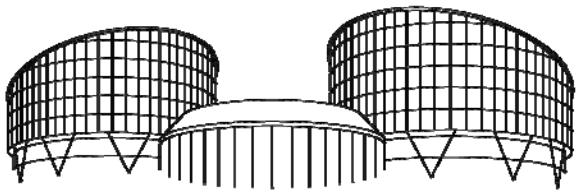

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VELJKOV v. SERBIA

(Application no. 23087/07)

JUDGMENT

STRASBOURG

19 April 2011

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Veljkov v. Serbia,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
David Thór Björgvinsson,
Dragoljub Popović,
Giorgio Malinverni,
András Sajó,
Guido Raimondi, *judges,*

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

Having deliberated in private on 29 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 23087/07) 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") by a Serbian national, Mrs Rajka Mićić ("the applicant"), on 29 May 2007. On 8 September 2010 the applicant informed the Court that she had changed her surname to Veljkov.

2. The applicant was represented by Mr V. Beljanski, a lawyer practising in Novi Sad. 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. On 4 March 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Jadranska Lešnica.

6. The applicant lived with her partner, P.J., in Belgrade from May 2001 until January 2006, when she moved to her parents' house, as a result of

alleged "psychological abuse" by her partner. Their daughter M.J., who was born in 2002, continued to live with her father.

A. Civil proceedings (child custody and maintenance, including adoption of interim orders)

7. On 20 February 2006 the applicant lodged a civil claim against P.J. ("the respondent") with the First Municipal Court (*Prvi opštinski sud*) in Belgrade ("the Municipal Court"), seeking sole custody of M.J. and child maintenance (*vršenje roditeljskog prava i izdržavanje*).

8. On 1 March 2006 the respondent lodged a separate claim against the applicant, with the Municipal Court, also seeking sole custody of M.J. and child maintenance.

9. On 16 May 2006 the Municipal Court obtained an opinion from the Palilula Social Care Centre (*Gradski centar za socijalni rad, Odeljenje Palilula*), which stated that the custody should be given to the mother.

10. On 17 May 2006 the applicant requested the court to issue an interim measure regulating her right of access to M.J.

11. At the hearing held on 8 June 2006, the respondent also requested an interim measure awarding him temporary custody of M.J.

12. On 15 June 2006 the Municipal Court ordered the respondent to allow the applicant access to M.J. by bringing their daughter at 2 p.m. every last Friday of the month to the Loznica Social Care Centre and collecting her from the applicant in Belgrade at the same time the following Friday.

13. On 20 June 2006 the respondent objected to the Social Care Centre's opinion of May 2006 and subsequently, on 10 July 2006, appealed against the interim access order. It would appear that the latter appeal was forwarded to the District Court (*Okružni sud*) in Belgrade on 27 August 2006.

14. The next hearing, scheduled for 3 July 2006, was adjourned because the Municipal Court had failed to secure the presence of lay judges (*sudija porotnika*) for family matters as required under the relevant provisions of the domestic law.

15. The hearing scheduled for 5 September 2006 was also adjourned, because at that time the case file was physically in the possession of the District Court, which was about to rule in respect of the adopted interim access order.

16. On 14 September 2006 the District Court in Belgrade rejected the respondent's appeal and upheld the interim access order of 15 June 2006.

17. On 30 November 2006 the Municipal Court considered whether to join the two sets of civil proceedings into a single case file, and adjourned the case until 30 January 2007.

18. Meanwhile, on 6 November 2006 the Palilula Social Care Centre informed the Municipal Court that the respondent's objection to their first

opinion of 16 May 2006 had been accepted, because the competent Ministry had found irregularities in its work. The Centre also warned the court that it could not have reliably assessed whether the conclusion of this opinion had been in the best interest of the child, in particular due to the need to ascertain the applicant's state of mental health.

19. Following the Centre's additional updated opinion of 4 December 2006 (see paragraph 52 below), on 11 December 2006 the Municipal Court issued a new interim access order, restricting the applicant's access to M.J. to two hours on Fridays at the premises of the Palilula Social Care Centre in Belgrade, thereby rendering the interim access order of 15 June 2006 obsolete.

20. On 22 December 2006 the applicant appealed against the new interim access order, while on 9 January 2007 she informed the court that she had not been and would not be going to Belgrade to see her daughter, because she was afraid of the respondent's abusive behaviour and intimidation.

21. On 30 January 2007 the Municipal Court noted that the applicant had appeared in person but that the hearing had been scheduled for the following day and that she would not be able to attend it." (see paragraph 17 above).

22. The interim access order was confirmed by the District Court in Belgrade on 14 February 2007.

23. On 27 April 2007 the Municipal Court formally joined the two sets of proceedings, while the applicant submitted that an opinion of the Loznica Social Care Centre could also be obtained and interim custody be granted to her.

24. On 7 May 2007 the Municipal Court granted interim custody in respect of M.J. to the respondent, pending the final outcome of the ongoing civil suit. It also requested the Palilula Social Care Centre to produce an expert opinion as to how custody should be determined in the best interests of the child, as well as on the access rights of the non-custodial parent. The interim access order of 11 December 2006 remained in force as regards the applicant's contact with her daughter.

25. On 6 June 2007 the District Court upheld this decision on appeal. On 13 July that court forwarded the case file to the Municipal Court.

26. On 18 June 2007 the Palilula Social Care Centre produced a report, giving its recommendation on how the custody and access rights should be determined (see paragraph 58 below).

27. On 27 September 2007 the Loznica Social Care Centre issued a report on the applicant's visits to that centre.

28. The hearing scheduled for 22 November 2007 was adjourned because of a strike by the judicial authorities.

29. On 12 December 2007 the applicant requested withdrawal of the Municipal Court judge, but on 19 December 2007 the President of the court dismissed her request.

30. At the next hearing, held on 20 December 2007, the Municipal Court decided to hear both parties in person on 28 January 2008.

31. Further hearings were held on 28 January and 4 March 2008. On the latter date the applicant requested the Municipal Court to obtain an expert opinion on the psychological and physical ability of both her and the respondent to take care of the child.

32. After both parties had made an advance payment of the costs of the expert opinion, on 3 April 2008 the Municipal Court ordered the Committee of the Belgrade Medical Faculty to prepare the expert report.

33. However, at a hearing held on 1 October 2008, the court reversed its decision and ordered that the expert report be prepared by the Dr Laza Lazarevic Institute of Neuropsychiatry.

34. On 19 March 2009 the Board of Experts of the Institute of Neuropsychiatry informed the Municipal Court that due to the negative attitude of the applicant towards this institution and the allegation of previous forgery of her health certificates by the Institute's doctors, it would not be able to obtain expert testimony at the hospital. On the same date the Municipal Court requested the Social Care Centre to enable the Board of Experts to have the applicant and the child observed at the Centre.

35. Following the examinations of the parties and M.J. on 19 and 24 March 2009, on 27 April 2009 the Board of Experts submitted its report on the parties' ability to exercise parental rights and responsibilities. It also submitted an additional report on 15 May 2009 in which it recommended that custody be granted to the respondent.

36. The hearing scheduled for 8 July 2009 was adjourned, because the applicant had appointed a lawyer, who needed some time to study the case file.

37. The next hearing, scheduled for 30 September 2009, was adjourned at the request of the applicant's lawyer. He was ordered by the court to respond to the expert report within fifteen days.

38. The hearing scheduled for 11 November 2009 was not held, because of a strike by the Bar Association.

39. The hearing scheduled for 9 December 2009 was adjourned indefinitely, due to an ongoing reform of the judiciary.

40. The applicant submitted objections to the expert report on 11 November and 9 December 2009. The respondent replied to the applicant's objections on 31 December 2009. On 3 March 2010, the applicant commented on the respondent's observations.

41. The Board of Experts replied on 30 March 2010 to the applicant's comments on its report. On 9 June 2010 the respondent commented on both the experts' and the applicant's observations.

42. On 17 June 2010 the Court of First Instance held its first hearing after the reform of the judiciary had been concluded.[1]

43. On the 18 June 2010 the Court of First Instance ordered M.J.'s school psychologist to provide an assessment of the psycho-physical state of the child. It also ordered the Palilula Social Care Centre to provide an updated opinion on the determination of custody and to inform it about the results of the pending corrective monitoring of the parties' exercise of parental rights by the Marriage and Family Counselling Office (see paragraph 65 below).

44. On 19 July 2010 the court received the assessment from the school psychologist.

45. The Court of First Instance scheduled the next hearing for 15 September 2010 in order to hear both parties.

46. It would appear that the proceedings are still pending before the first-instance court.

B. The enforcement of the interim access orders

(a) The interim access order of 15 June 2006

47. Following the adoption of the interim access order on 15 June 2006, the first attempt to reunite the applicant with M.J. took place on 7 July 2006, at the Loznica Social Care Centre. According to the Centre's report, the respondent had not prepared M.J. for the reunion and was verbally aggressive throughout the meeting. M.J. was initially reluctant to approach the applicant, but she ultimately "came closer" and accepted gifts from her mother. The Centre proposed that future meetings be scheduled on Fridays, in a park not far from the respondent's flat in Belgrade, before the applicant and M.J. started spending an entire week together. The applicant stated that she feared being left alone with the respondent. It was the first and last time that the respondent brought M.J. to Loznica, refusing to do so afterwards.

48. On 14 August 2006 the applicant formally requested enforcement of the interim access order of 15 June 2006. On 17 August 2006 the Municipal Court dismissed the applicant's request as incomplete, since the interim access order bore no stamp certifying that it had become final.

49. On appeal, on 13 November 2006 the District Court quashed this decision and remitted the case. It would appear that this decision was served on the applicant on 11 May 2007.

50. The applicant continued going to the premises of the Loznica Social Care Centre on Fridays, stating that she was afraid to meet her daughter in the presence of the respondent in Belgrade and insisting on meeting her in Loznica. Following her query about the possible presence of social workers

[1] Following the judicial reform, the Court of First Instance in Belgrade has become the competent court in this case.

during those meetings, she was informed that this was not the usual practice.

51. On 24 November 2006 the applicant called on the Loznica Social Care Centre to request the enforcement of the interim access order as rendered by the Municipal Court. She was informed that the Centre was not in charge of the case, as M.J. lived in Belgrade.

(b) The interim access order of 11 December 2006

52. On 4 December 2006 the Centre submitted an additional updated opinion to the Municipal Court, stating that, taking into account that there had been no regular or substantial contact between the applicant and M.J. in recent months, it was in the child's best interests to remain temporarily living with the father. The Centre suggested providing a new final report upon putting more efforts into restoring the bond between the mother and daughter.

53. On 11 December 2006 the Municipal Court issued a new interim access order, restricting the applicant's contact with M.J. to two hours each Friday at the Palilula Social Care Centre in Belgrade.

54. On 18 December 2006 the Loznica Social Care Centre sent its opinion to the Palilula Social Care Centre, indicating that the respondent might be being manipulative about the alleged problematic mental health of the applicant. It proposed that a medical institution examine the applicant and give an opinion on both parties' capacity to exercise parental rights and responsibilities.

55. On 9 January 2007 the applicant informed the court that she had not been and would not be going to Belgrade to see her daughter as she was afraid of the respondent's alleged threats and promises to "send her to bedlam".

56. It appears from a letter from the Palilula Social Care Centre dated 9 April 2008 that the applicant had not up to that point attended any of the scheduled meetings with her daughter in Belgrade.

57. On 7 May 2007 the Municipal Court granted interim custody in respect of M.J. to the respondent, while the interim access order of 11 December 2006 remained in force as regards the applicant's contact with her daughter.

58. On 18 June 2007 the Palilula Social Care Centre recommended that custody be granted to the respondent, while the applicant's access rights were to be limited to one hour every Friday, at the Palilula Social Care Centre. The access ruling was subject to change and extension once the emotional and caring links between the applicant and her daughter had been restored. The Centre's experts pointed out that the applicant had not contacted them in order to be able to see M.J., and offered professional assistance to facilitate contact between the mother and child, as well as with the respondent in order to motivate M.J. to maintain contact with the

applicant. They noted that the respondent had inquired about the applicant's interest in seeing M.J and had been allowing regular visits to M.J. by her older stepbrother (the applicant's son).

59. On 18 and 19 September 2007 the applicant contacted both social care centres, stating that the respondent had not been allowing her any contact with M.J., even indirectly by phone. She requested both centres to initiate proceedings for deprivation of the respondent's parental rights.

60. On 31 December 2007 the applicant informed the Palilula Social Care Centre that she had remarried and changed her surname. When the Centre asked her to attend the scheduled meetings with M.J., she said she did not have enough money to travel to Belgrade and was afraid of the respondent.

61. Despite the fact that the interim access order of 15 June 2006 was no longer valid, the applicant requested its enforcement in six written pleadings to the Fourth Municipal Court in Belgrade between September 2007 and January 2008. On 18 January 2008 this court issued an enforcement order in this respect. However, that court subsequently, following the respondent's objection, suspended the enforcement proceedings.

62. At the hearing on 1 October 2008, the applicant stressed that she had not seen her daughter since 7 July 2006 and urged the Municipal Court to change the location of their scheduled meetings to the applicant's place of residence. She repeated that she did not have enough money to travel to Belgrade each week to see her daughter. When asked by the court whether she wished to have a meeting with her daughter that same day, the applicant stated that she was afraid of the respondent, as well as of her daughter's reaction on seeing her.

63. According to the report of the Palilula Social Care Centre dated 16 August 2010, on 6 May 2009 the applicant had requested the Palilula Social Care Centre to organise a meeting with M.J. for the first time in accordance with the second interim access order of 11 December 2006. Despite the Centre's warning about the need to take appropriate steps to prepare M.J. for the forthcoming visits after a lengthy absence of care and contact between them, the applicant allegedly insisted on having contact with M.J. starting from 8 May.

64. It would appear that since 8 May 2009 the applicant has been meeting with M.J. regularly. However, the Social Care Centre experts reported that the applicant was not really aware that a mother's absence could have a profound impact on her daughter and could alienate her daughter's affection towards her. While she insisted on emotional reciprocation from her daughter, the contact was a significant source of stress for the child, who cried, hid behind her father, persistently avoided to look at her mother, refused the applicant's gifts and asserted that she had been beaten by her. Nevertheless, the applicant systematically accused the

respondent of abusing his position as the parent with interim custody and of inculcating M.J.'s attitude towards her.

65. The Centre also reported a severely dysfunctional parental relationship and an ambivalent approach on the part of the respondent to the importance of M.J.'s contact with her mother. In order to improve the parental and parent-child relationships, on 10 May 2010 the Centre adopted of its own motion a decision on corrective monitoring of the parties' exercise of parental rights by the Marriage and Family Counselling Office, for a minimum of six months. The Office was supposed to work with the parents to help them acquire a better understanding of their parental rights and responsibilities, as well as of the needs of their daughter. After they had undergone this therapy, the Centre was to evaluate changes in their attitudes and approaches in exercising parental roles, as well as to assess the need for further measures for the protection of M.J.'s rights. The respondent was also supposed to bring M.J. regularly to the Counselling Office, which would work on improving her motivation in order to try to salvage her contact with the applicant.

C. Proceedings for deprivation of parental rights

66. On 4 December 2006 the applicant instituted proceedings against P.J., requesting that he be deprived of his parental rights ("*roditeljsko pravo*") because of his behaviour in respect of their daughter. It would appear that P.J. lodged the same claim against the applicant and that the competent court eventually joined the two proceedings.

67. In the course of those proceedings, on 11 September 2007 the applicant sought an interim injunction against domestic violence. She claimed that P.J. had threatened her, which is why she was afraid to attend the scheduled meetings with her daughter.

68. On 3 December 2007 the court granted her request and issued an interim measure prohibiting P.J. from approaching or further disturbing the applicant.

69. However, on 6 November 2008 the District Court quashed this interim measure on appeal and returned the case for reconsideration.

70. On 2 February 2009 the court decided to separate the proceedings for protection against domestic violence from those for deprivation of parental rights.

71. As regards the proceedings for protection against domestic violence, on 21 October 2009 the First Municipal Court in Belgrade granted an injunction against domestic violence, i. e. "insulting or any other insolent, unscrupulous or malevolent behaviour" as defined in the Article 197 § 6 of the Family Law. In particular, it banned the respondent from disturbing the applicant for one year, as well as from coming within 500 metres of her and

her place of residence, other than when necessary to allow contact between the applicant and the child.

72. On 13 May 2010 the Court of Appeal upheld the former part of this decision, quashed the latter due to the lack of valid and convincing reasons and remitted it for re-examination.

73. It would appear that these proceedings are still pending.

D. Relevant medical facts

74. In 1993 the applicant had been diagnosed with interstitial lung disease, having subsequently become depressive and occasionally in need of psychiatric treatment.

II. RELEVANT DOMESTIC LAW

1. Administrative Proceedings Act (Zakon o opstem upravnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY nos. 33/97, 31/01 and 30/10)

75. Article 110 states that a competent authority may exempt a party to administrative proceedings from paying the costs of the proceedings, including witnesses' and experts' costs and expenses, if it finds that paying those expenses would affect the individual and his/her family's well-being and ability to maintain themselves.

2. Other relevant provisions

76. Other relevant provisions are set out in the cases of *V.A.M. v. Serbia* (no. 39177/05, §§ 56-59 and 65-75, 13 March 2007), and *Tomić v. Serbia* (no. 25959/06, §§ 55-62 and 68-71, 26 June 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

77. Relying on Article 6 of the Convention and Article 5 of Protocol No. 7, the applicant complained that the ongoing civil suit for child custody/maintenance had been continuing for an excessively long time, and that this was preventing her from exercising her parental rights.

78. The Court considers that this applicant's complaint falls to be examined under Article 6 of the Convention (see *Laino v. Italy* [GC], no. 3158/96, § 25, ECHR 1999-I), which reads as follows:

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

A. Admissibility

79. The Government submitted at the time that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention, in that she had never sought enforcement of the interim access order of 11 December 2006.

80. The Court reiterates that remedies required to be exhausted under the above provision are only those that offer the applicant reasonable prospects of success (see, among many other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV). In the present case, the applicant's Article 6 complaint relates solely to the length of the child custody proceedings instituted by her in 2006. The Court shall, as the master of the case, therefore examine the non-exhaustion argument in relation to the issue of non-enforcement of the interim access orders under Article 8 below.

81. In respect of the length itself, the Court, however, cannot accept that an enforcement request relating to an interim order may be considered a remedy to be exhausted in respect of the length of the main proceedings. The Government's objection in this respect must therefore be dismissed.

82. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

83. The Government argued that the overall length of the proceedings could be explained by the civil suit's complexity. In particular, it involved very sensitive issues of family relations, various proceedings which cut across each other, many legal steps taken with voluminous written pleadings, as well as the fact that the applicant lived outside Belgrade, where the Municipal Court is located.

84. The applicant maintained that the proceedings had lasted an excessively long time. The domestic authorities had overlooked what was at stake in the proceedings and had failed to take any steps to accelerate the proceedings and enable the applicant to establish a proper and permanent high-quality relationship with her child.

85. 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). In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see *Laino,* cited above, § 18). In particular, exceptional diligence is required in dealing with cases where the impugned proceedings concerned a child custody dispute (see *V.A.M. v. Serbia*, cited above, § 101).

86. The period to be taken into consideration began on 20 February 2006, when the applicant lodged her civil action, and has not yet ended. It has thus lasted five years and two months at one level of jurisdiction.

87. The Court notes at the outset that the impugned proceedings were of a sensitive nature concerning matters of child custody and maintenance and that they may be regarded as involving a certain degree of complexity. However, in this regard, the issues involved in these proceedings were clearly of great importance to the applicant, and furthermore the Convention as well as the relevant domestic law require exceptional diligence in all child-related matters.

88. As to the conduct of the authorities, the Court has identified several significant lapses in activity and failures to ensure speedy conclusion of the proceedings at hand: (a) it would appear that numerous hearings have been adjourned since the initiation of the proceedings, including four hearings have been adjourned for reasons related to internal organisation (although the adjournment of the hearing caused by the Bar Association strike cannot be attributed to the State (see *Pafitis and Others v. Greece*, 26 February 1998, § 96, *Reports of Judgments and Decisions* 1998-I)); (b) it took over a year to join the actions lodged by both parties with the same end in one set of proceedings; (c) it took more than a year and two months to decide on the interim custody order; (d) it took a month and a half for the Municipal Court to transmit the respondent's appeal against the interim access order to the District Court in a pressing case like this; (e) no substantive procedural steps were undertaken by the domestic courts, at least between 16 June and 19 December 2008, as well as between 9 December 2009 and 17 June 2010; (f) the Government did not provide any explanation as to the six-month delay caused by the court's decision to change the medical institution which was to provide the expert report.

89. The applicant's conduct did not make a significant contribution to the procedural delay complained of, except perhaps the seven days in respect of her request for the withdrawal of the presiding judge and also the adjournment of the hearing scheduled for 30 September 2009. The Government's objection that the applicant did not live in Belgrade and that there had been a great many legal submissions, with voluminous written pleadings, cannot be accepted as sufficient reason for a case of such

importance to the parties to be pending for five years and two months without any prospect of a speedy conclusion.

90. Having regard to its case-law on the subject (see, for example, *Laino,* cited above, § 22; *V.A.M. v. Serbia*, cited above, § 111; *Johansen v. Norway*, 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 88; and *H.N. v. Poland*, no. 77710/01, § 95, 13 September 2005), what was at stake in the proceedings and the requirement to act with exceptional diligence, the overall length of the proceedings in the instant case was excessive and failed to meet the "reasonable time" requirement.

91. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE NON-ENFORCEMENT OF THE INTERIM ACCESS ORDERS

92. The applicant further complained that the non-enforcement of the interim access orders issued on 15 June and 11 December 2006 violated her right to respect for her family life.

93. The Court considers that this complaint falls to be examined under Article 8 of the Convention, which provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

94. The Court notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005, and *V.A.M. v. Serbia*, cited above, § 130). Even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, § 49, Series A no. 290).

95. The Court recalls that the obligation of the national authorities to take measures to facilitate reunion is not absolute, since the reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures

being taken to this effect. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned will always be an important ingredient. Whilst national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly found that what is decisive is whether the national authorities have taken all necessary steps to facilitate the execution, in so far as can reasonably be demanded in the special circumstances of each case (see, among other authorities, *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A; *Nuutinen v. Finland*, no. 32842/96, §§ 127-128, ECHR 2000-VIII; *Glaser v. the United Kingdom*, no. 32346/96, § 66, 19 September 2000; *Hansen v. Turkey*, no. 36141/97, §§ 97-99, 23 September 2003; *Kallo v. Hungary* (dec.), no. 70558/01, 14 October 2003; *Tomić v. Serbia*, no. 25959/06, §§ 100-102, 26 June 2007; *Felbab v. Serbia*, no. 14011/07, § 67, 14 April 2009; and *Krivošej v. Serbia*, no. 42559/08, § 52, 13 April 2010).

96. In this context, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit (see *Tomić*, cited above, § 101).

(a) As regards the interim access order of 15 June 2006 (see paragraph 12 above)

97. The Court observes at the outset that, following the applicant's request for an interim order regulating her contact with her daughter, the authorities promptly adopted the interim order and scheduled immediately a meeting with the child at the local social care centre on 7 July 2006 (see paragraphs 12 and 47 above). In view of the initial unsuccessful attempt of the reunion, the Court firstly observes that a certain amount of adaptation of the visit schedule was obviously necessary in order for a more qualitative contact to be re-established. It further notes that the Centre sought to adapt the visit schedule in proposing that the future meetings be scheduled on Fridays, in a park near the respondent's flat in Belgrade, before the applicant and M.J. spent a full week together. However, notwithstanding the Centre's instructions, it emerges that the applicant continued going to the premises of the local social care centre on Fridays as scheduled by the court access order, therefore missing four meetings in Belgrade, on account of her fear of meeting her daughter only in the presence of the respondent, and insisting on meeting her in Loznica. Accordingly, the applicant failed to

adapt to the new unfavourable situation, as well as to put more efforts into adapting to it.

98. Secondly, while it is not apparent from the materials in the Court's possession that the social care authorities or the competent court took additional steps to facilitate further reunions between the applicant and her daughter, the Court cannot speculate as to whether the social care centre took appropriate measures to enhance the quality of the relationships between the parties, and whether the deterioration in the contact could have been prevented by the appropriate enforcement of the first access order.

99. Finally, this access order remained unenforced from 7 July 2006 until 11 December 2006, thus for no more than five months, when it ceased to have any validity for enforcement purposes (see paragraphs 47-51 above).

100. Consequently, having regard to the margin of appreciation enjoyed by the competent Serbian authorities and the length of the non-enforcement of the access order, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) As regards the interim access order of 11 December 2006 (see paragraph 20 above)

101. The Government submitted that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention, in that up to the relevant date she had not sought enforcement of the second interim access order, issued on 11 December 2006. Moreover, she misled the court in requesting enforcement of the interim access order of 15 June 2006, which was no longer valid. The Government submitted that the "domestic authorities dealing with the applicant's case had undertaken all possible actions in order to preserve the proper development of the applicant's relations with her child", but that the applicant, however, had been insufficiently active.

102. The Court does not find it necessary to decide on the Government's plea of non-exhaustion, as this part of the application is in any event inadmissible, for the reasons stated below.

103. The Court notes that the applicant was dissatisfied with the second interim access order of 11 December 2006, because it enabled her to have only limited access to M.J. to two hours each Friday, in the presence of a social worker and P.J at the Palilula Social Care Centre in Belgrade. However, it is not the Court's task to decide who is the parent that the child should live with or whether or not the conclusions of the domestic courts in this respect were wrong, in particular, since the applicant did not substantiate any significant or manifest inadequacy of the decisions taken at the domestic level. What is decisive for the Court is whether in reuniting parents with their children the national authorities have taken all

necessary steps to facilitate such meetings as can reasonably be demanded in the specific circumstances of each case (see paragraph 95 above).

104. The Court observes that the applicant indeed did not seek a formal enforcement of that second access order until 6 May 2009 (see paragraph 63 above), nor did she appear for any of the scheduled meetings at the Palilula Social Care Centre to meet her daughter until 8 May 2009 claiming that she would be exposed to a great anguish and hazard by seeing the respondent on the same occasion (see paragraph 64 above).

105. The Court accepts that the applicant may have been afraid of her former partner's conduct on the basis of his alleged insulting and insolent behaviour (see paragraphs 67-73 above). However, since she had already instituted adequate proceedings against him for protection from such behaviour, as well as several sets of other civil or criminal proceedings, it is difficult to understand why she delayed in lodging an enforcement request in respect of the interim access order, and why she did not attend scheduled meetings to see her child in the presence of social workers.

106. When the Palilula Social Care Centre asked her to start attending the scheduled meetings with M.J., she said she did not have enough money to travel to Belgrade and was afraid of the respondent. Moreover, at the hearing held on 1 October 2008, when offered the opportunity to see her daughter that same day, the applicant claimed that she was afraid of the respondent, as well as of her daughter's reaction to meeting her (see paragraphs 60 and 62 above).

107. The court notes firstly that the applicant has never requested to be relieved from paying the costs of the child custody proceedings, which possibility was provided by the Administrative Proceedings Act if those costs would have affected the individual and his/her family's well-being and stability (see paragraph 75 above).

108. It further observes that, according to the Palilula Centre's report, on a later occasion, in May 2009, the applicant requested it to arrange an immediate meeting (two days later) with M.J. despite its warning of the need to take appropriate steps to prepare M.J. for the forthcoming visits after a lengthy absence of care and contact between them (see paragraph 63 above). There is nothing in the case file which would indicate any plausible reasons for the applicant's change of attitude on this matter.

109. Finally, as soon as the applicant contacted the Palilula Social Care Centre on 6 May 2009, she began meeting her daughter regularly, in conformity with the second access order, in presence of the respondent. Though the respondent himself had not been particularly cooperative during the reunions, it appears that he had not threatened the applicant or addressed her in an insulting manner.

110. Taking into account only the documentation in its possession, the Court also observes that the respondent State's authorities apparently issued certain decisions and reports during the civil proceedings, though no

particularly effective efforts were made to reverse a downward spiral in the applicant-child relationships in a period between the adoption of the second interim access order and the applicant's request for the enforcement of this measure. However, following the applicant's request for the enforcement of the order, the Centre's experts have obviously facilitated their contact in a protective environment on a regular basis, as set out in the court order.

111. In view of the negative parental and child-parent relationships and the more apparent emotional costs than benefits from scheduled meetings between the applicant and her daughter, pure and simple reliance on the court orders to arrange reunion would obviously not be enough. In this respect, the Court notes that the Palilula Social Care Centre redirected resources away from repeated attempts to impose contact between the mother and M.J. and a tolerance of parental conflict towards a more proactive approach. The Centre adopted of its own motion a decision on corrective monitoring of the parties' exercise of parental rights by the Marriage and Family Counselling Office for a minimum of six months, as well as motivation therapy for M.J. with the aim of improving her relationship with the applicant. It also announced that it would be taking further measures once it received a report on the success of the above-mentioned therapy. Finally, the Court notes that proper conditions should be created in the future so that the applicant could have an access to M.J. as indicated in the interim access order of 11 December 2006. This remains an obligation for the State authorities to fulfil.

112. In these circumstances, it cannot be concluded that the authorities failed to take all necessary steps to reunite the applicant with her daughter or to ensure the enforcement of the interim access order. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

115. The Government contested this claim.

116. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,600, plus any tax that may be chargeable on that amount.

B. Costs and expenses

117. The applicant also claimed 94,630 Serbian dinars (RDS) (approximately EUR 1,300) for costs and expenses incurred before the Court.

118. The Government deemed this claim excessive.

119. 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 are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award in full the sum sought by the applicant for the proceedings before it.

C. Default interest

120. 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

1. *Declares* unanimously the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention with regard to the length of the proceedings;

3. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into Serbian dinars at the rate applicable on the date of settlement:
      (i) EUR 2,600 (two thousand six hundred euros) in respect of the non-pecuniary damage suffered, plus any tax that may be chargeable,

(ii) EUR 1,300 (one thousand three hundred euros) for costs and expenses, plus any tax that may be chargeable to the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Françoise Tulkens
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge David Thór Björgvinsson is annexed to this judgment.

F.T.
F.E.P.

DISSENTING OPINION OF JUDGE DAVID THÓR BJÖRGVINSSON

I voted against the majority's finding of a violation of Article 6 § 1, although admittedly more than five years before one level of jurisdiction is a long time. However, that is not in itself sufficient to find a violation of Article 6 § 1 as the reasonableness of the length of proceedings must be assessed in the light of the circumstances of each case.

At the outset I wish to make the following remarks. Firstly, since the Convention protects fundamental human rights, a violation of Article 6 § 1 on the basis of the length of proceedings should only be found in cases which reveal obvious and serious deficiencies in the workings of the domestic courts in question that amount to a denial of justice and where it can thus truly be said that the applicant's fundamental procedural rights have been breached. Secondly, breaches should only be found where lengthy periods of inactivity that are clearly imputable to the State can be detected. Thirdly, the applicant has to show that he or she made some effort to have the allegedly delayed proceedings accelerated, thereby expressing an interest in having the proceedings conducted more speedily. Fourthly, the applicant has to show that he or she did not contribute significantly to the alleged delay by his or her own behaviour.

Using these criteria I come the conclusion that there has been no violation of Article 6 § 1 in this case. My reasons are the following:

Firstly, although cases concerning custody and maintenance are not complicated from a legal point of view, I would agree with the majority that they are of a sensitive nature and that they involve a certain degree of complexity (see paragraph 87 of the judgment). One of the main factors causing delays in such proceedings are expert assessments and reports that need to be made in order to assess what is in the best interest of the child, but several such reports were produced within the framework of the present case. However, in this case the complexities were mostly of a procedural nature, as shortly after the main proceedings had been instituted, the parties requested interim measures for the award of a right of access and temporary custody respectively. The proceedings ended on 14 February 2007 with the order of the District Court in Belgrade giving limited access rights to the applicant. The respondent's request for interim custody was granted on 6 June 2007 by the District Court. In addition, issues concerning the enforcement of the interim access order arose (see paragraphs 47-65). Furthermore, the applicant initiated two additional sets of proceedings against the respondent, namely one for deprivation of his parental rights on 4 December 2006 and another one for an interim injunction against domestic violence on 11 September 2007. It would seem that these proceedings are still pending. Thus, in this case we have a complicated situation of various proceedings overlapping with each other, adding considerably to the overall complexity of the custody and maintenance proceedings and causing further delays.

Secondly, I disagree with the assessment of the majority that the applicant did not make a significant contribution to the procedural delay complained of, except, as stated in the judgment, "perhaps the seven days in respect of her request for the withdrawal of the presiding judge and also the adjournment of the hearing for 30 September 2009" (see paragraph 89). This assessment overlooks the fact that the applicant at the same time had initiated various other sets of proceedings against the respondent which, as stated above, unavoidably contributed to the overall delay. In addition, I note that, as stated in

paragraph 34, the alleged behaviour of the applicant contributed to a delay in producing the necessary expert opinions, and that the applicant subsequently submitted objections to the expert reports. While this of course is the applicant's procedural right it unavoidably causes further delays (see paragraphs 40 and 41). Furthermore, I would add that a hearing scheduled for 8 July 2009 was adjourned because the applicant had appointed a lawyer who needed some time to study the case file (see paragraph 36). This same lawyer then asked for an adjournment of the hearing scheduled for 30 September 2009 (see paragraph 37). Later, the hearing scheduled for 11 November 2009 was adjourned because of the strike by the Bar Association, of which the applicant's lawyer was presumably a member. Thus, I believe the majority clearly underestimate the applicant's and her lawyer's contribution to the overall delay in the proceedings.

Thirdly, nowhere in the case file is it suggested that the applicant made any effort whatsoever at national level to have the proceedings accelerated.

I would agree with the majority that, as stated in paragraph 88 of the judgment, certain irregularities imputable to the State can be detected. However, taking into account the proceedings as a whole, the various overlapping sets of proceedings, the applicant's own contribution to the delays and the fact that never at any stage did she make an effort to have the proceedings accelerated, I believe that these irregularities do not reveal such obvious and serious deficiencies in the workings of the domestic courts as to amount to a breach of the applicant's fundamental procedural rights under Article 6 § 1 of the Convention.