

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

SECOND SECTION

DECISION

Application no. 14435/08
Marina STANKOVIĆ and others
against Serbia

The European Court of Human Rights (Second Section), sitting on 17 April 2012 as a Committee composed of:

András Sajó, President,
Dragoljub Popović,
Paulo Pinto de Albuquerque, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 March 2008,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the comments submitted by the Serbian Government,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Marina Stanković ("the first applicant"), Mr Danijel Stanković ("the second applicant") and Ms Violeta ("the third applicant) Stanković are Serbian nationals who were born in 1993, 1999 and 1966, respectively and live in Smederevo. They were represented before the Court by Ms S. Pećanac, a lawyer practising in Smederevo. The respondent Government are represented by their Agent, Mr S. Carić.

The first and the second applicants are a brother and a sister, while the third applicant is their mother.

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

1. The civil proceedings

On 19 November 1996 the Municipal Court in Vitina dissolved the marriage of the third applicant and R.S. and awarded the custody of the first applicant to R.S. However, the first applicant has effectively lived with the third applicant ever since.

In 1999 the second applicant (whose father is also R.S.) was born. He has lived with the third applicant since.

On 8 February 2007 the first and second applicants filed a lawsuit before the Municipal Court in Smederevo requesting R.S. to pay them monthly maintenance. On an unspecified subsequent date, the third applicant stepped into the proceedings, requesting custody of both her children. On several occasions the summons could not have been served upon R.S. since he had lived in Austria. By 25 October 2007 the summons were served and R.S. appointed an attorney to represent him in the proceedings.

Throughout the proceedings, the court scheduled sixteen hearings, of which the third applicant missed to attend eight, while R.S failed to attend six. Between 18 November and 19 December 2007 one hearing was postponed due to the strike of the court administrative staff and one due to the illness of the judge in the applicants' case.

In the course of 2008 the first applicant, who suffers from a mild mental disability and epilepsy, moved to R.S.'s household. At the hearing of 18 November 2008 she gave a statement that she preferred to be given to the custody of her father. However, by 19 January 2009 the first applicant withdrew her statement, and expressed preference to be the custody of the third applicant, moving again to her household.

During 2009 the first applicant got pregnant and moved out of the third applicant's household.

Due to the sensitive nature of the applicants' situation, on four occasions the court requested the Social Care Centre to submit reports in relation to the situation of the first and the second applicants, in particular since the first applicant has kept changing preference as to with which parent she wanted to live, in order to enable the court to decide on the custody claim set by the third applicant.

At a hearing on 1 April 2010 the court warned the third applicant that should she miss to attend another hearing the suit would have to be considered as withdrawn.

At a hearing on 23 April 2010 R.S. agreed with the applicants' claims. On even date the Municipal Court adopted a judgment and (a) awarded custody of the second applicant to the third applicant, (b) took note of the first applicant's apparent independence, thus finding it unnecessary to decide on her custody, (c) awarded the first and second applicants monthly maintenance in the amount of RSD 9,000 (approximately EUR 90), at the same time ordering payment of accumulated maintenance – for the first

applicant until 7 September 2009, as the date of her independence, and for the second applicant until the date of the judgment, (d) ordered R.S. to continue paying monthly maintenance for the second applicant and (e) awarded them the costs of proceedings.

None of the parties appealed against the judgment of 23 April 2010, which therefore became final and R.S. started paying maintenance accordingly.

2. The criminal proceedings

On an unspecified date the applicants filed a criminal complaint against R.S. for alleged child neglect and abuse. On 23 April 2008 the Public Prosecutor informed them that he would not proceed with the prosecution, at the same time informing them that they could take over the prosecution within eight days. The applicants have failed to continue with their criminal complaint.

COMPLAINTS

Under Articles 3, 6, 7 and 13 of the Convention, the applicants, in substance, complained about the length and unfairness of their civil proceedings, as well as the absence of an effective domestic remedy for the procedural delay.

The applicants also complained about the outcome of the criminal proceedings which they filed against R.S.

Under Article 14 of the Convention the applicants, furthermore, complained about being discriminated against, based on their property status.

THE LAW

1. The Government argued that the complaint concerning the length of civil proceedings was manifestly ill-founded, submitting that the applicants have significantly contributed to their protraction and that consequently this complaint fell to be declared inadmissible pursuant to Article 35 § 3 of the Convention. The applicants contested this submission by the Government.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The Court observes that the proceedings in the instant case lasted from 8 February 2007 to 23 April 2010. During this time, which amounts approximately to three years and two months, the case was finally resolved.

Firstly, the Court notes that the facts of the case have not been particularly complex, however the respondent in the domestic proceedings having residence abroad has to an extent had consequence to the overall length of proceedings. Namely, during the first eight months of the proceedings R.S. has been out of reach of the Serbian judiciary, and has subsequently missed a couple of hearings. However, once located he had appointed an attorney, and the proceedings continued without significant interruption from his part. Furthermore, the particular circumstances of the first applicant, and her changing preference as to with which parent she wanted to live, provoked the court to demand four different reports from the Social Work Centre, which lead to certain protractions of the proceedings.

Secondly, the Court notes that in the period from 18 November to 19 December 2007 one hearing was postponed due to the strike of the court administrative staff, and another due to the illness of the presiding judge. Subsequently the hearings have been scheduled regularly; nonetheless the third applicant (who was also acting on behalf of the first and the second applicants) failed to attend eight, without properly justifying her absence. Indeed the applicants fail to demonstrate that any other period, apart from the month from 18 November to 19 December 2007 could have been attributable to the State. The Court finds that this one month cannot be said to have significantly contributed to the overall duration of the proceedings.

Finally, it needs to be noted that the applicants' case concerned an issue of utter importance for them – the child custody and maintenance. For that reason the domestic court needed to assess the situation carefully and diligently, especially given the particular needs of the first applicant, which in return required additional hearings to be scheduled an reports be demanded, due to the sensitive nature of the case.

Consequently, while the domestic authorities appear to have acted with due care, there being no significant period of inactivity throughout the proceedings attributable to their part, the applicants themselves have failed to follow their case with necessary attention, thus missing eight hearings and almost leading to the presumption of withdrawal of the suit.

Regard being had to the above the Court considers that in this case the authorities complied with the requirement of expedition. Accordingly, this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention, there being no need for the Court to examine the remainder of the Government's admissibility objections as regards this complaint.

2. The applicants also complained about the fairness of the civil proceedings at question. The Court notes that the applicants have waived their right to lodge and appeal against the judgment of 23 April 2010. It

follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. The applicants furthermore complained about the absence of an effective domestic remedy for the procedural delay. Even assuming that the constitutional appeal was not an effective remedy in this particular case, considering the Court's finding in the case of *Vinčić and others* (*Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 51, 1 December 2009) – whereby the appeal to the Constitutional Court is considered to be in principle an effective domestic remedy as of 7 August 2008 – and reiterating that Article 13 is applicable even in the absence of an infringement of the applicant's Convention rights, it nonetheless applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see, amongst others, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court has found above that the applicants' complaint under Article 6 § 1 about the length of the proceedings is manifestly ill-founded. The applicant therefore did not have an "arguable claim" for the purposes of Article 13 (see, for example, *Samadi v. Germany* (dec.), no. 22367/04, 12 February 2008; and *Ellersiek v. Germany* (dec.), no. 77151/01, 23 June 2005).

It follows that this complaint is likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

4. The applicants also complained about the outcome of the criminal proceedings they had launched against R.S. The Court recalls it well developed case-law that the Convention does not guarantee any right as such to have third persons convicted and that Article 6 is inapplicable to proceedings with a view to pressing charges against such persons (see e.g. *Panyik v. Hungary* [dec.], § 4, 9 March 2010). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3(a), and must be rejected pursuant to Article 35 § 4 of the Convention.

5. The applicants finally complained about being discriminated against based on their property status. However, they have not provided any means of comparison, enabling the Court to consider the difference in the treatment of persons in analogous, or relevantly similar, situations (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007; *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008-). The complaint is thus completely unsubstantiated. It follows that also this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos Deputy Registrar	András Sajó President