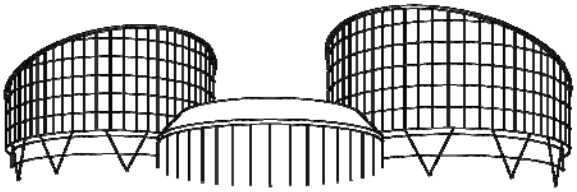

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF RISTIĆ v. SERBIA

(Application no. 32181/08)

JUDGMENT

STRASBOURG

18 January 2011

FINAL

18/04/2011

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

In the case of Ristić v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos,
Guido Raimondi, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 32181/08) 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 behalf of the two Serbian nationals, Ms Jovana Ristić and Mr Nikola Ristić ("the applicants"), by their mother, on 26 June 2008.

2. The applicants were represented by Mr M. Baratović, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

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

4. The applicants complained about the excessive length of the criminal proceedings, relating to their father's failure to pay the child maintenance awarded.

5. On 24 March 2009 the President of the Second Section decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was also decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1992 and 1996 respectively and live in Belgrade.

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

8. On 28 December 2000 the Third Municipal Court (*Treći opštinski sud*) in Belgrade dissolved the marriage between the applicants' parents and ordered their father (hereinafter "the defendant") to pay each of them 25% of his monthly income in child maintenance.

9. On 27 June 2001 this judgment became final.

10. On 2 April 2003 the applicants' mother filed a criminal complaint against the defendant, alleging his failure to pay the child maintenance awarded.

11. On 13 May 2003 the Third Municipal Public Prosecutor's Office requested the opening of the investigation.

12. On 29 May 2003, in the course of the preliminary proceedings before the Third Municipal Court, the applicants' mother, acting on behalf of the applicants, sought payment of the child maintenance accrued on the bases of the judgment adopted on 28 December 2000 (i.e. submitted a "civil-party complaint"; "*podnela predlog za ostvarivanje imovinsko-pravnog zahteva*").

13. On 14 July 2003 the Third Municipal Public Prosecutor's Office formally indicted the defendant in this respect.

14. The first hearing scheduled for 9 December 2003 was adjourned.

15. Between March 2004 and April 2005 two hearings were held whilst another three hearings were adjourned on various procedural grounds.

16. On 25 April 2005 the Third Municipal Court decided to consider the applicants' civil complaint on the merits and requested an expert opinion in respect of the amount of accrued maintenance between January 2001 and June 2005.

17. The expert produced his report on 7 July 2005.

18. Between August 2005 and October 2006, four hearings were adjourned either because of the failure of the defendant's lawyer to appear before the court or the court's failure to summon him properly.

19. In view of a possibility of settling the problem with the defendant, the applicants' legal representative requested the court to grant a short adjournment of the hearing of 22 November 2006. The court rescheduled the hearing for 8 December 2006.

20. Between December 2006 and October 2007, another two hearings were held whilst three hearings were adjourned on procedural grounds, one of them because of the presiding judge's "other commitments" (*zbog sprečenosti*).

21. In a letter of 11 September 2007, addressed to the President of the Third Municipal Court, the applicants alleged that the presiding judge had herself indicated that she "did not know what to do with the case" and would gladly be replaced by another judge.

22. On 22 November 2007 the Third Municipal Court requested an updated version of the expert's opinion.

23. The expert submitted his report on 8 January 2008.

24. The court served this report on the parties at the hearing of 8 February 2008, which was adjourned to allow them to submit their written comments.

25. The hearing scheduled for 6 March 2008 was adjourned because the prosecutor and the applicants' representative had failed to appear, and re-scheduled for 1 April 2008.

26. Given the defendant's failure to appear in court, the court adjourned the hearing of 1 April 2008 and scheduled the next hearing for 9 July 2008. This hearing would appear to have been also adjourned.

27. On 8 October 2008 the Third Municipal Court found the defendant guilty of failing to pay child maintenance and sentenced him to three months' in prison, suspended for one year. The court further advised the applicants, under Article 206 of the Criminal Proceedings Act (see paragraph 35 below), to pursue the compensation claims which they had made in the course of the criminal proceedings by means of a separate civil action before the civil courts. It was noted that the data collected in the

course of the criminal proceedings were not sufficient to determine the matter in the criminal context.

28. It would appear that this judgment was not served on the applicants' representative.

29. On 12 February 2009 the District Court (*Okružni sud*) in Belgrade quashed the Third Municipal Court's judgment and remitted the case for re- consideration.

30. The Third Municipal Court subsequently adjourned the hearing scheduled for 22 June 2009 in view of the defendant's failure to appear in court.

31. On 16 July 2009 the Third Municipal Court discontinued the proceedings because the prosecution had become time-barred. It further advised the applicants that they could pursue their claim for damages in a separate civil suit. No appeal having been submitted, this decision became final on 9 October 2009.

II. RELEVANT DOMESTIC LAW

32. The relevant domestic law is set out in the Court's judgment of (*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, §§ 24-35, 1 December 2009), as well as in the Code of Criminal Procedure (*Zakonik o krivičnom postupku*, published in the Official Gazette of the Federal Republic of Yugoslavia nos. 70/01 and 68/02, as well as the Official Gazette of the Republic of Serbia – OG RS – nos. 58/04, 85/05, 115/05, 46/06, 49/07, 122/08, 20/09 and 72/09).

33. Under Serbian law a victim of a criminal offence may seek financial reparation for the damage sustained from the perpetrator either by filing a civil party (pecuniary) complaint in criminal proceedings pursuant to the Code of Criminal Procedure, or by bringing a separate civil claim.

34. According to Article 201 of the Code of Criminal Procedure, a civil party claim (*imovinsko-pravni zahtev*) arising out of the commission of a criminal offence shall be decided, following the request of an authorised claimant, in the course of criminal proceedings unless it significantly delays those proceedings. Under Article 203, this claim may, *inter alia*, be submitted to the competent criminal court of first instance up until the conclusion of the main hearing.

35. The Act further provides under Article 206 that should the court find the accused guilty, the victim may be awarded full or partial compensation. In the latter case, the court may advise him or her to seek the remainder of the compensation sought in civil proceedings. The same applies if evidence taken in criminal proceedings is insufficient to have damages awarded. In case of an acquittal or dismissal of the prosecution, if the proceedings are discontinued or the indictment is rejected, the court shall advise the victim to pursue his or her compensation claim in a separate civil suit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

36. Complaints were made on behalf of the applicants that the proceedings at issue had not been concluded within a reasonable time, as required by Article 6 § 1 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

1. The parties' submissions

37. The Government maintained that the applicants had not exhausted all effective domestic remedies within the meaning of Article 35 § 1 of the Convention. In particular, they had failed to lodge a constitutional appeal with the Constitutional Court of the Republic of Serbia (hereinafter "the Constitutional Court"), as well as to seek civil enforcement of the judgment of 27 June 2001.

38. As regards the constitutional appeal, the applicants stated that, at the material time, they had not considered the constitutional complaint a domestic remedy to be exhausted before submitting their case to the Court. The applicants further explained that the defendant had allegedly transferred all his property to his brother and current partner, meaning that no civil enforcement would have been possible. Lastly, they believed that the criminal proceedings would expedite the payment of the maintenance awarded, particularly following the criminal court's initial decision to consider their claims on the merits.

2. The Court's assessment

39. The Court notes that the present application was introduced on 26 June 2008. The Court further recalls that it has already held that a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, cited above, § 51). The Court does not see any reason to hold otherwise in the present case, which is why the Government's objection in this respect must be dismissed.

40. As regards the Government's second objection, the Court notes that under the applicable domestic legislation a victim of a criminal offence may pursue a civil action for the damage sustained as a consequence of a criminal offence either by filing a civil-party complaint before the criminal courts simultaneously with the prosecution or by initiating a separate civil suit for damages (see paragraph 33). The Court observes that the applicants had made use of the criminal avenue (see paragraph 12). Bearing in mind that the criminal court had accepted to examine their civil claims, the applicants therefore had a legitimate expectation that the said court would proceed to rule on their merits. In any event, the applicants have not complained before this Court about the non-enforcement of the judgment of 27 June 2001, but only in respect of the protracted length of the criminal proceedings wherein they appeared as victims with a civil claim. Thus, for the purposes of this case, the Government's objection is clearly irrelevant and must, as such, be rejected.

41. In view of the above, the Court concludes that the applicants' complaints cannot be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention. The Court also considers that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The complaints must therefore be declared admissible.

B. Merits

1. The parties' submissions

42. The Government contested that the overall length of the proceedings in question had been excessive. In particular, they maintained that: (a) though it may be considered that the impugned criminal proceedings had started on 13 May 2003, the period which falls within the Court's competence *ratione temporis* began on 3 March 2004, the date when the Convention entered into force in respect of Serbia; (b) the case was relatively complex because of the court's responsibility to establish both the elements of a crime and the defendant's debt; (c) while several adjournments of the hearings could be imputable to the domestic authorities, the conduct of the applicants' legal representative had also contributed to the length; (d) the presiding judge had adjourned several hearings in order to ensure the defendant's right to a fair trial.

43. The applicants contested these arguments. They maintained that the proceedings in question were factually and legally simple. The applicants further submitted that they had not contributed to the delay at issue, but that the judicial authorities had sent a very disturbing message to irresponsible fathers to the effect that they could avoid paying child maintenance with impunity.

2. The Court's assessment

44. The Court notes at the outset that the applicants were not accused in the criminal proceedings complained of, but participated as the injured parties. In this connection, it notes that Article 6 does not apply to criminal proceedings in respect of the right to have third parties prosecuted or sentenced for a criminal offence. It may, however, apply under its "civil head" to criminal proceedings involving a determination of pecuniary claims asserted by the injured parties (so-called "civil-party complaints") and, even in the absence of such claims, to those criminal proceedings the outcome of which is decisive for the "civil right" in question (see *Perez v. France* [GC], no. 47287/99, §§ 57-72, ECHR 2004-I). Article 6 is applicable under its civil limb to the criminal proceedings from the moment when the victims join as civil parties, namely as of when they bring their action for the damage suffered as a result of a criminal offence (*Atanasova v. Bulgaria*, no. 72001/01, 2 October 2008, § 51; and *Boris Stojanovski v. "the former Yugoslav Republic of Macedonia"*, no. 41916/04, 6 May 2010, § 40), even if this happens during the preliminary investigation stage of the case (see *Tomasi v. France*, 27 August 1992, Series A no. 241-A; and *Perez v. France*, cited above, § 40).

45. The Court further recalls 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, *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-V; *Frydlender v. France* [GC], no. 30979/96, CEDH 2000-VII*; Zimmerman and Steiner*

v. Switzerland, 13 July 1983*,* Series A no. 66, and *Jablonski v. Poland*, no. 33492/96, 21 December 2000).

46. Turning to the present case, the Court firstly notes that Article 6 is applicable as of 29 May 2003, which was when the applicants' mother, acting on behalf of the applicants, filed the civil-party complaints in the course of the criminal investigation and they thus acquired the status of civil parties to the criminal trial. The complaints were obviously designed to secure a conviction which would have enabled the applicants to exercise their civil rights, i.e. the right to child maintenance as ordered by the judgment of 28 December 2000.

47. The Court secondly notes that, for the purposes of this case, the impugned proceedings lasted between 29 May 2003 and 9 October 2009, when the court's decision of 16 July 2009 became final. On 3 March 2004, the date when the Convention came into force in respect of Serbia, they had thus been pending for nine months, while following this date, they came within the Court's competence *ratione temporis* for a period of five years and seven months before two levels of jurisdiction (see, among other authorities, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 46).

48. Thirdly, the proceedings at issue were not particularly complex, they involved issues of great importance to the applicants, and furthermore, the Convention as well as the relevant domestic law require exceptional diligence in all child-related matters.

49. Fourthly, the applicants' conduct did not contribute to the procedural delay complained of, except, perhaps, in respect of their request for the adjournment of the hearing scheduled for 22 November 2006 for sixteen days in order to try to achieve a settlement, and only partially in respect of the hearing fixed for 6 March 2008, as their representative failed to appear, together with the prosecutor (see paragraphs 19 and 25 above). Furthermore, the second expert financial report was needed to calculate the maintenance, as well as the statutory interest, accrued in the course of the proceedings themselves.

50. Fifthly, while the domestic courts need to protect the due process in respect of the defendant, they should also afford adequate protection to the victims, particularly where they happen to be young and vulnerable.

51. Sixthly, the Court observes that the prosecution of the defendant became time-barred and that as a result it became impossible for the applicants to obtain a decision on their claim in the criminal proceedings.

52. In view of the above, as well as the fact that there were several significant periods of judicial inactivity and a number of unwarranted adjournments, the Court finds that the protracted character of the proceedings were mainly imputable to the respondent State's judicial authorities.

53. The Court is therefore of the opinion that the length of the proceedings complained of has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

55. The applicants claimed EUR 25,500 in respect of the damage suffered as a result of a violation of their rights guaranteed under Article 6, as well as the payment of the maintenance awarded domestically.

56. The Government contested their claims.

57. The Court considers that the applicants' claims, in so far as they relate to the payment of the maintenance, must be rejected, as the Court does not discern any causal link between the violation found and the damage alleged.

58. The Court, however, takes the view that the applicants have suffered some non-pecuniary damage as a result of the violation found which cannot be made good by the Court's mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 2,600 under this head.

B. Costs and expenses

59. The applicants claimed EUR 500 for the costs and expenses incurred before this Court. They further claimed the costs and expenses incurred before the domestic courts without specifying the exact amount.

60. The Government contested these claims.

61. 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 have been actually and necessarily incurred and were reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicants' claim for costs and expenses before the domestic courts as they were not incurred in order to remedy the violation in issue, but considers it reasonable to award them EUR 500 for the proceedings before it.

C. Default interest

62. 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 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:

(i) EUR 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable,

(ii) EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants;

(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 18 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President