



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

FOURTH SECTION

CASE OF ÓNODI v. HUNGARY

(Application no. 38647/09)

JUDGMENT

STRASBOURG

30 May 2017

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 Ónodi v. Hungary,

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

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Faris Vehabović,

Egidijus Kūris,

Iulia Motoc,

Georges Ravarani,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 9 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 38647/09) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Gábor Ónodi (“the applicant”), on 16 July 2009.

2. The applicant was represented by Ms M. Regász, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant alleged, in particular, that the Hungarian authorities had failed to take effective steps to enforce his right to contact with his daughter, in breach of Article 8 of the Convention.

4. On 14 March 2016 this complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Szajol.

6. On 6 October 1990 he married Ms N.R. The couple had one daughter, R.Ó, born on 23 March 1994.

7. On 24 March 2006 the couple divorced and agreed on custody of the child and other parental rights. Their agreement, which was approved by the Szolnok District Court, placed the daughter with her mother and granted the

applicant contact every other weekend, during the school holidays, Easter Sunday, Whit Monday, the first holiday following Christmas Eve and three weeks during the summer holidays. The applicant was also to pay child allowance, amounting to 20% of his salary, but at least 20,000 Hungarian forints (HUF – approximately 66 euros (EUR)) per month.

8. Ms N.R. moved out of the former family home and took up residence in Budapest.

9. The applicant could exercise contact on 25 and 26 June and 24 July 2006. However, his daughter was reluctant to stay with him during the summer holidays and preferred to spend her holidays with her grandparents.

10. The applicant's further attempts to exercise contact failed, seemingly because in the mother's view it was up to the child to decide whether she wanted to see her father. The applicant applied to the Szolnok County Guardianship Authority to have the contact agreement enforced. In a decision of 11 September 2006 it ordered Ms N.R. to comply with the agreement, warning her that failure to do so could result in her being fined and ordered to reimburse the applicant's travel costs. Given the strained relationship between the parents, a notary initiated child protection proceedings (*védelembe vétel*) on 27 December 2006. Subsequently, on a number of occasions Ms N.R. was fined for not complying with the agreement. It appears from the case file that the applicant could exercise contact between 10 July 2007 and 10 November 2008.

11. In 2007 Ms N.R. brought an action seeking to change the applicant's contact rights and an increase in the amount of child allowance. In a counterclaim the applicant requested that the child be placed in his custody.

12. The applicant also filed a criminal complaint against Ms N.R. alleging child endangerment. The parties' attempt to stabilise the relationship between the applicant and his daughter during the suspension of the custody proceedings were unsuccessful and the Szolnok District Court ordered that any meetings between them take place at a child protection centre.

13. In a judgment of 10 June 2008 the Szolnok District Court reduced the applicant's contact with his daughter to every first and third Saturday of the month from 9 a.m. to 6 p.m. It held that the previously agreed form of contact was unlikely to be implemented and would only lead to further proceedings before the guardianship authority, which would be to the detriment of the child. The court based its judgment on an expert opinion finding that the child should have had an adaptation period to re-establish her relationship with her father. The court dismissed the applicant's claim concerning custody, stating that the child's wishes had to be taken into account, given that she was now fourteen years of age.

14. On 19 November 2008 the Jász-Nagykun-Szolnok County Regional Court upheld the first-instance judgment in essence but amended the applicant's contact rights to every other Saturday between 9 a.m. and 4 p.m.

until 31 May 2009, and all weekend-long visits every other weekend as of 1 June 2009.

15. In 2009 the applicant failed to turn up at numerous scheduled meetings for months, for which he was fined HUF 10,000 (approximately EUR 35).

16. In 2010 the applicant's contact rights and the amount of child allowance were subject to further litigation. On 29 January 2010 the Szolnok District Court dismissed an action brought by him seeking to decrease the amount of child allowance, and a review of the way contact should be exercised. The court established that since the court decision of 19 November 2008, no contact had taken place between the applicant and his daughter and, despite a request by the applicant, the guardianship authority had taken no steps to implement the judgment on the grounds that he had made no efforts to resolve the conflict with his daughter. In particular, he had paid no heed to her request to travel by public transport instead of in his car.

The court also found that in the absence of any significant change in circumstances, there was no reason to amend the arrangements for contact.

17. In a final judgment of 15 April 2010 the Jász-Nagykun-Szolnok County Regional Court reviewed the applicant's parental rights, granting him contact every other weekend on the condition that the daughter, who was by now already 16 years old, be allowed to visit him by herself. The court dismissed the applicant's request for a decrease in the child allowance. The applicant lodged a petition for review with the Supreme Court. It was dismissed on 8 February 2011.

18. It appears from the case file that meetings between the applicant and his daughter only took place sporadically in 2010 and did not happen at all in 2011, despite the applicant lodging numerous enforcement requests with the guardianship authority.

19. In 2011 the applicant requested that the Jász-Nagykun-Szolnok Guardianship Authority and all subordinate guardianship authorities be excluded from any further proceedings for bias. On 12 December 2011 the Budapest Regional Guardianship Authority appointed the Budapest XV District Guardianship Authority to deal with any further proceedings concerning the enforcement of the applicant's contact rights, noting that at that point there were eight enforcement requests pending, the oldest dating back to January 2010.

20. The applicant lodged a number of requests seeking to end his obligation to pay child allowance, which were finally accepted by the Budapest IV and XV District Court on 10 October 2012 and on appeal by the Budapest High Court on 3 September 2013. Nonetheless, an additional request by him for the reimbursement of the child allowance he had already paid was dismissed at both levels of jurisdiction.

II. RELEVANT DOMESTIC LAW

21. The relevant rules concerning the enforcement of contact orders are contained in Government Decree no. 149/1997 (IX. 10.) on Guardianship Authorities and Child Protection and Guardianship Proceedings, which provides:

Section 33

“(2) A child’s development is endangered where the person entitled or obliged to maintain child contact repeatedly neglects, deliberately, to comply or to properly comply with the [contact arrangements], and thereby fails to ensure uninterrupted contact.

...

(4) Where, in examining compliance with subsections (1)-(2), the guardianship authority establishes [culpability on the parent’s side], it shall, by a decision, order the enforcement of the child contact within thirty days from the receipt of the enforcement request. In the enforcement order it shall:

a) invite the non-complying party to meet, according to the time and manner specified in the contact order, his or her obligations in respect of the contact due after the receipt of the order and to refrain from turning the child against the other parent,

b) warn the non-complying party of the legal consequences of own-fault non-compliance with the obligations under subsection (a),

c) oblige the non-complying party to bear any justified costs incurred by the frustration of contact.

(5) Where the person entitled or obliged to maintain contact fails to meet the obligations specified in the enforcement order under subsection (4), the guardianship authority may ...

a) initiate the involvement of the child contact centre of the child welfare service or take the child into protection in the event that the maintenance of contact causes arguments, or is continuously frustrated by difficulties, or the parents have problems in communicating,

b) initiate a child protection mediation procedure

...

(7) If it is established that during the child’s upbringing the parent/person obliged to allow [contact] to the non-custodial parent/person continuously turns him/her against the person entitled to contact and, despite the enforcement measures specified in subsections (4)-(5), fails to comply with the contact order, the guardianship authority:

a) may bring an action seeking a change to the place of care if it is in the best interests of the child,

b) shall file a criminal complaint ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained that the Hungarian authorities had failed to take effective steps to enforce his contact with his daughter. He alleged a violation of Article 8 of the Convention, which reads:

“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

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

B. Merits

1. The parties' submissions

24. The applicant submitted that his attempts to have regular and effective contact with his child had started in 2007. Those attempts had, however, remained for the large part ineffective. He emphasised that owing to his former wife's behaviour, he had been prevented from having regular and uninterrupted contact with R.Ó., since she had been manipulated by her mother into refusing contact with him. He maintained that he had submitted more than sixty-two applications to the guardianship authorities requesting the enforcement of his contact rights. However, the domestic authorities had failed to apply the domestic law in a way which could have effectively secured his contact rights and they should have taken more steps to help him re-establish meaningful contact.

25. The Government maintained that there had been no violation of Article 8. They contended that the domestic courts had done everything in their power to have the decisions on contact enforced. They also maintained that the domestic authorities had had to strike a careful balance between the applicant's undisputed right to have a connection with his child and the best interests of the child, who had refused any contact with him.

26. They also maintained that the applicant's behaviour, in particular his refusal to resolve certain conflicts during one of the visits and failure to turn up at several of the arranged appointments, had contributed to the hostility between him and his child and the inability of the domestic authorities to enforce the decisions on contact.

27. They emphasised the active role the domestic authorities had had in implementing the decisions on contact, in particular by imposing a fine on the mother when she had failed to comply with the final judgments, warning R.Ó. about her obligation to cooperate, and trying to establish contact arrangements suitable for both parties.

28. In any event, the child, who at the material time already had had full capacity to understand the situation, had been opposed to contact with her father.

2. *The Court's assessment*

(a) **General principles**

29. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among many other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005 and *Nazarenko v. Russia*, no. 39438/13, § 60, ECHR 2015 (extracts)).

30. The essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There are, in addition, positive obligations inherent in an effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community, including other concerned third parties, and the State's margin of appreciation. The Court has already repeatedly held that in matters relating to their custody the interest of children 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 (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII and *Plaza v. Poland*, no. 18830/07, § 71, 25 January 2011).

31. In cases concerning the implementation of the contact rights of one of the parents, Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to facilitate such reunion, in so far as the interest of the child dictates that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family; the State's obligation is not one of result, but of means (see, among other authorities, *Pascal v. Romania*, no. 805/09, § 69, 17 April 2012).

32. The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is not, however, absolute. The establishment of contact may not be able to take place immediately and may require preparatory or phased measures. The co-operation and understanding of all concerned will always be an important ingredient. While national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. What is decisive is whether the national authorities have taken all necessary steps to facilitate the execution that can reasonably be demanded in the specific circumstances of each case. 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 does not live with the child (see *Fuşcă v. Romania*, no. 34630/07, §§ 35-37, 13 July 2010).

33. The Court further recalls the conclusion it reached in *Glaser v. the United Kingdom* (no. 32346/96, § 70, 19 September 2000) that active parental participation in the proceedings concerning children is required under Article 8 of the Convention in order to ensure the protection of their interests. When an applicant, as in that case, applies for the enforcement of a court order, his conduct – and that of the courts – is a relevant factor to be considered. The Court has also acknowledged that arrangements for contact may require great effort on the part of the parent with whom the child no longer lives (see *Kajari v. Finland*, no. 65040/01, § 42, 23 October 2007).

(b) Application of these principles to the present case

34. The Court notes, firstly, that it is common ground that the relationship between the applicant and his daughter comes within the sphere of family life under Article 8 of the Convention.

35. In the light of the above principles, 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 of 24 March 2006, 19 November 2008 and 8 February 2011, 25 August and 29 December 2009 and 29 January and 15 April 2010 (see paragraphs 7, 14, 17 above), which all authorised the applicant to have regular contact with his daughter.

36. The Court observes that on 24 March 2006 the Szolnok District Court approved the agreement between the applicant and his ex-wife granting the applicant contact with his daughter every other weekend and on some public holidays and certain days of the school holidays. The applicant's ex-wife moved to another town with the child, when she was

12 years old. It appears that the applicant and the mother initially managed to resolve the issue of contact, however difficulties in implementing the arrangements arose as early as 2006 and the applicant lodged an enforcement request with the guardianship authority. Although Ms N.R. was warned and subsequently fined on a number of occasions, the applicant continued to experience problems in having regular and uninterrupted contact with his child.

37. It is true that, as argued by the Government, certain difficulties in achieving regular contact could be attributed to the applicant, since he failed to turn up on several of the dates agreed (see paragraph 15 above). Furthermore, the aversion of his daughter towards him, as observed by the domestic authorities, was partly due to his reaction during one of the visits (see paragraph 16 above). Be that as it may, it transpires that the applicant was initially constructive and made efforts to have contact with his daughter. Later, after a certain period of time characterised by a continuous frustration of contact, he must have become more agitated facing the hostility of his daughter and the lack of effort on the part of the authorities to enforce his contact with her. In these circumstances, the Court cannot subscribe to the Government's argument that the applicant's own behaviour was a decisive factor for the non-enforcement of his contact rights by the domestic authorities.

38. The Court finds it significant that the applicant lodged more than sixty requests for enforcement of the contact order (see paragraphs 10, 16, and 24 above), as it demonstrates that he had a serious interest in his daughter. It further observes that the enforcement attempts were less than successful (see paragraphs 10 and 18 above). It is true that the applicant's enforcement requests led to Ms N.R. receiving an administrative fine that was subsequently repeated due to her continued non-compliance with the final court judgment (see paragraph 10 above). The Court also acknowledges that the difficulties in securing the applicant's contact rights were essentially due to the mother's behaviour, but considers that the facts of the case indicated that the financial sanctions imposed on Ms N.R. were inadequate to improve the situation and overcome her lack of cooperation. The same holds true for the child protection proceedings and the criminal investigation opened against Ms N.R., neither of which resulted in any changes to the applicant's contact with his daughter.

39. In such a delicate situation, the Court finds it very difficult to believe that the focus on the ordinary civil enforcement proceedings or criminal law sanctions could have improved the situation. While the guardianship authorities were unable to enforce all aspects of the contact orders because of the respondent's lack of cooperation and subsequently the child's negative attitude towards her father, they made no considerable efforts to gradually re-establish the contact between them. Quite to the contrary, the Szolnok District Court's judgment of 10 June 2008 restricting the

applicant's contact was based on the practical conclusion that the previous contact arrangements could not be implemented, thereby condoning the mother's uncooperative behaviour and disregard for the previous agreement.

40. In a similar vein, the further court proceedings and decisions appeared to focus on the practical arrangements for contact, which had not taken place for years, rather than on the support the parties would have needed to ensure that opportunities for maintaining the child's relationship with the applicant were not lost in the future.

41. Looking at the facts of the case, the Court believes that it would have been worthwhile to explore all available avenues to facilitate the maintenance of those ties, whether with the involvement of social services or otherwise.

42. The Court also notes that even if the domestic legal order did not allow for the imposition of effective sanctions, each Contracting State must equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it by Article 8 of the Convention (see *Maire v. Portugal*, no. 48206/99, § 76, ECHR 2003-VII).

43. Lastly, it is also apparent from the case file that the domestic authorities failed to deal with the matter promptly, since a number of enforcement requests lodged by the applicant remained unprocessed for more than a year (see paragraph 19 above).

44. Having regard to the foregoing, and notwithstanding the respondent State's margin of appreciation in the matter, the Court concludes that the Hungarian authorities failed to fulfil their positive obligations to duly protect the applicant's right to respect for his family life.

45. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government contested that claim.

49. The Court considers that the applicant must have suffered non-pecuniary damage on account of the violation found, and awards him, on an equitable basis, EUR 6,000 under this head.

B. Costs and expenses

50. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court.

51. The Government contested that claim.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,900 for the costs and expenses incurred before it.

C. Default interest

53. 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;
3. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,900 (one thousand nine hundred 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Ganna Yudkivska
President