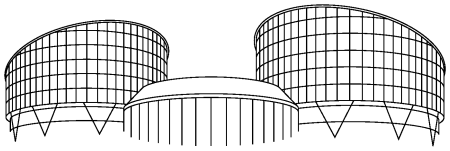

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CRISTIAN CĂTĂLIN UNGUREANU v. ROMANIA

(Application no. 6221/14)

JUDGMENT

STRASBOURG

4 September 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cristian Cătălin Ungureanu v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 3 July 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6221/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Cristian Cătălin Ungureanu ("the applicant") on 25 November 2013.

2. The applicant was represented by Ms E. Ungureanu, a lawyer practising in Ploieşti. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that it had been impossible for him to maintain personal relations with his son during the divorce proceedings, and that the length of those proceedings had been excessive.

4. On 16 September 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Ploiești.

6. At the relevant time, he was married to I.M.U. and they had a son together, born in 2006. Following a series of conflicts between the parents concerning their son's education, on 13 September 2012 I.M.U. filed for divorce and custody of the child. On 19 October 2012 she left the family

home and took the child with her. They moved in with her parents and grandmother.

7. On 2 November 2012 the applicant lodged an application for an interim injunction (*ordonanţă preşedenţială*), seeking to be granted sole or shared custody of the child during the divorce proceedings, or alternatively the right to visit the child during those proceedings according to a detailed schedule that he submitted to the court.

8. The Ploiești District Court gave its ruling on 8 January 2013. It ruled that it would not be in the child's interests to change his residence temporarily during the divorce proceedings. It also observed that the applicant had not been prevented from visiting his child in the mother's new home, as he himself had confirmed in his statements before the court. The court noted that in any case the law did not provide for the possibility to have visiting rights established during divorce proceedings. It relied on Article 613^2 of the Code of Civil Procedure (see paragraph 18 below).

9. Following an appeal by the applicant, that ruling was upheld by the Prahova County Court, which rejected all the arguments raised by the applicant concerning his right to visit his child. The court reiterated that the law did not allow for the granting of that right during divorce and custody proceedings. The court also ordered the applicant to pay 1,000 Romanian lei (RON – approximately 230 euros (EUR)) to I.M.U., representing the costs that I.M.U. had incurred. The court delivered the final decision in the case on 27 May 2013.

10. In June 2013 the applicant, who was in the habit of visiting his son at school in the mornings, was removed from the school premises by the school guard, who informed him that from then on, he would need the school principal's permission if he wanted to see his son at the school.

11. According to the applicant, after the final decision of 27 May 2013 (see paragraph 9 above), I.M.U. and her family denied him any further contact with his son. It appears from the parties' submissions that the applicant was able to see his son on 27 December 2012, between 31 December 2012 and 2 January 2013, on 20 January, between 2 and 3 March, on 14 and 17 March, on 28 April, on 2, 6 and 12 May 2013, and one last time, on 9 June 2013, after the court had given its ruling in respect of the interim injunction.

12. On 30 October 2013 the applicant added a copy of the District Court's ruling of 8 January 2013 (see paragraph 8 above) to the case file.

13. After several postponements that were due mainly to the parties' requests to be allowed to submit additional evidence, on 22 January 2014 the Ploieşti District Court gave its judgment on the divorce proceedings, ruling that the child's sole residence would be with his mother. The applicant was granted the right to have the child stay at his home every other weekend and for two weeks during the summer holidays. On 21 February 2014 the applicant asked the District Court to finish the

drafting of its written judgment faster, and reiterated that he had been unable to see his child for the past ten months.

14. On 4 March 2014 the judgment was served on the applicant at his address; on 28 March 2014 he lodged an appeal. On 2 April 2014 I.M.U. also lodged an appeal against the District Court's judgment. Despite requests from the applicant to expedite the proceedings in order to allow him to re-establish contact with his son, the case file could not be sent to the Prahova County Court before 7 May 2014 owing to administrative problems within the District Court.

15. The start of the proceedings before the Prahova County Court was postponed on several occasions in order to allow the parties to get acquainted with the submissions in the file, to hear evidence and to obtain an expert evaluation of the relations between the parents and between each parent and the child. The County Court delivered its ruling on 22 October 2015. It upheld the previous decision adopted by the District Court.

16. Both parties lodged appeals against the County Court's decision. At the applicant's request, the case was sent to the Bucharest Court of Appeal. After several postponements to the proceedings, on 2 November 2016 the Bucharest Court of Appeal delivered the final decision in the case. It upheld the ruling of the District Court, but made some amendments to the applicant's visiting schedule.

17. On 19 February 2018 the child moved in with the applicant, at the boy's own express request and in accordance with an agreement signed before a notary by both parents, following the mother's decision to move permanently to another town.

II. RELEVANT DOMESTIC LAW

18. Article 613^2 of the Code of Civil Procedure ("the former Code"), as applicable at the relevant time, provided that during divorce proceedings a court could order temporary measures by means of an interim injunction, concerning: custody of children, alimony, child allowance and use of the family home. The same provision was incorporated into Article 920 of the new Code of Civil Procedure, which entered into force on 15 February 2013 and is presently applicable.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicant complained under Articles 6, 8, 14 and 17 of the Convention of the denial of his visiting rights by the courts and of the repercussions of the courts' decisions on his relationship with his son and on the child's psychological development. He further complained under Article 8 that the divorce proceedings had lasted too long, thus endangering even further his relationship with his son.

20. The Court, master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine the complaint from the standpoint of Article 8 alone (see, for example and *mutatis mutandis*, *Cristescu v. Romania*, no. 13589/07, § 50, 10 January 2012, and *Jovanovic v. Sweden*, no. 10592/12, § 53, 22 October 2015). Article 8 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."

A. Admissibility

21. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The applicant

22. The applicant complained that the courts had abusively refused his request for the establishment of visiting rights during the divorce proceedings, thus leaving the extent of his relationship with his son entirely at his spouse's discretion. He noted that the proceedings in respect of the interim injunction had lasted for more than seven months (from 2 November 2012 until 27 May 2013 – see paragraphs 7 and 9 above) and that therefore, although he could have lodged another application for an

interim injunction, that course of action would not have brought a swift resolution and could not have guaranteed a favourable outcome.

23. He further pointed out that he had done everything to alert the domestic courts in respect of the necessity to expedite the divorce proceedings and argued that he had not been responsible for any delay in those proceedings.

(b) The Government

24. The Government contended that the applicant had never been prevented from visiting his child and that imposing a visiting schedule by means of a court order would have only exacerbated the deterioration of relations between the parents. They asserted that the lack of legislative provisions for awarding provisional visiting rights pending the outcome of divorce proceedings had not constituted the domestic courts' fundamental argument in dismissing his application.

25. They furthermore pointed out that in similar situations the domestic courts consistently awarded visiting rights by means of an interim injunction if the best interests of the children concerned dictated it. They cited several examples of domestic case-law to this effect.

26. The Government pointed out that if the applicant had been prevented from seeing his child, he could at any point have lodged a fresh application for an interim injunction, which would have been examined by the courts.

27. Lastly, the Government contended that the authorities had not been responsible for the delays in the divorce proceedings and argued that the length of those proceedings had been reasonable and had not interfered with the applicant's right to family life.

2. The Court's assessment

28. The Court refers to the principles established in its case-law regarding the right to respect for family life (see, as a recent example, *Mitrova and Savik v. the former Yugoslav Republic of Macedonia*, no. 42534/09, §§ 77-79, 11 February 2016).

29. Turning to the facts of the present case, the Court notes that the domestic courts clearly stated that the law did not provide for granting visiting rights during divorce proceedings (see paragraphs 8, 9 and 18 above). The applicant's complaint relates to the effects that the application of this law had on his relationship with his son (see paragraph 11 above). It appears that after the decision of 8 January 2013 was taken, it became more difficult for the applicant to maintain contact with his son (see paragraphs 10 and 11 above).

30. The Court acknowledges that the domestic courts do not always reject as inadmissible such requests for visiting rights made during divorce proceedings (see paragraph 25 above). However, the applicant could not have benefited in any manner from the existence of more favourable

domestic case-law, as decisions adopted by the domestic courts in individual cases are not binding on any other domestic courts and do not constitute as such a primary source of law.

31. Moreover, the applicant could not have been expected to lodge a fresh application for an interim injunction, as indicated by the Government (see paragraph 26 above), as nothing in the law itself allowed him to expect a different outcome from the courts. When examining his request, the domestic courts did no more than apply the law, albeit in a restrictive manner. The Court considers that the provision of the law in question, by its very nature, removed the factual circumstances of the case from the scope of the domestic courts' examination (see, *mutatis mutandis, X and Others v. Austria* [GC], no. 19010/07, § 126, ECHR 2013).

32. The Government argued that the absence of regulation had not been the fundamental reason given by the courts for dismissing the applicant's application for an interim injunction (see paragraph 24 *in fine* above). Be that as it may, the Court notes that that argument was prevalent in the domestic courts' decisions. Moreover, even the remaining argument – namely that the applicant was not prevented from seeing his child (see paragraph 8 above) – cannot be construed as constituting an effective examination of the child's best interests, but rather as a mere observation of the situation at that particular moment. The domestic courts did not examine the precariousness of the situation, nor did they respond to the applicant's request for a more structured visiting plan (see paragraph 7 above). In other words, they left the exercise of a right which was fundamental to both the applicant and his child at the discretion of the applicant's spouse with whom he had (at that time) a conflict of interest (see paragraph 6 above).

33. The Court notes that the hindrance complained of is by its very nature temporary, as it could only last as long as the divorce proceedings were pending. However, in the case at hand these proceedings, initiated on 13 September 2012 (see paragraph 6 above), lasted for more than four years (see paragraph 16 above). The applicant – and equally important, his child – was therefore affected for about three years and five months – that is to say from 9 June 2013 (when he last saw his son – see paragraph 11 above) until 2 November 2016 (when the divorce court gave the final ruling in the case – see paragraph 16 above). The Court considers that in the present case, the lengthiness of this period of time leads it to find that the respondent State has failed to discharge its positive obligations under Article 8 of the Convention (see, for example, *M. and M. v. Croatia*, no. 10161/13, §§ 179 and 182, ECHR 2015 (extracts), and *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, §§ 127 and 138-142, 1 December 2009).

34. The foregoing considerations are sufficient to enable the Court to conclude that as regards the granting of visiting rights during divorce proceedings the Romanian authorities failed to meet their positive

obligations arising from Article 8 of the Convention. The underlying problem lies with an insufficient quality of the domestic law.

There has accordingly been a violation of this provision.

35. In the light of the above conclusion, the Court considers that there is no need to make a separate ruling on the complaint concerning the length of the divorce proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

37. The applicant claimed EUR 150,000 in respect of non-pecuniary damage for his and his son's suffering because of the separation imposed on them by I.M.U. as a consequence of the 8 January 2013 judgment. He furthermore claimed EUR 100,000 for the psychological and physical effort he had had to make in order to overcome the obstacles placed by the school administration (see paragraph 10 above) to his maintaining contact with his son.

38. The Government opposed any award being made to the applicant's son, who was not a party to the instant proceedings. They furthermore argued that the finding of a violation constituted sufficient just satisfaction for the applicant. Lastly, they asserted that the amounts requested by the applicant were exorbitant and unjustified vis-à-vis the awards made by the Court in similar cases.

39. Having regard to all the circumstances of the present case, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon. Lastly, bearing in mind that the applicant's son is not party to the present proceedings, the Court makes no award of damages to the child.

B. Costs and expenses

40. The applicant also claimed the following amounts for the costs incurred before the domestic courts and for those incurred before the Court:

(a) RON 1,000 or EUR 230, representing costs charged to the applicant under the decision of 27 May 2013 (see paragraph 9 above);

(b) RON 1,500 or EUR 350, representing costs for translating documents for the Court proceedings;

(c) RON 8,000 or EUR 1,800, representing lawyer's fee in the Court proceedings.

He produced receipts for these costs.

41. The Government considered that the applicant's obligation to pay RON 1,000 to I.M.U. was a logical consequence of his application for an interim injunction being dismissed as ill-founded by the domestic courts. They furthermore denied the applicant's right to reimbursement for the translation costs, and argued that he could have asked the Court's permission to use the Romanian language if he had not mastered sufficiently the official languages. For that reason, they considered this cost to have been unjustified in respect of the proceedings. Lastly, they contended that the lawyer's fee was excessive and unjustified and also argued that a simple receipt, unaccompanied by a signed contract for assistance, was not sufficient to allow for the evaluation of the actual work performed by the lawyer.

42. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the total amount requested by the applicant – that is to say EUR 2,380, covering costs under all heads.

C. Default interest

43. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention in respect of the impossibility of granting of visiting rights during divorce proceedings;

3. *Holds* that there is no need to examine separately whether there has been a violation of Article 8 of the Convention also on account of the length of the divorce proceedings;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,380 (two thousand three hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President