



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

1959 · 50 · 2009

SECOND SECTION

CASE OF M.V. v. SERBIA

(Application no. 45251/07)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of M.V. 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 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 45251/07) against the Republic of 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, M.V. (“the applicant”), on 8 October 2007.

2. The President of the Chamber acceded to the applicant’s request not to have his name disclosed and gave priority to his application in accordance with Rules 47 § 3 and 41 of the Rules of Court, respectively.

3. The applicant was represented by Ms S.R., his mother and legal guardian. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

4. 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

5. The applicant, M.V., is an infant of Serbian nationality who was born in 2002 and currently lives in Belgrade.

6. The facts of the case, as submitted on behalf of the parties, may be summarised as follows.

7. On 16 April 2003 the applicant's representative, S.R., filed a civil claim with the Second Municipal Court (*Drugi opštinski sud*) in Belgrade, seeking child maintenance from N.V., the applicant's biological father.

8. On 2 February 2004 the Second Municipal Court issued an interim maintenance order, which had been requested by the applicant on 19 January 2004.

9. On 24 November 2004 the District Court quashed the interim order.

10. By 11 May 2005 a total of five hearings were scheduled. Only one, however, was held while the remaining four were adjourned due to the presiding judge's "other commitments" (*zbog sprečenosti*).

11. Between 17 June 2005 and 20 October 2006, the Second Municipal Court held or adjourned another thirteen hearings. At the hearing of 20 February 2006, it heard the applicant and the respondent for the first time since the beginning of the proceedings.

12. On 12 December 2006 the Second Municipal Court ruled partly in favour of the applicant and issued an interim maintenance order, pending the conclusion of the civil proceedings.

13. On 28 February 2007 the District Court (*Okružni sud*) in Belgrade quashed this judgment, as well as the interim order, and remitted the case for a retrial. In so doing it stated that the maintenance awarded needed to be reconsidered and, further, that N.V.'s access to the applicant also had to be regulated.

14. Between 5 July 2007 and 25 February 2008, three hearings were held, whilst two were adjourned because of a strike and the replacement of certain members of the court's panel.

15. On 25 February 2008 the Second Municipal Court ruled partly in favour of the applicant, issued an interim maintenance order pending the conclusion of the civil proceedings, and ordered N.V. to cover the legal costs.

16. On 31 March 2008 N.V. filed an appeal against this decision.

17. On 30 May 2008 the District Court reduced the maintenance awarded, rejected the request for an interim maintenance order, and ruled that each party was to pay its own costs and expenses.

18. This judgment was served on the applicant on 24 July 2008.

19. On 5 August 2008 the applicant filed an appeal on points of law.

20. On 11 August 2008 the applicant also filed a request for the re-opening of the proceedings.

21. According to the information in the case file provided by the parties to date, it would appear that the proceedings are still pending before the Supreme Court.

22. Throughout the proceedings complaints were made on behalf of the applicant about the delay to various State bodies, but to no avail.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

23. Complaints were made on behalf of the applicant under Articles 6, 8 and 13 of the Convention about the length of the proceedings in question, as well as the lack of an effective domestic remedy at his disposal in order to have them expedited.

24. The Court considers that these complaints fall to be examined under Articles 6 and 13 of the Convention.

25. The Government raised various objections to the admissibility of these matters. However, the Court has rejected similar objections in several previous cases (see, for example, *mutatis mutandis*, *Tomić v. Serbia*, no. 25959/06, §§ 81 and 82, 26 June 2007; *V.A.M. v. Serbia*, no. 39177/05, §§ 85 and 86, 13 March 2007; *Cvetković v. Serbia*, no. 17271/04, §§ 38 and 42, 10 June 2008) and finds no reason not to do so on this occasion. The complaints are therefore declared admissible.

26. The Government further contended that there had been no violation of Articles 6 and 13 of the Convention.

27. As regards the applicant's complaint about the protracted length of the proceedings, the Court observes that the impugned proceedings have been within the Court's competence *ratione temporis* for a period of more than five years and five months and, according to the information, in the case file, would appear to be still pending at third instance. On 3 March 2004, the date when the Convention came into force in respect of Serbia, it had already been pending for more than ten months.

28. The Court notes that this is not a particularly complex suit, that it involves issues of great importance to the applicant, and that both the Convention as well as the relevant domestic law require exceptional diligence in all child-related matters. Having regard to the criteria laid down in its jurisprudence, the Court is of the opinion that the overall length of the impugned proceedings has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

29. Moreover, having regard to its findings in respect of Article 6 § 1 and its prior judgments on the issue (see, *mutatis mutandis*, *Jevremović v. Serbia*, no. 3150/05, § 120-122, 17 July 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 length of the proceedings in question. There has, accordingly, been a violation of Article 13 of the Convention taken together with Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicant's representative, who is also his mother and legal guardian, claimed EUR 20,000 on his behalf for the non-pecuniary damage suffered. She also requested EUR 30,000 for her own mental anguish. No costs and expenses were requested.

31. The Government contested these claims. They pointed out that the applicant's representative was not a party to the proceedings before the Court and, therefore, not entitled to any compensation.

32. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the breach of his rights under the Convention, which is why a finding of a violation alone would not constitute sufficient just satisfaction within the meaning of Article 41. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,600 in respect of the non-pecuniary damage suffered, with default interest based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

33. The Court, however, rejects the claim submitted by the applicant's representative based on the reasons given by the Government.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of 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, EUR 1,600 (one thousand six hundred euros) in respect of the non-pecuniary damage suffered, which sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President