



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

SECOND SECTION

CASE OF DIMITRIJEVIĆ AND JAKOVLJEVIĆ v. SERBIA

(Application no. 34922/07)

JUDGMENT

STRASBOURG

19 January 2010

FINAL

19/04/2010

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

In the case of Dimitrijević and Jakovljević 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 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 34922/07) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Serbian nationals, Ms Aleksandra Dimitrijević (“the first applicant”) and Ms Suzana Jakovljević (“the second applicant”), on 2 August 2007.

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

3. The applicants, who had been granted legal aid, were represented by Mr M. Pavlović, a lawyer practising in Niš. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

4. On 27 May 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

5. The applicants, a daughter (the first applicant) and a mother (the second applicant), were born in 1993 and 1967, respectively, and live in Niš.

6. On 6 May 2003 M.D., the first applicant's father, filed a claim with the Municipal Court (*Opštinski sud*) in Niš, seeking the dissolution of his marriage to the second applicant.

7. On 12 February 2004 the applicants jointly filed a counterclaim (*protivtužba*), requesting that M.D. be ordered to pay monthly child maintenance to the first applicant.

8. On 18 January 2005 the Municipal Court: dissolved the marriage; awarded custody of the first applicant to the second applicant; regulated M.D.'s access rights; ordered him to pay monthly child maintenance; and decided that each party should bear its own costs.

9. Due to the Municipal Court's failure to properly serve this judgment on the applicants, the latter, who had clearly continued living at the same address, only managed to file an appeal against it on 27 April 2007.

10. On 18 September 2007 the District Court (*Okružni sud*) in Niš quashed the Municipal Court's judgment in so far as it concerned the maintenance sought and ordered a retrial.

11. Having held four separate hearings, on 26 December 2007 the Municipal Court ruled partly in favour of the applicants. In so doing, it ordered M.D. to pay monthly child maintenance, as well as the costs incurred by the applicants.

12. On 26 February 2008 this judgment was upheld by the District Court on appeal.

THE LAW

13. The applicants complained about the excessive length of the child maintenance suit in question.

14. The Government raised various objections to the admissibility of this matter. However, the Court has rejected similar objections in many 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 admissible.

15. The Court observes that the period to be taken into consideration began on 3 March 2004, which is when the Convention entered into force in respect of Serbia, and ended on 26 February 2008. The impugned proceedings have thus been within the Court's competence *ratione temporis* for a period of approximately four years, of which two years and three months are clearly imputable to the respondent State's judiciary (see paragraph 9 above).

16. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *M.V. v. Serbia*, no. 45251/07, 22 September 2009). Having examined all the material submitted to it, and noting that both the

Convention and the relevant domestic law require exceptional diligence in all child-related matters, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present circumstances. Having regard to its case-law on the subject, the Court concludes that the length of the proceedings here at issue was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

17. Relying on Article 41 of the Convention, the applicants, jointly, claimed a total of 23,000 euros (EUR) for the pecuniary and non-pecuniary damage suffered. The Government contested those claims. The Court does not discern a causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicants' claim in this regard. However, it considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it hence awards them, jointly, EUR 1,300 under this head.

18. The applicants also claimed EUR 1,500 each for costs and expenses. Regard being had to its criteria in this respect and the EUR 850 already granted to the applicants under the Council of Europe's legal aid scheme, as well as the costs awarded domestically, the Court rejects the applicants' claims in their entirety.

19. 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, UNANIMOUSLY,

1. *Declares the application admissible;*
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 1,300 (one thousand three 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President