



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

SECOND SECTION

CASE OF FELBAB v. SERBIA

(Application no. 14011/07)

JUDGMENT

STRASBOURG

14 April 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Felbab v. Serbia,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 14011/07) against Serbia 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 Nedeljko Felbab (“the applicant”), on 21 March 2007.

2. The applicant was represented by Mr D. Radin, a lawyer practising in Zrenjanin. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

3. The President of the Chamber gave priority to the application in accordance with Rule 41 of the Rules of Court.

4. The applicant complained about the non-enforcement of a final access order in a pressing child-related matter.

5. On 25 April 2008 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was also decided that the merits of the application would be examined together with its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1969 and lives in Zrenjanin, Serbia.

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

A. Introduction

8. On 1 August 1992 the applicant married M.F.
9. On 6 February 1993 and 9 September 1994 their children Z.F. and N.F., respectively, were born.
10. In 1998 the applicant and M.F. started having marital problems.
11. On 19 April 1998 M.F. moved out, but the children remained with the applicant.

B. The first set of civil proceedings

12. On 31 August 1999 the applicant filed a claim with the Municipal Court in Zrenjanin (“the Municipal Court”), seeking the dissolution of marriage, the custody of the children and a contribution to their maintenance.
13. In January 2000 M.F. spent several days with the children, but failed to return them to the applicant thereafter.
14. On 6 June 2000 the Municipal Court: (i) dissolved the marriage; (ii) granted custody of the children to M.F.; (iii) ordered the applicant to pay monthly child maintenance; and (iv) ruled that the applicant could spend every first and third weekend of each month with the children, as well as seven and fourteen days of their winter and summer holidays, respectively.
15. By 28 September 2000 this judgment had become final.

C. The second set of civil proceedings

16. On 9 August 2006 the applicant filed a claim with the Municipal Court, seeking custody of Z.F. and N.F. as well as the amendment of the maintenance ordered.
17. On 22 August 2006 M.F. filed a separate claim with the Municipal Court, seeking the amendment of the applicant’s access rights.
18. On 11 September 2006 the Municipal Court joined these proceedings into a single case.
19. On 8 February 2007 the applicant withdrew his claim in respect of N.F.
20. On 12 April 2007 the Municipal Court ruled against the applicant and partly in favour of M.F. In particular, the court ordered that the applicant would be entitled to spend time with Z.F. and N.F. each Sunday between 10 a.m. and 4 p.m., thereby restricting his prior access rights.
21. On an unspecified date thereafter this judgment would appear to have become final.

D. The enforcement proceedings

22. Having apparently been refused access to the children by M.F., on 28 September 2000 the applicant filed an enforcement request with the Municipal Court.

23. On 6 October 2000 the Municipal Court issued an enforcement order, stating, *inter alia*, that M.F. would be fined 1,500 Serbian dinars should she fail to comply therewith.

24. On 8 November 2000 the applicant informed the Municipal Court that he had been denied all access and requested that the conditional fine now be imposed.

25. On 28 November 2000 the Municipal Court rejected this request as premature, stating that M.F. had received the order in question on 20 November 2000.

26. On 27 March 2001 the Municipal Court confirmed its decision of 28 November 2000.

27. On 25 June 2001 the applicant informed the Municipal Court that his contact with the children was dependent upon the whims of his former wife and noted that the final judgment of 6 June 2000 was being ignored.

28. On 29 June 2001 the Municipal Court decided to impose the said fine and again ordered M.F. to respect the applicant's access rights.

29. On 22 December 2003 the Social Care Centre based in Zrenjanin ("the Social Care Centre") informed the court that the applicant had not been in touch with them. They further noted that M.F. had stated that the applicant had not shown any initiative to see the children. Lastly, the Social Care Centre proposed that the enforcement proceedings be terminated.

30. On 21 February 2005 the Municipal Court confirmed its decision of 29 June 2001.

31. On 3 March 2005 the Municipal Court ordered M.F. to pay 6,750 dinars in costs.

32. On 8 May 2008 the Municipal Court scheduled a hearing for 28 May 2008.

33. On 22 May 2008 the Municipal Court cancelled this hearing, terminated the enforcement proceedings and reaffirmed its order of 29 June 2001. As regards the termination, it referred to the judgment rendered in 2007 and relied on the provisions of Article 62 § 1 of the Enforcement Procedure Act (see paragraph 49 below).

34. Having received this decision, the applicant failed to file a formal complaint against it (see paragraph 50 below).

35. On 5 June 2008 M.F. paid the fine first imposed on 6 October 2000.

E. The criminal proceedings

36. On 20 April 2005 the Municipal Court found the applicant guilty of failing to pay child maintenance between 8 October 2001 and 8 March 2005 and sentenced him to four months in prison, suspended for one year.

37. On 28 September 2007 the Municipal Court revoked the suspended sentence and ordered the applicant to serve the four months in prison.

38. On 7 November 2007 this decision became final and on 4 February 2008 the applicant started serving his sentence. On 23 April 2008, however, the Municipal Court ordered that the applicant be released on parole.

F. Other relevant facts as regards the children

39. On 31 May 2006 the Social Care Centre confirmed that Z.F. had effectively been living with the applicant since 22 April 2006.

40. On 12 October 2006 the said centre observed that: (i) the enforcement proceedings had been ineffective due to the uncooperative attitude of the children, as well as their mother; (ii) the contact between the applicant and the children had been re-established in the summer of 2005; (iii) in late summer of 2005 and April 2006, respectively, Z.F. had fled to the applicant's home; and (iv) the applicant himself could not be considered to be a positive influence on her.

41. On 22 February 2007 Z.F. again went to stay with the applicant. Ultimately, however, she was returned to her mother by the Social Care Centre.

42. On 6 November 2006 Z.F. stated, *inter alia*, that she would prefer to live with the applicant.

43. On 21 December 2006 N.F. stated that he wanted to stay with his mother, but was willing to maintain regular contacts with the applicant.

44. It would appear that in December 2007 both Z.F. and N.F. had been staying with the applicant, which is why on 17 December 2007 he had been ordered by the Municipal Court to return them to their mother.

45. In a separate case, on 26 December 2007 the Municipal Court ruled that M.F. was legally entitled to have Z.F. removed from the applicant's home, where she had stayed temporarily. By 26 December 2007 this judgment became final and Z.F. returned to live with her mother.

G. The applicant's marital, financial and medical status

46. Following the dissolution of his marriage with M.F., the applicant remarried and fathered another three children.

47. On 22 February 2007 the applicant was diagnosed as suffering from hypertension, hypoglycaemia and spondylosis.

48. On 11 July 2008 the Employment Agency (*Nacionalna sluzba za zaposljavanje*) confirmed that the applicant had been formally unemployed since 1987, except briefly between 26 October 2001 and 6 March 2002. It would appear, however, that he had worked unofficially during this time and had been an occasional recipient of various social benefits.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - no. 28/00, 73/00 and 71/01)

49. Article 62 § 1 provides that enforcement proceedings “shall be terminated *ex officio* if the ... [title being enforced] ... has been ... repealed, reversed, annulled, or otherwise rendered ineffective, or the certification of enforceability has been ... revoked”.

50. Article 49 § 3 provides that the creditor shall have the right to file a complaint against a decision adopted, *inter alia*, on the basis of Article 62 § 1.

51. Article 209, while placing special emphasis on the best interests of the child, states that there shall be an initial period of three days for voluntary compliance with a child custody and/or access order. Beyond that, however, fines shall be imposed and, ultimately, if necessary, the child shall be taken forcibly, in co-operation with the Social Care Centre.

B. Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

52. The Enforcement Procedure Act 2004 entered into force in February 2005, thereby repealing the Enforcement Procedure Act 2000. In accordance with Article 304 of this Act, however, all enforcement proceedings instituted prior to 23 February 2005 are to be concluded pursuant to the Enforcement Procedure Act 2000.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

53. Relying on Articles 6 and 8 of the Convention, the applicant complained about the non-enforcement of the final access order adopted on 6 June 2000.

54. The relevant provisions of the said Articles read as follows:

Article 6 § 1

“In the determination of his [or her] civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by an ... impartial tribunal ...”

Article 8

“1. Everyone has the right to respect for his [or her] 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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The Government’s preliminary objection concerning the alleged abuse of the right of petition

55. The Government pointed out that the applicant’s lawyer had made insulting and inappropriate comments in his observations amounting to an abuse of the right of petition, within the meaning of Article 35 § 3 of the Convention. In particular, he had described the Government’s factual submissions and/or legal arguments as “primitive”, “devious” and “furtive”, and had added that they could only have been prepared by “someone who had merely seen the outside of the Law Faculty”. The Government therefore invited the Court to declare the application inadmissible or, alternatively, to deprive the applicant’s lawyer of his right to represent the applicant “any further”.

56. The Court recalls that, whilst the use of offensive language in proceedings before it is undoubtedly inappropriate, an application may only be rejected as abusive in extraordinary circumstances (see, *e.g.*, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p.1206, §§ 53-54; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Assenov and Others v. Bulgaria*, Commission decision of 27 June 1996, *Decisions and Reports* (DR) 86-B, p.

54). It is also true that in certain exceptional cases the persistent use of insulting or provocative language by an applicant against the respondent Government may be considered an abuse of the right of petition (see, most recently, *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II, as well as *Stamoulakatos v. the United Kingdom*, no. 27567/95, Commission decision of 9 April 1997; *L.R. v. Austria*, cited above; *X. v. Germany*, no. 2724/66, Commission decision of 10 February 1967; *X. and Y. v. Germany*, no. 2625/65, Commission decision of 30 September 1968, *Reports* 28, pp. 26-42). In the present case, however, the Court considers that although the statements made by the applicant's lawyer are inappropriate, excessively emotional and clearly regrettable, they do not amount to the circumstances of the kind that would justify a decision to declare the application inadmissible as an abuse of the right of petition (see, *mutatis mutandis*, *Chernitsyn v. Russia* (dec.), no. 5964/02, 8 July 2004) or, indeed, even to deprive the applicant's representative of his standing to represent his client in the present case, particularly given the fact that the impugned statements were made in the applicant's final observations.

57. It follows that the Government's preliminary objection must be dismissed.

B. Admissibility conclusion

58. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. As regards the applicant's complaint considered under Article 6 § 1 of the Convention

(a) Arguments of the parties

59. The Government pointed out that:

- the applicant had had continued informal contact with the children since 2001;
- on 22 December 2003 the Social Care Centre had itself proposed that the enforcement proceeding be terminated;
- the Convention had entered into force in respect of Serbia on 3 March 2004;

- a new judgment restricting the applicant's access rights had been rendered on 12 April 2007;
- the impugned enforcement proceedings had themselves been terminated by 22 May 2008;
- M.F. had ultimately paid the fine imposed by the enforcement court; and
- the applicant had not done enough to expedite the enforcement proceedings, while they lasted, and had, in the meantime, been convicted for failing to pay child maintenance.

The Government concluded that there had thus been no violation of Article 6 § 1 of the Convention.

60. The applicant reaffirmed his complaint and added that:

- he had been able to see the children only briefly and haphazardly, when they fled to his house, in front of their school, or occasionally when M.F. personally deemed it appropriate;
- he was never afforded contact with the children in accordance with the final access order of 6 June 2000;
- the Social Care Centre was biased in favour of M.F.;
- he could not have paid child maintenance because he had been indigent, of poor health and mostly unemployed: in any event, child access and child maintenance were two unrelated issues;
- the enforcement court itself had been obliged to proceed *ex officio*, and he had anyway complained orally about the delay on many occasions; and
- there was thus no point in filing a complaint against the Municipal Court's decision to terminate the proceedings in question or in bringing new enforcement proceedings based on the judgment adopted on 12 April 2007.

(b) Relevant principles

61. The Court recalls its settled case-law to the effect that Article 6 § 1 of the Convention, *inter alia*, protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, § 40; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003).

62. Further, the Court notes that, irrespective of whether enforcement is to be carried out against a private or State actor, it is up to the State to take all necessary steps to execute a final court judgment as well as to, in so doing, ensure the effective participation of its entire apparatus, failing which it will fall short of the requirements contained in Article 6 § 1 (see, *mutatis mutandis*, in the child custody context, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V).

(c) The Court's assessment

63. The Court observes, in the first place, that the final access order of 6 June 2000 had remained unenforced between 6 October 2000 and 22 May 2008, which is when the impugned enforcement proceedings had been terminated (see paragraphs 23 and 33 above). Secondly, having adopted the enforcement order, the Municipal Court was under an obligation to proceed *ex officio*. Thirdly, Serbia ratified the Convention on 3 March 2004, meaning that the proceedings in question had been within the Court's competence *ratione temporis* for a period of more than four years and two months. Fourthly, during this time the Municipal Court had merely confirmed a fine imposed earlier, ordered M.F. to pay the costs specified and cancelled a scheduled hearing (see paragraphs 30-33 above). Lastly, it is noted that the Municipal Court had failed to make use of any coercive measures despite the clearly uncooperative attitude expressed by the applicant's former wife (see paragraph 40 above). Notwithstanding the sensitivity of the impugned proceedings, as well as the fact that the applicant was able to see the children informally, the Court therefore considers that the Serbian authorities did not take sufficient steps to execute the final access order of 6 June 2000. There has consequently been a violation of Article 6 § 1 of the Convention.

2. As regards the applicant's complaint considered under Article 8 of the Convention

(a) Arguments of the parties

64. Both the Government and the applicant relied on their respective arguments described at paragraphs 59 and 60 above.

(b) Relevant principles

65. The Court notes 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, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

66. Article 8 includes for parents a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunions (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V).

67. What is decisive is whether the national authorities have taken all necessary steps to facilitate the execution of a child-related court decision as can reasonably be demanded in the specific circumstances of each case (see,

mutatis mutandis, *Hokkanen v. Finland*, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen v. Finland*, cited above, §128; *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003). 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 do not cohabit (see *Ignaccolo-Zenide*, cited above, § 102).

68. Lastly, the Court recalls that, although coercive measures are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live (see *Ignaccolo-Zenide*, cited above, § 106).

(c) The Court's assessment

69. In view of the above-cited jurisprudence, the specific facts of the present case and the parties' own submissions already considered under Article 6 (see paragraph 63 above), the Court finds that the Serbian authorities have failed to do everything in their power that could reasonably have been expected of them. In particular, although the applicant had sporadic contact with his children, his access rights as specified in the Municipal Court's judgment of 6 June 2000 were never enforced, having instead, ultimately, been restricted by the same court's judgment of 12 April 2007 (see paragraph 20 above). The legitimate interest of the applicant to develop and sustain a bond with his children and their own long-term interest to the same effect were thus not duly considered (see, *mutatis mutandis*, *Görgülü v. Germany*, no. 74969/01, § 46, 26 February 2004), which is why the applicant has suffered a separate breach of the right to respect for his family life as guaranteed by Article 8 (see, *mutatis mutandis*, *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, § 91).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

70. Under Article 13 of the Convention, the applicant complained that he had no effective domestic remedy in order to expedite the enforcement proceedings at issue.

71. Article 13 reads 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."

A. Admissibility

72. The Court notes that this complaint raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it cannot be declared inadmissible on any other grounds. The complaint must therefore be declared admissible.

B. Merits

73. The Government relied on their arguments described at paragraph 59 above and maintained that there was, hence, no violation of Article 13 either.

74. The applicant reaffirmed his complaint.

75. Having regard to its findings in respect of Articles 6 § 1 and 8, as well as its prior judgments on this issue (see, *mutatis mutandis*, *V.A.M. v. Serbia*, no. 39177/05, 13 March 2007; *Ilić v. Serbia*, no. 30132/04, 9 October 2007), the Court considers that, at the relevant time, there was indeed no effective remedy under domestic law for the applicant's complaint about the non-enforcement in question. There has, accordingly, been a violation of Article 13 taken together with Articles 6 § 1 and 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

78. The Government contested that claim.

79. The Court sees no reason to doubt that the applicant suffered distress as a result of the non-enforcement of his access rights, which is why a finding of a violation alone would not constitute sufficient just satisfaction within the meaning of Article 41.

80. Having regard to the above and on the basis of equity, as required by Article 41, the Court awards the applicant EUR 4,000 under this head.

B. Costs and expenses

81. The applicant also claimed a total of EUR 5,000 for the costs and expenses incurred domestically, as well as those incurred in connection with his Strasbourg case.

82. The Government contested that claim.

83. 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 were also reasonable as to their quantum. In the present case, regard being had to the lack of information in its possession and the above criteria, the Court rejects, as unsubstantiated, the applicant's claim for costs and expenses.

C. Default interest

84. The Court considers it appropriate that the default interest 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

1. *Declares* the application admissible by a majority;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;
4. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention, taken together with Articles 6 § 1 and 8;
5. *Holds* by six votes to one
 - (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, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of the non-pecuniary damage suffered, to be converted into Serbian dinars at the rate applicable at the date of settlement;
 - (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;

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

Done in English, and notified in writing on 14 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:

- (a) concurring opinion of opinion of Mr Popović;
- (b) dissenting opinion of Ms Jočienė.

F.T.
S.D.

CONCURRING OPINION OF JUDGE POPOVIĆ

I agreed with the majority of my colleagues on the merits of the case, but had previously been in favour of striking the application out of the list on the ground of abuse of the right of application within the meaning of Article 35(3) of the Convention.

The reason for my attitude on the admissibility issue was the indecent and entirely inappropriate language used by the applicant's counsel in his submissions to the Court.

I very much doubt that counsel has ever been allowed to use such language in the course of domestic proceedings and, in my opinion, he should be disciplined by the Bar.

DISSENTING OPINION OF JUDGE JOCIENE

1. I regret that I cannot agree with the Section's conclusions in this case to the effect that there has been a violation of Article 6 § 1 of the Convention and a separate violation of Article 8.

2. The applicant complained under Articles 6 and 8 of the Convention about the failure to enforce a final order granting access to his children, adopted by a municipal court on 6 June 2000. According to the applicant, that order remained unenforced until 22 May 2008 (see paragraphs 14, 22, 23 and 33 of the judgment).

3. In my opinion, this case should have been analyzed from the Convention perspective under Article 6 § 1 alone, since the main aspect here is the non-enforcement of the court judgment of 6 June 2000, seen as a part of the right of an access to a court; therefore, no separate examination under Article 8 is required (see *mutatis mutandis Mehmet and Suna Yiğit v. Turkey*, Application no. 52658/99, judgment of 17 July 2007).

4. I take into account the Government's arguments that the applicant continued to have informal contacts with the children from 2001 onwards. I also note that on 22 December 2003 the Social Care Centre in Zrenjanin informed the domestic court that the applicant had not been in touch with it and that M.F. had stated that the applicant had shown no initiative in attempting to see the children. For these reasons the Social Care Centre proposed that the enforcement proceedings be terminated. In my opinion, this clearly shows that the applicant himself was not sufficiently active in seeking contact with his children. Nevertheless, I believe that these arguments are not decisive in the circumstances of the case, particularly because Serbia ratified the Convention only on 3 March 2004. This means that, according to the Court's competence *ratione temporis*, only the period from 3 March 2004, when Serbia ratified the Convention (see, *mutatis mutandis, Jasiūnienė v. Lithuania*, no. 41510/98, § 38, 6 March 2003) to 22 May 2008, when the enforcement proceedings were terminated, should be taken into account.

5. It should now be analyzed whether the respondent State, taking into account its *margin of appreciation*, took all necessary steps to implement within a reasonable time the final court's decision and did everything in their power that could reasonably have been expected of them. I fully agree with the Court's clear-cut case-law that the reasonableness of the length of proceedings, including the enforcement proceedings, is to be considered in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and also the importance of what is at stake for the applicant (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97,

§ 19, ECHR 2000-IV). I also agree that Article 6 protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003, etc). In custody cases, the importance of what is at stake for the applicant in the litigation must be given extra weight. This means that it is essential that child custody cases be dealt with speedily (see *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII), as the passage of time can have irremediable consequences for relations between children and parents who do not live with them (see, *mutatis mutandis*, *Maire v. Portugal*, no. 48206/99, § 74, ECHR 2003-VII, and *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 102, ECHR 2000-I), although a delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy*, 8 December 1983, § 37, Series A no. 71).

6. Turning to the circumstances of our case, it should be noted that the period to be taken into consideration began only on 3 March 2004. Consequently, according to the Social Care Centre, contact between the applicant and his children was re-established in the summer of 2005 (see paragraph 40 of the judgment). In addition, on 31 May 2006 the Social Care Centre confirmed that Z.F., one of the applicant's daughters, had effectively been living with him since 22 April 2006.

7. Furthermore, the same Centre's subsequent credible arguments should be taken into consideration. On 12 October 2006 it observed that the enforcement proceedings had been ineffective due to the uncooperative attitude of the children, and not only that of the mother. The Social Care Centre also noted that the applicant himself could not be considered a positive influence on his daughter Z.F., which, in my opinion, is a very serious factor in balancing the interests of the parents and children involved. It is also established that on 22 February 2007 one of the daughters, Z.F., again went to stay with the applicant, but was returned to the mother's home.

8. Furthermore, it would appear that in December 2007 both Z.F. and N.F. were living with the applicant, which is why on 17 December 2007 he was ordered by the municipal court to return them to their mother (see paragraphs 44 and 45 of the judgment). The factual circumstances of this case clearly show that the applicant had contact with his children since 2005 and even more, the children were actually living with him, in violation of the court order placing them in the mother's house. In these circumstances, another aspect could have had very detrimental effects – the mother could also have complained that the municipal court's order of 6 June 2000,

placing the children with her, had remained unenforced, as the children had been actually or occasionally living with the applicant (see paragraphs 39-41 and 44).

9. It should be also noted that the Social Care Centre did not act alone in the enforcement proceedings, but was backed up by the domestic courts. On 6 October 2000 the Municipal Court issued an enforcement order stating, *inter alia*, that M.F. would be fined 1,500 Serbian dinars should she fail to comply with it. On 29 June 2001 the Municipal Court decided to impose the said fine and again ordered M.F. to respect the applicant's access rights; this decision was confirmed by the Municipal Court in February 2005. On 3 March 2005 the Municipal Court ordered M.F. to pay 6,750 dinars in costs.

10. Furthermore, the applicant's behaviour also attracts some criticism. On 20 April 2005 the Municipal Court found the applicant guilty of failing to pay child maintenance between 8 October 2001 and 8 March 2005 and sentenced him to four months in prison, suspended for one year. I note the applicant's argument that he was unemployed and was unable to pay child maintenance, but I consider that in such a situation the applicant ought to have applied to the court to have the maintenance order changed. The applicant's passivity cannot be seen as an appropriate contribution to the best interest of his children. As I understand it, the applicant had not only a right to contact with his children, but also a financial obligation to contribute to optimal living and educational arrangements for them.

11. In the circumstances of the case, I conclude that the Serbian authorities did everything in their power that could reasonably have been expected of them. They took all necessary steps to facilitate execution of the court's judgment of 6 June 2000 and, in my opinion, the overall duration of the execution proceedings cannot be deemed excessive. Therefore, there has been no violation of Article 6 § 1 of the Convention in this case. Taking into consideration the fact that the finding of a violation of Article 8 of the Convention was based on the same arguments, analyzed under Article 6 § 1 of the Convention, and given in particular the applicant's genuine opportunities to see his children and even to live with them, relying on the fact that no irremediable consequences for the relationship between the children and their father can be discerned in this case, and also taking into account the active attitude of the Social Care Centre and the courts, I come to the conclusion that no separate examination is necessary under Article 8 of the Convention.

Having found no violations in this case, I also voted against any award of compensation to the applicant under Article 41 of the Convention.