

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

THIRD SECTION

CASE OF DAVIDOVIĆ v. SERBIA

(Application no. 46198/18)

JUDGMENT

STRASBOURG

4 March 2025

This judgment is final but it may be subject to editorial revision.



In the case of Davidović v. Serbia,

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

Peeter Roosma*, President*,
Diana Kovatcheva,
Mateja Đurović*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 46198/18) 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") on 21 September 2018 by a Serbian national, Ms Sanela Davidović ("the applicant"), who was born in 1991, lives in Žagubica and was represented by Ms Tasić, a lawyer practising in Leskovac;

the decision to give notice of the complaint concerning the applicant's parental rights to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

the decision to dismiss the Government's objection to examination of the application by a Committee;

Having deliberated in private on 4 February 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the delayed enforcement of a final judgment made in the applicant's favour in child custody proceedings.

2. The applicant and Ž.A. had a child, who was born on 23 November 2011.

3. On 25 March 2013, after separating from Ž.A., the applicant was awarded custody of their child (aged one year and four months at the time). That judgment became final on 10 July 2013.

4. On 18 November 2013 the Žagubica court unit of the Požarevac Court of First Instance (hereinafter "the Court of First Instance") issued an order for the enforcement of the above-mentioned judgment.

5. On 26 February and 14 March 2014 the Court of First Instance ordered Ž.A. to appear in the Centre for Social Work (hereinafter "the Centre") and hand over the child to the applicant. According to minutes of the Court of First Instance dated 11 March 2014, enforcement of the judgment was not possible because the case file was not available. Enforcement of the judgment was therefore postponed to 2 April 2014. That attempt at enforcement was also unsuccessful, because Ž.A. had not been properly summoned.

6. On 2 April 2014 the Court of First Instance scheduled a new date for enforcement, namely 22 April 2014, to take place at Ž.A.'s home in the

presence of a psychologist from the Centre, with the assistance of the police. On the appointed day the child could not be found on the premises of Ž.A.'s home. The same set of circumstances occurred during subsequent attempts at enforcement on 22 May and 15 July 2014.

7. On 21 July 2014 the Court of First Instance ordered Ž.A.'s imprisonment until he had complied with the enforcement order. He did not begin serving the sentence until 5 March 2015.

8. Subsequent attempts at enforcement on 24 March, 21 April and 10 September 2015 were unsuccessful, because the child's grandparents had absconded with the child, despite a fine being imposed on the child's grandfather on 3 April 2015.

9. On 5 November 2015 the Court of First Instance awarded the applicant 500 euros (EUR) in respect of the excessive length of the enforcement and ordered the proceedings to be expedited.

10. After yet another failed attempt at enforcement on 24 December 2015, the Centre submitted a report to the Court of First Instance, stating that to proceed with the enforcement by seizing the child would not be in his best interests. On the basis of that report, on 14 March 2016 the Court of First Instance suspended the enforcement proceedings.

11. On 12 April 2017, upon the applicant's request, a further enforcement was ordered in which Ž.A. was given a three-day period in which to voluntarily hand over the child. After Ž.A. had failed to comply with the enforcement order, the Centre submitted a report to the Court of First Instance, stating that the taking of the child was the most suitable method of enforcement.

12. On 14 November 2017 the enforcement was finally carried out.

13. On 25 January 2018 the Constitutional Court found a violation of the applicant's right to respect for family life but did not award her any compensation for non-pecuniary damage, ruling that the finding of the violation represented sufficient redress, having regard to the fact that she had previously been awarded EUR 500 in respect of the excessive length of the enforcement (see paragraph 9 above). It found that at the time that the constitutional appeal was lodged, the custody judgment had been unenforced for two years and one month. During that period, the Court of First Instance had ordered Ž.A. to hand over the child twice and had unsuccessfully attempted to take the child from him on six occasions with assistance from the police and a psychologist. The Court of First Instance ordered Ž.A.'s imprisonment but he only began serving his sentence after a delay of eight months (see paragraph 7 above), whereas the child's grandfather was fined only once, and that fine was not collected. Despite the fact that throughout the process Ž.A. demonstrated an unwillingness to cooperate by absconding with the child, the court did not apply all the available means of enforcement provided for in Article 228 § 1 of the Law on Enforcement of 2011, nor did the police take coercive measures against Ž.A. or third parties who had

hindered the enforcement or even notify the prosecutor's office accordingly, as required by Article 231 § 3 of the Law. The Constitutional Court concluded that the ineffective conduct of the enforcement court had violated the applicant's parental rights during the relevant period.

14. The applicant complained under Article 8 of the Convention about the delay in the enforcement of the final judgment in question which had prevented her from seeing her child for more than four years and, in particular, about the Constitutional Court's decision not to award her compensation.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

The applicant's victim status

15. The Government submitted that, in view of the Constitutional Court's decision, the applicant could no longer claim to be a victim, having regard to the fact that the violation of the applicant's parental rights had already been established and that she had already received the amount of EUR 500 in respect of the excessive length of the enforcement (see paragraph 13 above).

16. The Court observes that the Constitutional Court acknowledged a violation of the applicant's rights. However, the Constitutional Court dismissed the applicant's request for compensation in respect of non-pecuniary damage, holding that the finding of the violation represented sufficient redress, bearing in mind that she had previously been awarded EUR 500 in respect of the excessive length of the enforcement. Even taking into consideration the amount awarded on account of the excessive length of enforcement in the context of the violation of parental rights (see paragraph 9 above), the amount of compensation awarded at domestic level cannot be considered appropriate and sufficient to remove the applicant's victim status because it is significantly lower than that generally awarded by the Court in other similar cases brought against Serbia (see, for example, *Krivošej v. Serbia*, no. 42559/08, § 65, 13 April 2010; *Milovanović v. Serbia*, no. 56065/10, §§ 96-99 and 141, 8 October 2019; and *Popadić v. Serbia*, no. 7833/12, § 106, 20 September 2022).

17. The Court therefore dismisses the Government's objection and considers that the applicant may still claim to be a victim within the meaning of Article 34 of the Convention. It further notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

II. MERITS

18. The general principles confirming positive obligations of public authorities inherent in effective "respect" for family life, under Article 8 of the Convention, have been summarised in *V.A.M. v. Serbia* (no. 39177/05, §§ 130-35, 13 March 2007)).

19. In the present case the Constitutional Court has already found that the domestic authorities had violated the applicant's parental rights (see paragraph 13 above). The Court has no reason to disagree with that assessment.

20. Regard being had to the above, the Court concludes that the Serbian authorities failed to take all necessary steps that could reasonably be expected in the given circumstances to ensure effective enjoyment by the applicant of her parental rights. There has accordingly been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant claimed 4,500 euros (EUR) in respect of the non-pecuniary damage suffered.

22. The Government contested that claim.

23. Given the nature of the violation found in the present case, taking into account the award made at the domestic level and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

24. The applicant also claimed EUR 500 for the costs and expenses incurred before the domestic courts and the Court, respectively.

25. The Government submitted that the amount claimed in respect of costs and expenses was unsubstantiated.

26. 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 were actually and necessarily incurred and were reasonable as to quantum. In the present case, as the applicant failed to submit any evidence (bills or invoices) in support of her claims for costs and expenses incurred, that part of her claim is rejected for lack of substantiation.

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, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which is to be converted into the currency of the respondent State 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President