest child. Part of the applicant's request for the enforcement of the court decision was dismissed by the Guardianship Authority for lack of conclusive evidence as regards the parties' conduct.

7. On 24 May 2013 the Guardianship Authority placed the children under child protection (*védelembe vétel*), since it found that the lack of cooperation between the parents was endangering the children's well-being. It observed that the mother was willing to cooperate with the child protection services but objected to unsupervised contact between the applicant and his children. The Guardianship Authority warned the parents once again to comply with the visiting arrangements.

8. By an interim measure of 16 July 2013, the Balassagyarmat District Court restricted the applicant's contact rights to one hour per week, supervised by the child protection services, which would gradually be extended to allow the applicant to take the children with him for a weekend in August and in September. The court observed that A.S. had not ensured that the meetings could take place between the applicant and his children, which had led to the children becoming more distant from their father. Thus, it concluded that regular contact could only be re-established gradually.

9. The applicant was unable to visit his children from July 2013 onwards due to the mother's lack of cooperation.

10. On 1 August 2013 the Guardianship Authority lodged a criminal complaint against both parents for placing children in danger. By this point A.S. had been fined seventeen times for having failed to comply with the

visiting arrangements. The applicant had been fined six times for not having appeared at the meeting with his children. Some of the applicant's requests for enforcement were dismissed for lack of conclusive evidence as to why the meetings between the applicant and his children had not taken place. A number of minor-offence proceedings were also conducted against A.S. for libel and for damage to private property.

11. On 19 September 2013 the Balassagyarmat District Court drew up a new contact schedule allowing the applicant to take the children with him once a week between 1 p.m. and 6 p.m., gradually extending the duration of the contact between the father and the children to longer meetings. It found that contrary to the mother's statements, the applicant had not placed his children in danger, and there was no reason to dismiss his request to be allowed to take the children with him.

12. On 8 May 2014 the Balassagyarmat District Court dissolved the applicant's marriage and placed the children in his custody, granting A.S. visiting rights. The judgment was upheld by the Balassagyarmat Court of Appeal on 12 March 2015.

13. On 12 December 2014 A.S. was found guilty of obstructing the applicant's contact with his children and was ordered to perform 120 hours of community service.

14. The applicant initiated the enforcement of the courts' ruling in relation to custody rights, since A.S. had not handed over the children. On 23 June 2015 the Balassagyarmat District Court ordered the assistance of the police to enforce the court orders. The children were placed in the applicant's custody on 6 July 2015.

15. The applicant complained under Article 8 of the Convention that the non-enforcement of the decisions on his contact rights had violated his right to respect for his family life.

THE COURT'S ASSESSMENT

16. The general principles concerning the domestic courts' orders and their implementation in respect of contacts between parent and child have been summarised in, *inter alia*, *Ónodi v. Hungary*, no. 38647/09, §§ 29-32, 30 May 2017.

17. The Court considers that the decisive question in the present case is whether or not the Hungarian authorities took all the appropriate steps that could reasonably have been expected to facilitate the enforcement of the contact arrangements set out in the court decisions (see *Fuşcă v. Romania,* no. 34630/07, § 36, 13 July 2010).

18. The Court first observes that the applicant was granted contact and visiting rights in respect of all of his children by the interim decision of the Balassagyarmat District Court on 12 July 2012, shortly after the divorce proceedings had had been initiated by A.S. The Court also notes that the

administrative enforcement of the contact rights was dealt with by the Balassagyarmat Guardianship Authority without undue delay (see paragraph 4 above).

19. The same hold true as regards the ensuing period of about two years, when the applicant turned to the Guardianship Authority for the enforcement of his contact rights. As it appears from the case file, the authority allowed for the applicant's requests promptly, the only exceptions being when the applicant failed to provide evidence to substantiate his request. The Court notes that the Guardianship Authority imposed a fine on A.S. for not complying with the District Court's decision at least on seventeen occasions.

20. As regards the changes to the applicant's contact rights, the District Court, considering that under the existing conditions the applicant's visits at A.S.'s place would result in further conflict, first decided that the applicant's children should be picked up by his mother. Subsequently, taking into account the need to rebuild the relationship between the applicant and his children, it restricted the time allocated to the applicant's visits. Recognising that these arrangements did not resolve the hostile attitude of the parents, the District Court then ordered that the visits would take place in a neutral environment, with the help of professionals and supervised by the child protection services, extending progressively the time the applicant could spend with his children. For the Court, this gradual approach of the District Court appears reasonable and corresponded to the authorities' duty to consider the best interest of the child, while not losing sight of the applicant's rights and interest as a parent, as required by the Court's case-law (see, *mutatis mutandis*, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 139, ECHR 2010).

21. Furthermore, when recognising that the financial sanctions imposed on A.S. were inadequate to improve the situation, the Guardianship Authority explored further available avenues to induce her to comply with the District Court's interim decisions. It initiated child protection proceedings and, as a last resort, lodged a criminal complaint against A.S. Thus, it cannot be said that the domestic authorities failed to show the diligence required in a matter concerning a parent's relationship with his children.

22. Finally, the Court finds it relevant that the judicial decision dissolving the applicant's marriage placed the children in his custody (see paragraph 12 above). The Court considers that this decision was indeed based on the best interest of the children and on the reasonable assessment of the parties' preceding conduct in respect of their children and towards each other.

23. In the light of the foregoing, the Court is satisfied that the national authorities took all the necessary steps to facilitate contact between the applicant and his children that could reasonably have been expected in the light of the delicate family situation present in the instant case. In the absence of any indication of a violation of the applicant's rights under Article 8 of the Convention, the application is manifestly ill-founded within the meaning of

Article 35 §§ 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2022.

Liv Tigerstedt Deputy Registrar	Raffaele Sabato President