



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

FIRST SECTION

CASE OF RIBIĆ v. CROATIA

(Application no. 27148/12)

JUDGMENT

STRASBOURG

2 April 2015

FINAL

02/07/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ribić v. Croatia,

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

Elisabeth Steiner, *President*,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 27148/12) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Zdenko Ribić (“the applicant”), on 6 April 2012.

2. The applicant was represented by Ms I. Bojić, an advocate practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged that the domestic authorities had breached their positive obligation to respect his family life by failing to secure to him his right to contact with his son.

4. On 13 November 2012 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1954 and lives in Zagreb.

6. On 25 April 1992 the applicant married Ms Z.J.

7. On 9 October 1993 Z.J. gave birth to their son I.R.

8. In December 1993 Z.J., together with their son, moved out of the flat in which she had lived with the applicant and went to live with her parents. After that she started avoiding contact with the applicant. Prior to the

institution of the divorce and custody proceedings in February 1996 (see paragraphs 9-30 below) the applicant saw his son only twice, in January 1994 and in 1995 during Easter holidays. The applicant and Z.J. officially divorced by a court judgment to that effect on 12 February 2002 (see paragraphs 21-22 below).

A. Civil proceedings for divorce, child custody and contact rights

1. Principal proceedings

9. On 19 February 1996 Z.J. brought a civil action against the applicant in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking divorce, custody of, and the maintenance for their son.

10. On 22 April 1997 the court asked the Zagreb Social Welfare Centre (*Centar za socijalnu skrb Zagreb*, hereafter “the local social welfare centre”) to prepare a report on the family situation in the Ribić family and submit its recommendation as to whom of the parents custody of their son should be awarded.

11. The Government submitted that the applicant had ignored the local social welfare centre’s calls to attend interviews necessary for the preparation of the report by not collecting the centre’s letters to that effect from the post office. The applicant denied that allegation, noted that the Government had not substantiated it by relevant documents and invited them to do so. He further submitted that while it was true that in the period between 1993 and 2003 he had worked in Ljubljana (Slovenia) on weekdays, he had been staying in Zagreb every weekend. If there had been any problem with the service of the local social welfare centre’s correspondence to him, the centre should have contacted the advocate who had represented him in the civil proceedings in question.

12. On 7 July 1997 the applicant’s and Z.J.’ legal representatives agreed to temporarily suspend the proceedings (*mirovanje postupka*) for a period of three months with a view to reaching an amicable solution, which however did not materialise.

13. Thus, in the further course of the proceedings, on 23 January 1998, the court decided to obtain information on the parties’ income, and scheduled the next hearing for 20 April 1998 with a view to hearing the parties.

14. However, the hearing scheduled for 20 April 1998 was adjourned because the applicant did not attend it.

15. At the hearing held on 22 May 1998 the court again decided to hear the parties and invited Z.J. to provide information on her income, something the applicant had already done.

16. At that hearing and in his written submission of 9 March 1999 the applicant asked the court to issue a provisional measure whereby it would

provisionally regulate his contacts with his son. According to the information submitted by the parties, the court did not decide on the applicant's motion, apparently because under the legislation in force at the material time interim contact orders were in the exclusive jurisdiction of the social welfare centres as administrative authorities (see paragraph 81 below).

17. At the hearing held on 9 October 1998 the court heard the parties and decided to obtain an opinion from an expert in psychiatry with a view to deciding on custody and access rights. However, since the applicant and Z.J. did not advance the costs of the expert opinion until seven months later, the case-file was not sent to the appointed expert institution before 11 June 1999.

18. In the course of the preparation of the expert opinion, on 26 February 2000 the applicant met with his son, for the first time since Easter of 1995 (see paragraph 8 above). On the same date the applicant and Z.J. signed an agreement regarding the contact schedule they would propose to the court. In particular, it was agreed to propose to the court that the contacts between the applicant and his son take place in the presence of both parents for two hours on the premises specified by the local social welfare centre and in the presence of a child-welfare professional designated by the centre. In the first three months, the contacts were to take place twice a month, and thereafter every week. After a year the local social welfare centre were to assess the situation and propose further arrangements.

19. By 3 April 2000 the designated expert institution had finalised the expert opinion, which was received by the court 11 days later. The experts' recommendation was in line with the parties' agreement of 26 February 2000, which they endorsed. The experts particularly emphasised the need for the contacts between the applicant and his son to take place in the presence of Z.J. and a child-welfare professional designated by the local social welfare centre.

20. Since both parties objected to the expert opinion, the court held three more hearings, on 25 May and 14 and 28 September 2001 during which the court heard the psychiatrist who had prepared it. The court also obtained fresh information on the parties' income with a view to deciding on the maintenance for their son.

21. On 26 October 2001 the Municipal Court pronounced judgment whereby it: (a) dissolved the marriage between the applicant and Z.J., (b) awarded custody of their son to Z.J., (c) granted the applicant access (contact) rights, and (d) ordered the applicant to regularly pay a certain amount of money as maintenance for his son. The relevant part of that judgment reads as follows:

“Contacts between I.R. and his father Zdenko Ribić shall take place twice a month on Saturdays for two hours for the period of two months, and after that once a week on Saturdays in the child's home in the presence of the mother and a psychologist or

social worker. After a year the local social welfare centre may propose changes in the frequency [of contacts].

...

Since both parties repeatedly, by their non-attendance and their failure to advance the costs of the expert opinion, caused hearings to be postponed and thereby protracted the proceedings for several years ... each party should bear their own [litigation] costs.”

22. Following an appeal by both parties, on 12 February 2002 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed the first-instance judgment in so far as it concerned access rights and maintenance and remitted the case. It upheld the contested judgment in so far as it concerned divorce and custody, which part thereby became final.

23. In the resumed proceedings, the Zagreb Municipal Court held hearings on 5 July 2002, and on 27 January, 19 March and 12 July 2003.

24. In addition, on 26 August 2002 the court invited the local social welfare centre to prepare a report and submit its recommendation on the applicant’s contact with his son. In the course of their preparation the expert team of the centre, consisting of a social worker and a psychologist, conducted several joint and separate interviews with the parties. The centre’s experts also contacted the applicant’s son’s school and obtained an opinion on his school performance.

25. On 7 February 2003 the local social welfare centre submitted its report and recommendation to the court. Its expert team recommended that the contacts between the applicant and his son take place every second Saturday for two hours for the period of three months, and after that every Saturday, in the presence of the mother and a child-welfare professional. However, the centre’s experts suggested that the contacts should not take place in the child’s home as it was not a neutral ground and could give rise to conflicts between the applicant on the one side and Z.J. and her parents on the other. Their report indicated that the applicant’s son was very emotionally attached to his mother, that he did not know his father but wanted to meet him. The expert’s opinion also suggested that the centre impose a child-protection measure of supervision of exercise of parental authority focusing on contacts between the applicant and his son, with a view to facilitating those contacts and assisting the parents in improving communication between them (see paragraph 59 below).

26. At the hearing held on 19 March 2003 the court heard the parties.

27. On 4 July 2003 the court rendered a partial judgment whereby it decided on the maintenance for the applicant’s son. At the same time it decided to stay the proceedings in so far they concerned the applicant’s access rights pending the outcome of the concurrent civil proceedings his former wife had instituted against him with a view to depriving him of parental responsibility (see paragraphs 77-78 below). The applicant appealed.

28. On 3 February 2004 the Zagreb County Court dismissed the applicant's appeal against the partial judgment on maintenance and upheld it. At the same time it quashed the first-instance decision to stay the proceedings and remitted the case. It held that the applicant had the right to maintain contact with his son as long as he was not deprived of parental responsibility.

29. In the resumed proceedings, on 23 July 2004 the Zagreb Municipal Court adopted a judgment whereby it again granted the applicant access rights and issued a detailed contact schedule. In particular, the court decided that in the first three months the contacts between the applicant and his son were to take place every second Saturday for two hours on the premises of the local social welfare centre and in the presence of the mother and either a psychologist or social worker designated by the centre. In the next three months the contacts were to be arranged in the same manner but every Saturday, and, after another three months, in the same way but in the absence of the mother. After nine months the applicant were to exercise his access rights for four hours every Tuesday and Thursday in those weeks when the applicant's son had school in the morning, every second weekend, thirty days of summer and seven days of winter holidays, as well as every second official or church holiday.

30. On 12 April 2005 the Zagreb County Court dismissed an appeal by Z.J. and upheld the first-instance judgment. The first-instance judgment of 23 July 2004 became final when the second-instance judgment of 12 April 2005 was served on both parties on 29 June 2005.

2. Enforcement proceedings

(a) First set of enforcement proceedings

31. As Z.J. refused to comply with the above judgment of 23 July 2004 and obstructed the exercise of the applicant's access rights, on 12 May 2005 he applied for enforcement of that judgment before the Zagreb Municipal Court.

32. On 25 August 2005 that court issued a writ of execution (*rješenje o ovrsi*) whereby it ordered Z.J., at the risk of fine of 3,000 Croatian kunas (HRK), to allow the applicant to exercise his access rights.

33. On 8 November 2005 the Zagreb County Court dismissed an appeal by Z.J. and upheld the writ.

34. On 2 December 2005 the local social welfare centre informed the court that Z.J. was not complying with judgment of 23 July 2004 as she had not been bringing the applicant's son to the scheduled meetings on the centre's premises where the contacts between him and the applicant were to be arranged. The centre thus asked to court to enforce the judgment through a judicial enforcement officer.

35. On 22 December 2005 the Zagreb Municipal Court issued a decision whereby it fined Z.J. HRK 3,000 for non-compliance with the judgment of 23 July 2004, and again ordered her, at the risk of further fine of HRK 6,000, to do so within fifteen days. Z.J. appealed but on 21 November 2006 the County Court dismissed her appeal.

36. In the meantime, on 29 December 2005, Z.J. asked for postponement of enforcement but the Municipal Court dismissed her motion.

37. Since Z.J. had paid the fine but nevertheless did not comply with the judgment, on 30 November 2006 the Zagreb Municipal Court accepted the applicant's motion of 27 September 2006 and issued a new writ of execution whereby it ordered a judicial enforcement officer, with the assistance of a pedagogue or a social worker employed with local social welfare centre, and a police officer, to take the applicant's son from Z.J., or any other person each time the applicant was entitled pursuant to the contact schedule to exercise his access rights, and to return him to her afterwards. Even though the court ordered that the costs of that intervention by the enforcement officer were to be borne by Z.J., it invited the applicant to advance those costs within eight days of the service of the writ.

38. By a decision of 14 February 2007 the Municipal Court discontinued the enforcement proceedings because the applicant had not advanced the costs. The applicant then first on 7 March 2007 appealed against that decision but, on 29 March 2007 withdrew that appeal and, eventually, on 23 November 2007 withdrew his application for enforcement of 12 May 2005 (see paragraph 31 above).

39. Accordingly, on 4 December 2007 the Zagreb Municipal Court discontinued the enforcement proceedings.

(b) Second set of enforcement proceedings

40. Meanwhile, on 23 April 2007 the applicant again applied for enforcement of the above judgment of 23 July 2004 (see paragraph 29 above) before the Zagreb Municipal Court.

41. On 6 December 2007 that court issued a writ of execution identical to the one of 30 November 2006 (see paragraph 37 above).

42. On 24 December 2007 Z.J. appealed against the writ and on 2 January 2008 sought that the enforcement be postponed.

43. On 6 February 2008 the Zagreb Municipal Court dismissed Z.J.'s motion for postponement of the enforcement. On 25 February 2008 Z.J. appealed against that decision.

44. On 28 February 2011 the Municipal Court forwarded Z.J.'s appeals of 24 December 2007 and 25 February 2008 to the Zagreb County Court for a decision.

45. By a letter of 19 April 2011 the County Court returned the case file to the Municipal Court asking it to correct certain errors in the first-instance proceedings.

46. In the meantime, on 10 June 2009 the applicant had lodged a request for protection of the right to a hearing within a reasonable time (*zahtjev za zaštitu prava na suđenje u razumnom roku*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*), complaining about the length of the second set of the enforcement proceedings.

47. On 26 September 2011 the Supreme Court found a violation of the applicant's right to a hearing within a reasonable time and: (a) awarded him HRK 5,000 in compensation, (b) ordered the Zagreb Municipal Court to correct the errors indicated in the Zagreb County Court's letter of 19 April 2011 within a month (see paragraph 45 above), and (c) ordered the Zagreb County Court to decide on Z.J.'s appeals of 24 December 2007 and 25 February 2008 within three months upon receiving the case file again from the Municipal Court.

48. By decisions of 6 March 2012 the County Court dismissed Z.J.'s appeals of 24 December 2007 and 25 February 2008.

49. Meanwhile, on 9 October 2011 the applicant's son turned eighteen and became an adult. Accordingly, the above enforcement proceedings became obsolete. Consequently, by a decision of 13 January 2013 the Municipal Court discontinued the enforcement proceedings.

B. Administrative proceedings before the local social welfare centre

50. Parallel to the above civil proceedings concerning *inter alia* custody and access, the local social welfare centre acted in various ways in order to solve the family conflicts.

1. Proceedings concerning the applicant's contact rights

51. On 20 March 2003 the local social welfare centre issued a decision whereby it provisionally granted the applicant access rights until the judgment in the above civil proceedings became final, and issued a contact schedule. In particular, the centre decided that the contacts between the applicant and his son were to take place every second Friday for one hour on its premises in the presence of a child-welfare professional for a period of three months. The decision specified that an appeal against it did not suspend its enforcement. On 14 April 2003 Z.J. appealed against that decision.

52. On 15 April 2003 the centre informed Z.J. of the need to cooperate with it and enable the contacts between the applicant and his son. It warned her that the failure to do so may be considered as dereliction of her duties as a parent calling for more stringent child-protection measures.

53. On 27 June 2003 the applicant applied to the centre for enforcement of its decision of 20 March 2003.

54. However, acting on the appeal by Z.J. of 14 April 2003, on 22 September 2003 the relevant Ministry, as the second-instance

administrative authority, quashed the centre's decision of 20 March 2003 and remitted the case. Accordingly, on 3 December 2003 the centre discontinued the administrative enforcement proceedings instituted by the applicant on 27 June 2003.

55. On 30 October 2003 the applicant applied to the centre to issue a new decision on his access rights.

56. On 22 December 2003 the local social welfare centre issued a new decision whereby it again provisionally granted the applicant access rights until the judgment in the above civil proceedings became final, and issued a new contact schedule. The decision specified that an appeal against it did not suspend its enforcement. On 19 January 2004 Z.J. appealed.

57. On 13 July 2004 the relevant Ministry dismissed that appeal and upheld the centre's decision. Z.J. then brought an action in the Administrative Court against the Ministry's decision, which that court dismissed on 17 February 2005.

58. In the meantime, on 15 October 2004 the applicant applied for enforcement of the local social welfare centre's decision of 22 December 2003 (see paragraph 56 above). However, it would appear that before 29 June 2005, that is, the date on which the judgment of the Zagreb Municipal Court of 23 July 2004 in the above civil proceedings became final (see paragraph 29-30 above) and thus superseded the decision the applicant sought to enforce, the local social welfare centre did not issue an enforcement order or undertake other steps to enforce its decision.

2. Proceedings concerning supervision of the exercise of parental authority

59. Concurrently with the administrative proceedings described above (see paragraphs 51-58), the local social welfare centre conducted other administrative proceedings. In particular, by a decision of 23 December 2003 the local social welfare centre imposed a child-protection measure of supervision of the exercise of parental authority (see paragraph 82 below) for a period of one year, appointed a supervising officer and drafted a supervision programme.

60. On 2 February 2004 the supervision officer informed the centre that Z.J. ignored her calls to arrange the first meeting between the applicant and his son in the execution of the centre's decision of 22 December 2003 (see paragraph 56 above) granting him provisional access rights. On the same day the centre adopted the opinion that the supervision measure should be discontinued as ineffective and that criminal-law measures should be set in motion instead (see paragraph 68 below).

61. On 1 March 2004 the supervising officer submitted her report to the centre stating that no contacts between the applicant and his son had taken place since the adoption of the centre's decision of 22 December 2003 (see paragraph 56 above). At the same time she proposed that the contacts

between the applicant and his son be arranged on school premises in the presence of a pedagogue.

62. By a decision of 9 March 2004 the centre discontinued the application of the child-protection measure of supervision of the exercise of the parental authority imposed by its decision of 23 December 2003 (see paragraph 59 above). It stated that the measure was ineffective given Z.J.'s lack of cooperation and that other, more stringent, child-protection measures were warranted. On 17 March 2004 Z.J. appealed against that decision.

63. On 17 February 2005 the relevant Ministry quashed the centre's decisions of 23 December 2003 and 9 March 2004 (see paragraphs 59 and 62 above) and remitted the case.

64. In the resumed proceedings, after having heard the applicant and Z.J. on 19 April 2005, by a decision of 13 May 2005 the centre again imposed the child-protection measure of supervision of the exercise of parental authority for a period of one year, appointed a supervising officer and prepared a programme of supervision. Z.J. appealed.

65. On 3 June, 4 and 31 July 2005 the supervising officer informed the centre that contacts between the applicant and his son had not taken place due to Z.J.'s lack of cooperation.

66. On 29 December 2005 the relevant Ministry dismissed an appeal by Z.J. and upheld the centre's decision of 13 May 2005 (see paragraph 64 above).

67. The child-protection measure imposed by the centre in its decision of 13 May 2005 expired on 15 May 2006. Monthly reports submitted by the supervising officer suggest that in that one-year period the applicant had not met his son.

C. Other relevant proceedings

1. Criminal proceedings against Z.J.

68. On 5 February 2004 the local social welfare centre invited the Zagreb State Attorney's Office to bring criminal charges against Z.J. for her failure to cooperate with the centre and the supervising officer, obstruction of measures issued by the centre and dereliction of her duties as a parent regarding her son's contacts with his father.

69. On 24 March 2004 the Zagreb State Attorney's Office informed the social welfare centre that, for the time being, there were no grounds to prosecute Z.J. for the criminal offence of obstruction of the child-protection measures defined in section 215 of the Criminal Code (see paragraph 84 below) because the decisions whose execution Z.J. allegedly obstructed had not become final.

70. On 14 April 2004 the applicant filed a criminal complaint against Z.J. with the same State Attorney's Office accusing her of the same criminal offence.

71. On 29 September 2004 the State Attorney's Office dismissed his criminal complaint. In so doing, it advanced the same reasons as those stated in its letter to the social welfare centre of 24 March 2004 (see paragraph 69 above).

72. On 18 November 2005 the local social welfare centre informed the State Attorney's Office that decisions whose execution Z.J. had been obstructing had become final and invited the State Attorney's Office to criminally prosecute her.

73. On 5 December 2005 the State Attorney's Office indicted Z.J. before the Zagreb Municipal Court for having been obstructing the court-ordered contacts between the applicant and his son. In particular, she was charged with the criminal offence of obstruction of child-protection measures laid down in section 215 of the Criminal Code (see paragraph 84 below).

74. By a judgment of 24 June 2008 the Municipal Court found Z.J. guilty as charged and convicted her but the judgment was subsequently quashed by the Zagreb County Court following her appeal and the case was remitted.

75. In the resumed proceedings, by a judgment of 24 January 2011 the Zagreb Municipal Court again found Z.J. guilty as charged and sentenced her to five months' imprisonment but imposed a suspended sentence with supervision (*uvjetna osuda sa zaštitnim nadzorom*) for a period of three years provided that in that (probation) period she did not commit a further offence. In its judgment the court noted, *inter alia*, the following:

"This court is deeply aware that all decisions and judgments including this one can no longer remedy the harm and evil caused by the conduct of the accused, primarily to her child, who grew up without a father ... However, it can at least emphasise that such behaviour is unacceptable and punishable ... When determining the penalty the court took into account, as aggravating circumstances, the fact that for a number of years the accused deliberately, perfidiously and deceitfully obstructed enforcement of any court decision or decision of the social welfare centre and in so doing behaved arrogantly and acted as if she was untouchable and in that way hindered a healthy and undisturbed development of her son. The court did not find any special mitigating circumstances."

76. By a judgment of 16 March 2012 the Zagreb County Court dismissed an appeal by Z.J. and upheld the first-instance judgment.

2. Proceedings to deprive the applicant of parental responsibility

77. In 2002 Z.J. instituted non-contentious proceedings against the applicant before the Zagreb Municipal Court with a view to depriving him of parental responsibility for his son.

78. By a judgment of 2 November 2004 the court dismissed Z.J.'s petition. It held that her claims that the applicant had abandoned his son,

grossly neglected his duties as a parent and failed to pay (regularly) for his maintenance were unfounded. In so doing it relied on the report of the local social welfare centre suggesting that it was Z.J. who had obstructed the applicant's contacts with his son.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

79. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette of the Republic of Croatia, no. 56/90 with subsequent amendments) read as follows:

Article 35

“Everyone shall be guaranteed respect for, and the legal protection of, his personal and family life ...”

B. Family-law legislation

1. *The 1998 Family Act*

(a) Relevant provisions

80. The relevant provisions of the Family Act of 1998 (*Obiteljski zakon*, Official Gazette no. 162/98 – hereafter “1998 Family Act”), which was in force between 1 July 1999 and 21 July 2003 read as follows:

Section 99(1)

“If the parents do not live together the social welfare centre shall decide on child custody and on access rights of non-custodial parent, unless this Act provides that those issues shall be decided by the court.”

EIGHTH PART

JUDICIAL PROCEEDINGS

COMMON PROVISIONS

Section 267

“(1) This part of the Act provides rules according to which the courts proceed when they decide in special civil and non-contentious proceedings and special enforcement and security proceedings on matrimonial and family matters and other matters regulated by this Act.

(2) The proceedings referred to in section (1) if this Act shall be urgent.”

Section 269

“(1) Procedural actions in special civil and non-contentious proceedings and procedural actions in special enforcement and security proceedings in matrimonial and family matters and other matters regulated by this Act shall be undertaken with urgency.

(2) In the proceedings referred to in section (1) if this Act the first hearing must be scheduled within fifteen days from the moment the action or petition was received at the court.”

Section 270

“The appeal against the first-instance decision in cases referred to in section 267 of this Act must be decided by the second-instance court within thirty days of receiving the appeal.”

VII. TRANSITIONAL AND FINAL PROVISIONS

Section 364

(1) If before the entry into force of this Act a first-instance decision by the court, social welfare centre or other authority was rendered, the provisions of the Marriage and Family Relations Act of 1978 shall apply in the subsequent proceedings.

(2) If after the entry into force of this Act the first-instance decision referred to in section (1) of this Act was quashed or set aside, the provisions of this Act shall apply in the subsequent proceedings.

(b) Relevant case-law

81. Under the case-law of Croatian courts developed in the application of the 1998 Family Act (see, for example, the decision of the Koprivnica County Court no. Gž 1005/1999 of 16 December 1999), the courts were not entitled to issue provisional measures and thus regulate the issues of custody and access rights before adopting a final decision on those issues. That was so because such interim custody and contact orders were pursuant to section 99(1) of the 1998 Family Act (see the preceding paragraph) in the exclusive jurisdiction of the social welfare centres as administrative authorities.

2. *The 2003 Family Act*

82. The relevant provisions of the Family Act of 2003 (*Obiteljski zakon*, Official Gazette no. 163/03 with subsequent amendments – hereafter “2003 Family Act”), which was in force between 22 July 2003 and 1 September 2014, read as follows:

3. Measures for protection of the rights and welfare of the child

Section 109

“(1) The social welfare centre shall order supervision of the exercise of parental authority when the errors and omissions are various and frequent or when the parents need special assistance in upbringing their child.

(2) ...

(3) The supervision programme may entail referring the child in a children's home for a half day or for a full day, referring parents and the child to medical and other institutions for treatment and other professional assistance.

(4) The supervision shall be ordered for the minimum period of six months. ...”

VII. TRANSITIONAL AND FINAL PROVISIONS

Section 362

(1) If before the entry into force of this Act a first-instance decision by the court, social welfare centre or other authority was rendered, the provisions of the 1998 Family Act shall apply in the subsequent proceedings.

(2) If after the entry into force of this Act the first-instance decision referred to in section (1) of this Act was quashed or set aside, the provisions of this Act shall apply in the subsequent proceedings.

83. The text of sections 263, 265 and 266 of the 2003 Family Act was identical to that of sections 267, 269 and 270 of the 200 of the 1998 Family Act (see paragraph 80 above).

C. The Criminal Code

84. The relevant provision of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/97 with subsequent amendments), which was in force from 1 January 1998 to 31 December 2012, reads as follows:

CHAPTER SIXTEEN (XVI)

CRIMINAL OFFENCES AGAINST MARRIAGE, THE FAMILY AND THE YOUNG

Obstruction and non-execution of measures for protection of a child or minor

Section 215

“Anyone who obstructs the execution of educational or other measures ordered by the court, social welfare centre or [other] state authorities or is not discharging its statutory duties [aimed at] the protection of a child or minor in due time, shall be punished by a fine or imprisonment up to one year.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

85. The applicant complained that, by failing to secure his regular contacts with his son, which had been necessary to maintain family ties between them, the domestic authorities had breached their positive

obligation to respect his family life. In particular, the applicant complained that in the period between the time his son had been only two months old and the time he had turned eighteen, he had seen him only three times. He relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life

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.”

86. The Government contested that argument.

A. Admissibility

87. The Court notes that the application 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. Introductory remarks

88. 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 other authorities, *Olsson v. Sweden* (no. 1), 24 March 1988, § 59, Series A no. 130, and *Gluhaković v. Croatia*, no. 21188/09, § 54, 12 April 2011).

89. Even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective “respect” for family life (see, among other authorities, *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31, and *Gluhaković*, cited above, § 55). These include an obligation for the national authorities to take measures with a view to reuniting parents with their children and to facilitate such reunions. This also applies to cases where contact and custody disputes concerning children arise between parents and/or other members of the children's family (see *Gluhaković*, cited above, § 56).

90. The Court notes that in the present case, as a result of delays in the custody and contact proceedings (see paragraphs 9-30 above), and the subsequent non-enforcement of the judgment granting the applicant contact rights (see paragraphs 31-49 above), the applicant had seen his son only three times during his entire childhood.

91. The Court considers that such a lengthy period during which the applicant was unable to maintain contact with his son is *a priori* in breach of the State's positive obligations under Article 8 of the Convention and could be justified only in exceptional circumstances. The facts of the present case therefore call for a global assessment in the light of the relevant principles emerging from the Court's case-law (see paragraphs 92-96 below). The Court therefore does not find it necessary to reproduce the parties' arguments in detail.

2. Relevant principles

92. Given that an effective respect for family life requires that future relations between parent and child be determined solely in the light of all the relevant considerations and not by the mere passage of time (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 177, 27 September 2011), the ineffective, and in particular delayed, conduct of custody and contact proceedings may give rise to a breach of positive obligations under Article 8 of the Convention (see *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 127, 1 December 2009, and *S.I. v. Slovenia*, no. 45082/05, § 69, 13 October 2011) as procedural delay may lead to a *de facto* determination of the matter at issue (see *H. v. the United Kingdom*, 8 July 1987, § 89, Series A no. 120). Therefore, in cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (see, for example, *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005, and *Strömblad v. Sweden*, no. 3684/07, § 80, 5 April 2012).

93. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly held that what is decisive in any assessment of the national authorities' conduct is whether they have taken all necessary steps to facilitate the execution that can reasonably be demanded in the specific circumstances of each case. 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 a child and the parent who does not live with him (see, for example, *Fernández Cabanillas v. Spain* (dec.), no. 22731/11, § 48).

94. 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. It is an obligation of means, and not one of result. The establishment of contact may not be able to take place immediately, and may require preparatory or phased measures. The cooperation and understanding of all concerned will always be an important ingredient.

However, lack of cooperation between separated parents is not a circumstance which can by itself exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the best interests of the child as primary consideration (see *Fernández Cabanillas*, cited above, §§ 47 and 50).

95. While the national authorities must do their utmost to facilitate such cooperation, 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 (see *Gluhaković*, cited above, § 57, and *Fernández Cabanillas*, cited above, § 47). Although coercive measures against children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behavior by the parent with whom the children live (see, for example, *Eberhard and M.*, cited above, § 130).

96. Therefore, in the present case the Court's task consists in examining whether the alleged delays in the custody and contact proceedings led to a *de facto* determination of the matter at issue, and whether the domestic authorities have taken all necessary steps that could reasonably be demanded in the given circumstances to enforce the applicant's contact rights or otherwise facilitate reunion between him and his son (see, for example, *Z. v. Slovenia*, no. 43155/05, §§ 149 and 157, 30 November 2010).

3. Application of the above principles to the present case

97. The period to be taken into consideration began on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. The period in question ended on 9 October 2011 when the applicant's son turned eighteen and became an adult (see paragraph 49 above). It thus lasted thirteen years and eleven months, of which custody and contact proceedings lasted seven years and eight months at two levels of jurisdiction (see paragraphs 9-30 above) and the ensuing enforcement proceedings another six years and three months (see paragraphs 31-49 above).

98. In the Court's view the arguments adduced by the Government cannot explain such a substantial delay. That is especially so in view of the fact that, following the applicant's request for protection of the right to a hearing within a reasonable time, the Croatian Supreme Court found that the said enforcement proceedings had themselves lasted unreasonably long (see paragraph 47 above). In particular, the Government's argument that the present case is similar to the case of *Mihailova v. Bulgaria* (no. 35978/02, 12 January 2006), in which the Court found no violation of Article 8 of the Convention, cannot be sustained because in that case the delays complained of lasted some two and a half years.

99. The Court is particularly struck by the fact that before 20 March 2003 the local social welfare centre did not find it necessary to provisionally regulate the issue of the applicant's contact with his son (see paragraph 51 above) even though by that time the civil proceedings in which that issue was to be resolved had already been pending for almost seven years (since 19 February 1996, see paragraph 9 above) and the applicant had seen his son only three times (see paragraphs 8 and 18 above). In this connection the Court observes that the likelihood of family reunification will be progressively diminished and eventually destroyed if the biological father and the child are not allowed to see each other at all, or only so rarely that no natural bonding between them is likely to occur (see, *mutatis mutandis*, *Görgülü v. Germany*, no. 74969/01, § 46, 26 February 2004).

100. The Court considers that this fact alone is sufficient to enable it to conclude that in the present case the domestic authorities have not taken such necessary steps to facilitate reunion between the applicant and his son that could have reasonably been expected of them. This resulted in a *de facto* determination of the matter at issue as the applicant had seen his son only three times before he turned eighteen.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

104. The Government contested that claim.

105. The Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards him EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

106. The applicant also claimed HRK 29,125 for the costs and expenses incurred before the Court.

107. The Government contested that claim.

108. 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 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

109. 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 Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 25,000 (twenty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five 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 2 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Elisabeth Steiner
President