

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

FOURTH SECTION

CASE OF KOSTIĆ v. SERBIA

(Application no. 31530/20)

JUDGMENT

STRASBOURG

2 July 2024

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



In the case of Kostić v. Serbia,

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

Anne Louise Bormann*, President*,
Branko Lubarda,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 31530/20) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 June 2020 by a Serbian national, Mr Dejan Kostić ("the applicant"), who was born in 1964 and lives in Velika Plana;

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

the parties' observations;

the Government not having objected to the examination of the application by a Committee;

Having deliberated in private on 11 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the non-enforcement of the applicant's contact rights with his son, as granted by a final judgment.

2. The child of the applicant and M.J. was born in 2003.

3. In the following years, the applicant and M.J. ceased to live together. By judgment of 20 February 2009, the Velika Plana Municipal Court (hereinafter "the Municipal Court") decided that the child would continue to live with his mother while the applicant would periodically spend time with the child according to a predetermined schedule.

4. On 15 June 2009 the Municipal Court issued an order for the enforcement of the above judgment.

5. Subsequently, by means of six separate submissions addressed to the Municipal Court, between 6 July 2009 and 22 March 2010, the applicant expressed his concern that M.J. had consistently denied him access to his son, contrary to the requirements of the judgment. In some of those submissions, the applicant also requested that M.J. be fined for her conduct.

6. Reports from the Centre for Social Work (hereinafter "the Centre"), which were submitted to the Municipal Court on four separate occasions, between 11 November 2010 and 10 October 2013, confirmed that the mother of the child had been obstructing the contact between the applicant and his

son, as well as the work of the Centre in general. The Centre pointed out that such behaviour could have unpredictable consequences for the child's psychological development. Consequently, it suggested that the Municipal Court should proceed with the enforcement of the applicant's contact rights.

7. Between 25 May 2010 and 14 July 2014 the enforcement judge from the Municipal Court imposed four successive fines in respect of M.J. which were ultimately enforced in 2014.

8. Between May 2014 and December 2015 the applicant met his son on several occasions on the Centre's premises and under its supervision. During this period, the Centre submitted reports to the Municipal Court in which it criticised both the applicant and M.J. for their communication with their child. In addition, the Centre informed the Municipal Court that it would no longer be beneficial to continue with the enforcement of the applicant's contact rights given the estrangement that had developed between him and his son.

9. On 19 April 2016 the enforcement judge held a hearing at which the then 13-year-old boy stated that he had no intention of maintaining contact with his father.

10. On 6 April 2017 the enforcement judge discontinued the enforcement proceedings regarding the order of 15 June 2009 (see paragraph 4 above).

11. On 28 November 2019 the Constitutional Court found a violation of the applicant's contact rights. Since the enforcement proceedings had lasted for seven years and ten months, the Constitutional Court found that the relevant domestic authorities had failed to act promptly and appropriately. In particular, the applicant had not had any contact with his son for almost three years after the enforcement order had been issued (see paragraph 6 above), despite his repeated requests to the Municipal Court to facilitate such contact and despite his well-founded fears that all this could create a sense of alienation in his son. The enforcement court also repeatedly issued fines in respect of the child's mother even when previous fines had not yet been collected and despite their obvious ineffectiveness. In addition to that, the enforcement court failed to consider other measures available to it, such as the imposition of a custodial sentence or the removal of the child from the mother's custody. By the time the enforcement court intensified its communication with the Centre, the relationship between the applicant and his son had already deteriorated to such an extent that no other avenue was likely to produce any results. Consequently, the applicant's relationship with his son had suffered irreversible damage. In these circumstances, the enforcement court was clearly not guided by the best interests of the child. The Constitutional Court also found that the applicant's right to a trial within a reasonable time had been violated, due to the excessive length of the enforcement proceedings. Lastly, the Constitutional Court awarded the applicant 1,200 euros (EUR) for the non-pecuniary damage suffered as a

result of the violation of his contact rights and the excessive length of the enforcement proceedings.

12. The applicant complained under Article 8 of the Convention that the failure of the domestic authorities to enforce the final judgment of 20 February 2009 had deprived him of having proper contact with his son and thus of the effective exercise of his parental rights.

THE COURT'S ASSESSMENT

13. The Government submitted that, in view of the Constitutional Court's decision, the applicant could no longer claim to be a victim and that he had not suffered a significant disadvantage since the expected difference between the compensation awarded domestically and the amount likely to be awarded by the Court itself could not but be insignificant.

14. The Court considers that all this falls to be examined under the issue of the applicant's victim status. However, as this objection is closely linked to the substance of the applicant's complaint under Article 8, it must be joined to the merits.

15. The Court notes that the applicant' s complaint is also 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.

16. The Constitutional Court has already found that the domestic authorities had violated the applicant's contact rights (see paragraph 11 above). The Court has no reason to disagree with that assessment (see, *mutatis mutandis, Milovanović v. Serbia*, no. 56065/10, §§ 135-36, 8 October 2019).

17. The Constitutional Court also awarded the applicant compensation in the amount of EUR 1,200 for the non-pecuniary damage suffered. It concerned its findings of a violation of the applicant's contact rights and the excessive length of the proceedings (see paragraph 11 above). The Court does not consider that the level of compensation awarded at domestic level can be considered as appropriate and sufficient to remove the status of victim of the applicant (see, for example, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 262, ECHR 2012 (extracts)) 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*, cited above, § 141; and *Popadić v. Serbia*, no. 7833/12, § 106, 20 September 2022).

18. The Court therefore dismisses the Government's objection in this regard and concludes that there has been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed compensation in respect of the non-pecuniary damage suffered, but left the exact amount to the Court's discretion.

20. The Government contested this claim.

21. Given the nature of the violation found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the amount of EUR 3,300 in this connection, plus any tax that may be chargeable.

22. The applicant did not claim any costs or expenses. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection concerning the applicant's victim status and *dismisses it*;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,300 (three thousand three hundred 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.

Done in English, and notified in writing on 2 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski Deputy Registrar	Anne Louise Bormann President