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

THIRD SECTION

DECISION

Application no. 25384/18
X and Y
against Serbia

The European Court of Human Rights (Third Section), sitting on 4 February 2025 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. 25384/18) 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 24 May 2018 by two Serbian nationals, Mr X and Mr Y ("the applicants"), who were born in 1956 and 2007 respectively, live in Belgrade and were represented by Mr M. Konstantinović, a lawyer practising in Belgrade;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the decision not to have the applicants' names disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicants, a father and son, complained under Articles 3, 6 and 8 of the Convention about (i) the outcome and alleged unfairness of custody proceedings, in which custody was given to S.Ž., the first applicant's ex-wife and the second applicant's mother, and (ii) the alleged failure of the domestic authorities to protect the second applicant from domestic violence.

A. Custody proceedings

2. On 26 January 2010 X, the first applicant, asked the Belgrade Court of First Instance to dissolve his marriage with S.Ž. and to grant him sole custody of Y, the second applicant.

3. On 29 October 2010 the Novi Beograd Centre for Social Work informed the court that X had stopped being cooperative and had broken off contact with the professional team in charge of observing the family.

4. On 10 November 2010 the court ordered that experts from the Clinic for Child Psychiatry and Neurology of the Belgrade Faculty of Medicine assess the parties' parental abilities.

5. On 19 January 2012 the court dissolved the marriage between X and S.Ž., granting sole custody of Y to S.Ž. X was granted contact rights. The court examined X and S.Ž., as well as two experts on whose report, dated 16 May 2011, it relied together with reports of the Novi Beograd department of the Belgrade City Centre for Social Work. The court prohibited X and S.Ž. from resorting to any insolent, rude and malicious behaviour during Y's return to S.Ž. and ordered that they refrain from any insolent, malicious and reckless behaviour thereafter. That order was set for a period of one year, with the possibility of extension.

6. On 12 December 2012 and 14 November 2013, the judgment was upheld by the Belgrade Court of Appeal and the Supreme Court of Cassation, respectively. On 21 March 2014 X lodged a constitutional appeal on his own behalf and on that of Y against those judgments.

7. On 21 December 2017 the Constitutional Court dismissed the constitutional appeal as unfounded. It upheld the lower courts' judgments and pointed out, *inter alia*, that X, once the contested judgment had become final, no longer had the authority to represent Y in court.

B. Subsequent events

1. Proceedings concerning X's contact with Y and parental rights

8. S.Ž. filed complaints with social services, alleging violence perpetrated by X against her minor son (such as belittling the mother in the presence of the child and persuading the child to talk about being beaten by her, her poor parenting practices and her irresponsible attitude towards his health).

9. On 23 May 2014 a caseworker from social services made a field visit to X and observed the relationship between him and Y and that between X and his brother, Z.B., with whom he lived in a joint household. The caseworker issued a report which stated, *inter alia*, that Y's basic needs were satisfied but that he was exposed to emotional neglect and abuse. The report also stated that X took advantage of his son's young age to create a conflict of loyalties, disregarding the minor's emotional and social needs to enjoy a sense of peace, serenity and trust, which he should have in relation to both

parents, and especially in relation to the parent with whom he lived and who took direct care of him.

10. Relying on the report, S.Ž. asked the Belgrade First Basic Court to limit contact between X and Y.

11. On 2 February 2015 X asked the court to grant him sole custody of Y. He subsequently asked the court that S.Ž. be deprived of her parental rights.

12. On 4 November 2015 the Forensic Medical Board of the Novi Sad Medical Faculty issued a report, which stated that both parents lacked parental skills. X failed to recognise the mother's role in the child's life, and the mother had noticeable difficulties setting rules and boundaries for the child. Furthermore, as with the father, she failed to recognise the father's role in the child's proper development. The experts also stated that X manipulated the child and disturbed his peace and security by frequently reporting the mother to the authorities. Having examined all the circumstances, the experts concluded that the child should stay with his mother and continue to maintain contact with his father in the manner he had done so far. The experts suggested that both parents undergo family therapy for six months.

13. On 18 December 2017 the court gave a judgment ordering, *inter alia*, that contact between X and Y be reduced and that both parents attend the Marriage and Family Counselling Centre for Social Work to establish the necessary parental cooperation.

14. On 16 May 2019 the Belgrade Court of Appeal quashed the order of 18 December 2017 and remitted the matter for fresh consideration to the Belgrade Third Basic Court. It also prohibited X from harassing S.Ž. and Y any further.

15. On 21 March 2018, following an incident between Y and his mother, X refused to return Y to his mother.

16. On 30 May and 31 October 2018, the Belgrade Third Basic Court ordered that X return Y to S.Ž. He did not comply.

17. In a decision of 10 July 2020, the court ordered that X return Y to his mother. It deprived X temporarily of his parental rights and suspended all contact between him and Y for a period of six months. By the same decision, the court prohibited X from harassing S.Ž. and Y. It based its decision on findings of the Forensic Medical Board of the Novi Sad Medical Faculty dated 1 July 2020. It appears that the case is pending before the Court of Appeal.

18. On 10 February 2023 the Belgrade Third Basic Court deprived X of his parental rights and prohibited him from further disturbing S.Ž. and Y.

19. On 23 October 2023 the Belgrade First Basic Court made an interim order depriving S.Ž. of her parental rights.

20. Y currently lives with the brother of his father, Z.B., in Belgrade.

2. Criminal proceedings against X

21. The criminal proceedings against X on charges of abduction are pending before the first-instance court.

C. Alleged ill-treatment of Y

22. Since 6 April 2010 X had on numerous occasions complained to the domestic authorities that S.Ž. had been abusing Y, in that she had continuously been committing physical and psychological violence against him.

23. On each occasion the prosecutor's office conducted an inquiry to verify X's allegations. They questioned X, Z.B., Y and S.Ž., obtained expert opinions and reports from the Belgrade City Centre for Social Work, collected information from educational facilities and reviewed medical documentation.

24. All X's criminal complaints were dismissed for lack of evidence supporting the allegations of ill-treatment.

25. On 21 March 2018 X informed the Belgrade Police Administration that S.Ž. had physically assaulted Y and that the child had turned to him for help. The police interviewed Y, who stated that S.Ž. had scratched his thigh and that they had been pushing each other.

26. On 10 July 2018 X's criminal complaint in respect of the incident of 21 March 2018 was dismissed for lack of *corpus delicti*.

THE COURT'S ASSESSMENT

A. Alleged ill-treatment

27. The applicants complain under Article 3 of the Convention that the authorities had failed to respect their obligation to conduct an effective investigation in response to the first applicant's complaints that Y's mother had ill-treated him.

28. The relevant principles concerning the State's positive obligation inherent in Article 3 to investigate cases of ill-treatment, and in particular domestic abuse committed against children, are set out in *D.M.D. v. Romania* (no. 23022/13, §§ 40-41, 3 October 2017), *C.A.S. and C.S. v. Romania* (no. 26692/05, §§ 68-72, 20 March 2012) and *Söderman v. Sweden* ([GC], no. 5786/08, §§ 78-85, ECHR 2013).

29. In the present case, the Court notes that the authorities responded promptly to the numerous complaints lodged by X. They questioned the applicants, the alleged perpetrator and possible witnesses, and examined the evidence. In the Court's view, there is nothing in the material submitted to suggest that the authorities disregarded the seriousness of the allegations or

that they carried out their duties in a perfunctory manner (contrast *Eremia v. the Republic of Moldova*, no. 3564/11, § 66, 28 May 2013).

30. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Complaints concerning the outcome of the custody proceedings

31. The applicants alleged a violation of Article 8 of the Convention as regards the domestic courts' refusal to grant custody of Y to X.

32. The Court notes that the issue might arise as to X's *locus standi* to represent his son in the proceedings before it, regard being had to a possible conflict of interest between them. However, the Court will dispense with the ruling on that issue because the complaint is, in any event, inadmissible for the reasons set out below.

33. The relevant general principles are well developed in the Court's case-law (see, among other authorities, *Širvinskas v. Lithuania*, no. 21243/17, §§ 92-97, 23 July 2019, and *Petrov and X v. Russia*, no. 23608/16, §§ 98-102 and 106, 23 October 2018).

34. Turning to the present case, the Court considers that the decision to award custody of Y to his mother amounted to an interference with the first applicant's right to respect for his family life. It also considers that the interference had a basis in domestic law and that it pursued the legitimate aim of protecting the rights of the child. It remains to be examined whether the interference was "necessary in a democratic society".

35. In reviewing the domestic courts' decisions, the Court observes that the courts persistently reiterated the importance of Y's best interests. They based their decisions on a number of further considerations, such as the strained relationship between the parents and the lack of their willingness to overcome the difficulties. The domestic courts relied on the detailed and comprehensive assessments of expert psychologists (see paragraphs 5 and 9 above) and additional reports from the child's teachers, the children's services and the psychologists on the case. These reports were based on the close contact that the teachers had with the child, on continuous monitoring by the child welfare services and, on the experience, resulting from ongoing psychological therapy. Moreover, the parties made a number of written and oral submissions to the courts and social services, which were all taken into consideration and examined in detail.

36. The facts established by the domestic courts were based on the parties' submissions and detailed expert opinions (contrast *Petrov and X*, § 109, cited above, and *Penchevi v. Bulgaria*, no. 77818/12, § 69, 10 February 2015, in which no expert opinion had been obtained). Consequently, the Court is satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with.

37. Within their wide margin of appreciation (see *Sahin v. Germany* [GC], no. 30943/96, § 65, ECHR 2003-VIII), the authorities assessed the situation and the behaviour of both parents. Their decision to grant custody to the child's mother did not appear arbitrary or unreasonable, regard being had to the facts as they stood at the time.

38. Overall, the Court can accept that the reasons given by the domestic courts were relevant and sufficient within the State's margin of appreciation. In consequence, the applicants' complaint is inadmissible as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Remaining complaints

39. The applicants further complained under Article 6 of the Convention of the unfairness of the custody proceedings and the lack of impartiality of the court-appointed experts and under Article 8 concerning the positive obligations to protect the physical and moral integrity of the second applicant.

40. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto.

41. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 March 2025.

Olga Chernishova Deputy Registrar	Peeter Roosma President