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Meeting: 1521st meeting (March 2025) (DH)

Item reference: Action Plan (11/02/2025)

Communication from Romania concerning the case of Cristian Catalin Ungureanu v. Romania (Application No. 6221/14)

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Communication de la Roumanie concernant l'affaire Cristian Catalin Ungureanu c. Roumanie (requête n° 6221/14) *(anglais uniquement)*

L/567/11.02.2025

4845 R/AG/83



Action Plan

Cristian Cătălin Ungureanu v. Romania

**(Application No. 6221/14, judgment of 4 September 2018,
final on 4 December 2018)**

I. Case description

The case concerns the domestic courts' refusal to decide on rights for the applicant to visit his son during divorce proceedings (violation of Article 8).

The national courts in the present case have stated that the law – Civil Procedural Code - did not allow for access rights to be decided during divorce proceedings. The Court acknowledged that the domestic courts do not always reject as inadmissible such requests for visiting rights made during divorce proceedings but concluded that the applicant could not have benefited 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.

The divorce proceedings lasted between September 2012 and November 2016, leading to an order that the child should live with his mother and giving Mr Ungureanu a schedule of visiting rights. The child moved back in with the applicant in February 2018 after the mother decided to move town.

II. Individual measures

The just satisfaction awarded by the Court for non-pecuniary damage and costs and expenses was paid on 1 March 2019, in due time limit.

No further individual measures are needed, as the hindrance complained of by the applicant was a temporary one (pending the divorce proceedings).

III. General measures

1) Analysis of the origin of the violation found

The source of the violation, as it transpires from the judgment, arises from the legal impossibility to obtain, pending the divorce proceedings, visiting rights.

The Court has acknowledged that the domestic courts do not always reject as inadmissible such requests and that they award visiting rights by means of an interim injunction if the best interests of the children concerned dictated it. However, as long as nothing in the law itself allow applicants to expect a positive decision from the courts, because the aspect concerning visiting rights is not mentioned among those which could be the object of an interim injunction during divorce proceedings, the Court considered 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.

2) *Measures envisaged*

The provisions of Article 613² on temporary measures during divorce proceedings of the Code of Civil Procedure (the former Code), applicable at the date of the events were incorporated as such in Article 920 of the New Code of Civil Procedure (NCCP) which entered into force on 15 February 2013. The text in force at the present does not expressly include "visiting rights" among the matters which could form the object of an interim injunction during the divorce proceedings.

The Ministry of Justice is analysing options to promote an amendment of Article 920 NCCP, in order to expressly provide for the possibility to request by interim injunction visiting rights by the non-resident parent, during the divorce proceedings. Pending this process, the Government Agent will disseminate the judgement to all domestic courts and to the Superior Council of Magistracy, in order to have the case included in the programs of initial and permanent training of magistrates, so as to maintain the positive jurisprudence of granting contact rights to the non-resident parent during the divorce proceedings, provided that the principle of the superior interest of the child is observed.

As explained below, the Romanian legal system includes substantive provisions guaranteeing the right of a child, respectively of a parent to maintain personal relations, irrespective of a change in the relation between parents, including divorce. The only reason for interrupting or limiting a parent-child relation would be related to the non-observance of the principle of the best interest of the child, namely, as provided by the Law no. 272/2004 *on the protection and promotion of the rights of the child (republished)*: "if there are rigorous reasons which may endanger the physical, mental, intellectual, moral or social development of the child".

Thus, according to Romanian Constitution (Article 26 §1) parents have the right to continue to maintain personal ties with their children, even if they no longer live together, and the legislature is obliged to provide for appropriate mechanisms by which legal system allows and protects the exercise of this right.

Accordingly, the Civil Code provides for the right of the child who does not live with his/her parents, respectively with one of his/her parent, to maintain personal relations with them; this right may be limited only in specific situations provided by the law and taking into consideration the principle of the superior interest of the child (Article 262 § 2). Considering the dual nature of the right to maintain personal relations, Article 401 of the Civil Code provides at its turn for the right of the parent which has been separated from his/her child/children to have personal relations with them. In case of disputes between the parents, the competent domestic court will decide upon the ways this right is to be exercised.

As regards ways of exercising contact rights, *Law 272/2004 on the protection and promotion of the rights of the child (republished)* provides for the following options (Article 18): a) meetings between the child and the parent or another person who, according to the present law, has the right to maintain personal relations with the child; b) visiting the child at his or her residence; c) hosting the child, for a specific period of time, by the parent or by another person with whom the child does not live

on a regular basis; d) correspondence or any other form of communication with the child; e) sending to the child information regarding the parent or other persons who, according to the present law, have the right to maintain personal relations with the child. f) sending to the parent or to other persons who have the right to maintain personal relations with the child, information regarding the child, including recent photos, medical evaluations or school records.¹

3) Conclusions

The Government will keep the Committee informed upon the general measures adopted for the execution of the present judgement.

¹ According to Article 18 § 2 of the Law no. 272/2004: Sending the information stipulated under paragraph (1) lines e) and f) must be achieved in a way which would observe the best interests of the child and the special provisions on the confidentiality and dissemination of personal data.