



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

THIRD SECTION

CASE OF PJEVIĆ v. RUSSIA

(Application no. 1764/18)

JUDGMENT

Art 8 • Family life • Failure to secure Serbian national's right to be in contact with son residing in Russia after divorce

STRASBOURG

19 October 2021

FINAL

19/01/2022

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

In the case of Pjević v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

Dmitry Dedov,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 1764/18) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr Aleksandar Pjević (“the applicant”), on 5 January 2018;

the decision to give notice to the Russian Government (“the Government”) of the complaints under Articles 8 and 13 of the Convention and to declare inadmissible the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties’ observations;

Noting that the Serbian Government did not make use of their right under Article 36 § 1 of the Convention to intervene in the proceedings,

Having deliberated in private on 21 September 2021,

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

INTRODUCTION

1. The present case concerns the failure of the Russian authorities to secure contact between the applicant and his son residing in Russia.

THE FACTS

2. The applicant was born in 1971 and lives in Belgrade. The applicant was represented by Mr M. Timotijević, a lawyer practising in Belgrade.

3. The Government were represented initially by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

THE CIRCUMSTANCES OF THE CASE

A. Background information

5. On 22 November 2003 the applicant married a Russian national, Ms L.P. The couple settled in Belgrade, Serbia.

6. In June 2005 they moved to Moscow, Russia.

7. On 28 December 2010 Ms L.P. gave birth to their son, N. The child holds both Serbian and Russian nationality.

8. In December 2011 L.P. and the child moved to St Petersburg.

9. In March 2012 the Meshchanskiy District Court of Moscow dissolved the marriage between the applicant and L.P.

10. On an unspecified date the applicant moved back to Belgrade.

B. Child residence proceedings in Serbia

11. On 8 March 2012 the applicant initiated court proceedings in Serbia seeking to determine the child's place of residence and to establish the contact arrangement between the child and the non-resident parent.

12. On 22 July 2013 the Municipal Court in Belgrade ("the Municipal Court") considered that it had no jurisdiction to examine the applicant's claims.

13. On 10 July 2014 the Supreme Court quashed the above decision and remitted the case to the Municipal Court for examination on the merits.

14. On 3 April 2015 the Municipal Court decided that, while the proceedings were ongoing, the child should reside with L.P., and determined a temporary contact arrangement for the applicant and the child.

15. On 19 June 2015 the Municipal Court again found that it had no jurisdiction to pursue the examination of the claim over the residence of a child holding Russian and Serbian nationality and residing in Russia lodged by a Serbian national residing in Russia against a Russian national residing in Russia.

16. On 18 November 2016 the Supreme Court quashed the above decision and remitted the case to the Municipal Court for examination on the merits.

17. On 3 November 2017 the childcare authority of the municipal district Grazhdanka in St Petersburg submitted to the Municipal Court its expert opinion. Based on comprehensive study of the child's living conditions in St Petersburg, references from his school and extracurricular activities, L.P.'s background and references from work, emotional ties between her and the child, and the child's opinion, the report concluded that it would be in the best interests of the child to determine his place of residence as being with L.P. and to establish a schedule for his contacts with the applicant as follows: from 10 a.m. on Saturdays to 4 p.m. on Sundays at

the child's place of residence, without disturbing the child's school and after-school routine.

18. On 9 March 2018 the Municipal Court decided that the child should reside with L.P. and determined a detailed schedule for the applicant's contact with the child.

19. However, on 3 October 2018 the Court of Appeal in Belgrade quashed the above judgment finding that the Serbian court had no jurisdiction over the case and terminated the proceedings.

C. Proceedings in Russia relating to the applicant's request for recognition and enforcement of the interim decision of 3 April 2015

20. On 8 July 2015 the applicant applied to the St Petersburg City Court ("the City Court") seeking formal recognition and enforcement of the interim measure of the Belgrade Municipal Court of 3 April 2015 granting him temporary contact rights in respect of the child pending the proceedings in Serbia.

21. On 10 November 2015 the City Court rejected the applicant's request. It held, in particular, that the Treaty of 24 February 1962 between the Union of Soviet Socialist Republics and the Federal People's Republic of Yugoslavia on Legal Assistance in Civil, Family and Criminal Matters did not apply to interim measures. It further held that the decision of 3 April 2015 contradicted the basic principles of Russian law as it had been taken without prior determination of the child's opinion and his interests, without L.P. having been informed of the relevant hearing and given an opportunity to participate in it, and could not be appealed against by the latter. Besides, since L.P. was a Russian national residing together with the child in Russia the applicant's claim should have been examined by a Russian court. The City Court noted in this connection that on 19 June 2015 the Serbian court found that it had no jurisdiction to examine the case and annulled all the decisions taken in the framework of those proceedings, including the interim decision of 3 April 2015. Although the decision of 19 June 2015 was in the process of being appealed against by the applicant, the parties did not challenge the Serbian law cited in it as regards the issues of jurisdiction.

22. On 26 January 2016 the Appellate Panel of the City Court upheld the above decision on appeal. The City Court noted that it was open to the applicant to apply to a competent Russian court for resolution of a dispute regarding his contact with his son.

D. Proceedings in Russia relating to the applicant's contact rights

23. On 30 January 2017 the applicant applied to the Kalininskiy District Court of St Petersburg ("the District Court") in order to have determined the

temporary contact arrangement between him and his son pending the proceedings in Serbia.

24. On 31 March 2017 the District Court dismissed the applicant's claim without examination in view of the ongoing proceedings on the same subject matter between the same parties in the courts of Serbia.

25. On 10 July 2017 the City Court upheld the above decision on appeal. The City Court noted that the applicant was not precluded from concluding an agreement with L.P. as to the contact arrangement between him and the child pending the proceedings before the Serbian courts.

26. On 15 September 2017 a judge of the City Court rejected the applicant's cassation appeal.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT INTERNATIONAL LAW

27. The 1989 New York Convention on the Rights of the Child provides as follows:

Article 8

"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

...

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

..."

28. The Treaty of 24 February 1962 between the Union of Soviet Socialist Republics and the Federal People's Republic of Yugoslavia on Legal Assistance in Civil, Family and Criminal Matters (still in force) provides that each Contracting Party recognises, in particular, final and enforceable judicial decisions in civil and family matters rendered in the territory of the other Contracting Party (Article 48 § 1 (a)).

29. Judicial decisions listed in Article 48 of the Treaty shall be recognised and enforced in the following circumstances: (a) if a decision's entering into force was confirmed and it is subject to enforcement; (b) if in accordance with the law of the Contracting Party addressed the Contracting Party from which a decision originates had jurisdiction to examine the case; (c) if recognition or enforcement of a decision does not contradict the basic principles of law of a Contracting Party addressed; (d) if a party against which the decision is taken was afforded an opportunity to protect his or her rights; (e) if there is no final decision by the courts of the Contracting Party addressed in the proceedings between the same parties on the same subject matter, or if there are no ongoing proceedings in the courts of the Contracting Party addressed on the same case provided that those proceedings were the first to be instituted; (f) if, in the case where it was necessary to apply the law of the Contracting Party addressed, such law, or other law essentially similar to law of the Contracting Party addressed, was applied (Article 49).

30. A court of a Contracting Party addressed shall recognise and allow enforcement of a decision rendered by requesting Contracting Party if all the conditions provided for by the Treaty are met (Article 51 § 1).

31. The procedure for the recognition and enforcement of judicial decisions is governed by the law of the Contracting Party addressed (Article 53 § 1).

II. RELEVANT DOMESTIC LAW

32. The Code of Civil Procedure provides that courts in the Russian Federation have jurisdiction to examine cases with participation of foreign citizens if a defendant is residing in the Russian Federation (Article 402 § 2).

33. A court in Russia returns a claim or leaves it without examination if a foreign court, the decisions of which are subject to recognition and enforcement on the territory of Russia, has already opened a case in a dispute between the same parties on the same subject and on the same grounds (Article 406 § 2).

34. For the relevant provisions of the Code of Civil Procedure on recognition and enforcement on foreign court judgments, see *McIlwrath v. Russia*, no. 60393/13, §§ 69-75, 18 July 2017.

35. For the relevant provision of the Family Code see *Hromadka and Hromadkova v. Russia*, no. 22909/10, §§ 105-11, 11 December 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained about the failure of the Russian authorities to secure his contact with his son in breach of 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.”

A. Admissibility

37. The Government considered that the complaint was manifestly ill-founded for the reasons set out below (see paragraphs 40-41 below).

38. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

39. The applicant submitted that as a result of the refusal by the Russian courts to recognise and enforce the interim decision of 3 April 2015 by the Belgrade Municipal Court granting him temporary contact with his son pending court proceedings in Serbia, on the one hand, and to examine his claim for contact rights in domestic proceedings, on the other, he had been deprived of an opportunity to maintain and develop family life with his son. This amounted to an interference with the applicant's right to respect for his family life. Such interference was not in accordance with law. It pursued no legitimate aim and was not necessary in a democratic society. The interests of the child were not respected. Consequently, since the couple's separation the applicant never had an unsupervised contact with his son, spent a single vacation or even a weekend with him. He was only able to see his child for a few hours at the mother's place of residence and in her presence (sitting in the next room).

(b) The Government

40. The Government reiterated the reasons given by the domestic courts for their refusal to recognise and enforce the interim decision of 3 April

2015 by the Belgrade Municipal Court granting the applicant temporary contact with his son pending court proceedings in Serbia. They further submitted that since the applicant had chosen to protect his rights under Article 8 of the Convention by lodging a claim with the court in Belgrade, there had been no legal grounds for institution of proceedings based on the same statement of claim in the court of St Petersburg.

41. There was no interference with the applicant's right to respect for his family life since he did not lose his personal ties with the child. The applicant was not deprived of his parental authority, L.P. was not preventing him from maintaining contact with the child, the competent Russian authorities took all the necessary measures to give the applicant an opportunity to communicate with his child and to take part in his upbringing. In particular, the childcare authority of the municipal district Grazhdanka in St Petersburg assured itself that the applicant had the opportunity to meet his son every time he came to St Petersburg, at the boy's place of residence and in the presence of L.P. The latter strongly objected to the applicant's contact with the child without her presence fearing that he might take the child outside the Russian Federation. The childcare authority conversed with the applicant and L.P. by telephone and offered them the services of the Centre for Social Assistance to Families and Children of the Kalininskiy District of St Petersburg and mediators for resolution of the existing conflict situation. However, the conflict could not be resolved and it was explained to the parties that it remained open for them to apply to a court. The childcare authority advised the applicant to withdraw his claim from the Serbian court for a prompt resolution of the contact issue before the court in Russia, but he did not do so. Furthermore, in 2015-2018 the childcare authority on two occasions visited the child's place of residence and drew up respective inspection reports. Its representative also talked to the child who explained that he had regular contacts with the applicant when the latter came to St Petersburg and that they often spoke on the telephone. The child further stated that he did not want to visit his father in Serbia.

2. *The Court's assessment*

42. The general principles relevant for the Court's assessment have been summarised in *McIlwrath v. Russia*, no. 60393/13, §§ 121 and 123-24, 18 July 2017.

43. It is common ground that the relationship between the applicant and his son falls within the sphere of family life under Article 8 of the Convention. The Court will therefore proceed to determine whether the State acted in a manner calculated to allow these ties to develop normally.

44. The Court observes that following his divorce with L.P. in March 2012 the applicant brought court proceedings against L.P. in Serbia seeking to determine the issue of his son's residence and the terms of his contact

with the non-resident parent. It took the Serbian court three rounds of proceedings and over six and a half years to come to the conclusion that it had no jurisdiction to examine the applicant's claim, the child holding Russian and Serbian nationality and residing in Russia and the defendant being a Russian national and residing in Russia (see paragraphs 11-19 above). However, in the middle of those proceedings, on 3 April 2015 the Belgrade Municipal Court granted the applicant temporary contact with the child pending the proceedings.

45. The applicant subsequently pursued the proceedings in Russia seeking to obtain a formal recognition and enforcement of the above interim measure. However, on 10 November 2015 the City Court rejected the applicant's request, finding that the Treaty of 24 February 1962 between the Union of Soviet Socialist Republics and the Federal People's Republic of Yugoslavia on Legal Assistance in Civil, Family and Criminal Matters did not apply to interim measures. It further considered that, since L.P. was a Russian national residing together with the child in Russia, the applicant's claim should have been examined by a Russian court. While examining the applicant's appeal against the above decision, the Appellate Panel of the City Court noted that it was open to the applicant to apply to a competent Russian court for resolution of a dispute regarding his contact with his son (see paragraphs 21-22 above).

46. Nevertheless, when the applicant applied to the Russian court for determination of the temporary contact between him and his son pending the proceedings in Serbia, on 31 March 2017 the District Court left his claim without examination owing to the ongoing proceedings on the same subject between the same parties in the courts of Serbia. This decision was upheld on appeal by the City Court and subsequently the applicant's cassation appeal was rejected (see paragraphs 24-26 above).

47. It appears, therefore, that the domestic courts neither accepted the jurisdiction of the Serbian courts to deal with the issue of the applicant's contact with his son, nor assumed their own jurisdiction to decide on the matter. This inconsistency deprived the applicant for several years from having his contact rights with his son determined, even on a temporary basis, with all the circumstances this should have had to their relationship (see paragraph 39 above).

48. In the light of the foregoing, the Court considers that the Russian authorities did not act in a manner calculated to allow the family ties between the applicant and his son to develop normally and failed in their duty to assist the applicant in securing his right to be in contact with his son. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant further complained about the absence of an effective domestic remedy for securing contact with his son in violation of Article 13 of the Convention reading as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

50. The Court considers that the issue raised under this Article overlaps with the merits of the applicant’s complaint under Article 8. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 8 of the Convention (see paragraph 48 above), the Court considers it unnecessary to examine that issue separately under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed compensation for non-pecuniary damage sustained as a result of the alleged violation of the Convention in an amount to be determined by the Court.

53. The Government considered that no such award should be made in the present case.

54. The Court considers that the applicant must have suffered distress as a result of the domestic authorities’ failure to secure his contact with his son. In the light of the circumstances of the case, and making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant 12,500 euros (EUR) under this head.

B. Costs and expenses

55. The applicant also claimed EUR 11,383.90 euros in respect of costs and expenses, broken down as follows:

(i) EUR 685.97 for train tickets Moscow-St Petersburg to attend court sessions in the period between October 2015 and July 2017;

(ii) EUR 1,379.52 for airplane tickets from Moscow to Belgrade for attending court sessions in Belgrade in the period between April 2015 and November 2017;

(iii) EUR 5,545.60 for legal assistance in the domestic proceedings and before the Court;

(iv) EUR 2,426.72 for legal assistance in the proceedings in Serbia;

(v) EUR 892.33 for translation of court documents from Serbian to Russian language in connection with the requests lodged by the applicant with the Russian courts in the period between July 2012 and April 2018; and

(vi) EUR 453.76 for postal expenses.

In support of his claim the applicant submitted receipts for legal assistance in Moscow, receipts for translation costs, 20 train tickets, receipts for postal expenses, receipts for his legal representation in the proceedings in Serbia and before the Court, 5 airplane tickets.

56. The Government submitted that the applicant had failed to provide copies of legal services agreements with his lawyers. They considered that the applicant's claim for postal expenses should also be rejected, since sending the documents by special international courier service rather than Russian postal service, which is far less expensive, did not correspond to the criterion of "necessity". The Government furthermore believed that translation costs had not been proved by relevant agreements, and that travel expenses claimed had been in no connection to the subject-matter of the present case.

57. 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 rejects the applicant's claim in so far as it relates to the proceedings before the Serbian courts and considers it reasonable to award the sum of EUR 7,456 for costs and expenses incurred in the proceedings before the Russian courts and the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

58. 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* that there is no need to examine separately the complaint under Article 13 of the Convention;
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 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,456 (seven thousand four hundred and fifty-six 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 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Milan Blaško
Registrar

Georges Ravarani
President