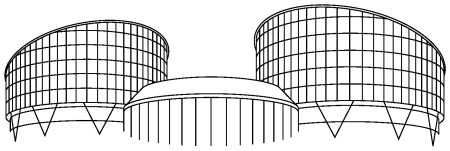

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF POPADIĆ v. SERBIA

(Application no. 7833/12)

JUDGMENT

Art 8 • Family life • Positive obligations • Authorities' failure to act with necessary diligence in matrimonial proceedings in which the applicant sought extension of contact rights with his young son to include overnight and holiday contact • Protracted judicial proceedings • Failure to consider applicant's legitimate interest in developing a bond with his child and the latter's long term interest to the same effect • Despite regular contact and a favourable determination of the dispute, quality and quantity of contact affected by lack of overnight and holiday contact for a considerable amount of time

STRASBOURG

20 September 2022

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 Popadić v. Serbia,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Branko Lubarda,
Gilberto Felici,
Saadet Yüksel,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 7833/12) 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, Mr Saša Popadić ("the applicant"), on 26 December 2011;

the decision to give notice to the Serbian Government ("the Government") of the application on 14 January 2014;

the parties' observations;

Having deliberated in private on 30 August 2022,

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

INTRODUCTION

1. The present case concerns the allegedly protracted length of matrimonial proceedings which prevented the applicant from fully exercising his parental responsibility over his son to include overnight and holiday contact, without relevant and sufficient reasons being adduced for limiting his contact rights throughout the proceedings.

THE FACTS

2. The applicant was born in 1973 and lives in Novi Sad. He was initially represented by Mr M. Dragićević, a lawyer practising in Subotica, and subsequently by Ms D. Vasković, a lawyer practising in the same town.

3. The Government were represented by Ms V. Rodić, their Agent before the European Court of Human Rights at the relevant time.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant has a son, S.P., who was born in February 2003, from his marriage with N.J. The family lived together in N.J.'s family's house in Kruševac until 31 October 2004, when the applicant moved to his parents'

house in his hometown, Novi Sad, at a distance of approximately 300 km from Kruševac, and found employment as a dentist there. Their son, who was one year and nine months old at the time, remained living with his mother, who was working in her dentist practice in Kruševac.

6. The applicant and N.J. established post-separation arrangements for the applicant and their son to see each other once a week, either on Saturday or Sunday, between 10.30 a.m. and 3.30 p.m. in Kruševac, but could not come to an agreement on overnight stays either in that town or in Novi Sad.

7. In January 2005 the applicant applied to the Kruševac Social Care Centre for assistance in establishing his contact rights and asked to be granted an interim measure in this respect two weeks later. As a result of legislative changes in 2005, competence to decide on the matters in issue was transferred from social services to the judiciary.

II. MATRIMONIAL PROCEEDINGS AND RELEVANT INTERIM ORDERS

8. On 8 March 2005 the applicant brought a civil action in the Kruševac Municipal Court seeking the dissolution of his marriage and extensive access rights in respect of his son, who was two years and one month old at that time. He explicitly acknowledged, as previously agreed, that it would be better for S.P. to remain living with his mother in view of his very young age, and he also offered to pay child maintenance. He further stated that he was seeing the child for several hours every weekend in Kruševac as agreed between him and N.J. ("the respondent"). However, as the respondent had been against overnight stays and the child travelling to Novi Sad, the applicant applied to the court to be allowed (i) to take his son every month for a week to Novi Sad to spend time also with him and his grandparents, (ii) to spend one day with him during the three remaining weekends in Kruševac, and (iii) to spend fifteen days together in both the summer and winter holidays. He suggested that the respondent could visit the child whenever he was with him.

9. On 19 April 2005 the Municipal Court sent the civil action for response to the respondent. In her written response of 23 May 2005, she contested only the applicant's application for extensive contact rights. She also informed the court that she had initiated another set of matrimonial proceedings on 16 March, not being aware that the applicant had also done so.

10. On 7 June 2005 the applicant requested the court to expedite the proceedings and to schedule the first hearing as soon as possible.

11. The court's attempt at conciliation through mediation on 22 September 2005 was not successful.

12. At a mediation hearing on 13 October 2005, which had been scheduled with the intention of reaching an amicable settlement of the case, the parties explained that they had agreed on everything except the amount of time the child should spend with the applicant. The court briefly concluded

that the attempt at an amicable settlement had failed and transmitted the case to a new trial chamber to examine it. It also rejected the respondent's civil action on the ground of litispendence (*lis pendens*).

13. At the first trial hearing of 7 November 2005, the new chamber began the proceedings from the beginning and accepted the applicant's initiative to request an expert opinion on the impugned contact rights. The court also requested information from the local Kruševac Social Care Centre on whether their experts had established contact with the parties in order to preserve contact between the applicant and his son.

14. On 16 November 2005 the applicant informed the court that he had pre-paid the costs and expenses for the engagement of an expert psychologist and proposed several tasks to be undertaken by the expert, such as assessing the parties' parental capabilities and their living conditions. He stated that the child had developed an emotional bond with his family despite the distance at which they lived from each other. He also submitted that the child, who lived only with his mother and grandmother, had not been growing up in the presence of any of the male family members who lived in his household in Novi Sad and that it had been slowly having an effect on his proper psychological upbringing.

15. On 14 December 2005 the Kruševac Social Care Centre confirmed that they were in contact with the parties following the applicant's initiative, noting their established pattern of contact each weekend and that the only disagreement between them pertained to the child's overnight stays and travelling once a month to the father's hometown.

16. In her report of 28 December 2005, which she also presented at the hearing on 31 May 2006, S.B., a clinical psychologist from the Kruševac Social Care Centre, noted that the applicant was highly motivated and able to have frequent and quality contact with his son, who was developing normally and felt satisfied and loved despite his parents' separation. She further observed that contact between them had never been interrupted, that they had developed an emotional bond and that contact had been going very smoothly without any kind of separation crisis. On the other hand, the mother was the main caregiver and the child had a very strong emotional and social bond with her, as well as routines in respect of sleeping and other habits. In view of these findings and the child's young age, the psychologist advised very frequent whole-day contact between the applicant and his son on Saturdays or Sundays three weekends a month, but only sporadic overnight stays of a maximum of two consecutive days the fourth weekend to take place not far from the child's residence, owing to a possible separation crisis in the event of a longer separation from his mother. Lastly, she stated that a decision on overnight stays outside a child's hometown would depend on the particular circumstances of each case, and she could not anticipate when exactly the child might be ready for such stays in the present case, but that, in general, adaptation periods for changes, especially in favourable circumstances such

as those which existed in the present case, usually lasted about a year. Therefore, more extensive access rights for the applicant might be deemed appropriate after a year of the proposed adaptation regime, given that a child should be gradually separated from his mother more often after three years of age anyway.

17. On 23 January 2006 the applicant expressed certain objections to the expert's findings and asked that she be heard in court.

18. The expert could not attend the hearing scheduled for 13 February 2006 owing to other commitments. At that very brief hearing, the court invited the applicant to provide details of his child maintenance contribution and the respondent to submit in writing her objections concerning the expert report, if any. On 20 February the applicant provided the requested information. As regards contact rights, he also amended his initial civil action of 8 March 2005 (see paragraph 8 above), applying to the court to be allowed to take his son to his hometown one weekend a month instead of for a whole week. He repeated that the respondent could visit the child whenever he was with him.

19. The two hearings fixed for 24 March and 19 April 2006 were adjourned owing to the presiding judge's other commitments and the expert's inability to attend due to certain health-related issues, respectively.

20. At a hearing of 31 May 2006, for the first time the court heard the parties and the expert, S.B. The respondent confirmed that "following contact with his father, the child was satisfied, contact was going smoothly, [and the child] did not show any difficulties when separated from one or the other parent". Following the respondent's proposal, the court decided to request another report from R.R., a child neurologist, on the frequency, type and duration of contact between the applicant and his son, taking into account the latter's age and psychological maturity.

21. The next two hearings, scheduled for 20 June and 24 July 2006, were adjourned for procedural reasons, that is, because of the short timescale for appointing a new expert after payment of the fees, and because the court had failed to secure the presence of lay judges (*sudija porotnika*) for family matters as required under the newly enforced provisions of the domestic family law (see paragraph 63 below), respectively.

22. In the meantime, the second expert, R.R., submitted her report on 18 July 2006. She advised against any overnight contact between the child and the applicant without the mother's presence, either in Kruševac or Novi Sad. According to the expert, the scientific model of gradual separation of a child from his or her mother after three years of age was obsolete. Even if the parents lived together, the decision of a child who had already attained the age of three to continue sleeping with his or her mother should be respected. In an analysis of child-parent relationships in general, she did not advise any pressure on a child to be separated from the mother overnight until he or she had attained the age of six, unless the child so wished and requested. As

regards the present case, she recommended that it would be in the child's best interest to maintain his habitual living arrangements and to be separated from his mother only for short periods of time, in a relaxed atmosphere, without pressure, anxiety and dissatisfaction and to spend several hours with the applicant per day each weekend. The child could sleep at his father's if he wished and requested, but not before he attained the age of six. It was not necessary for the child to stay overnight with the father, away from his house and bed, for them to be closer. There were many other and better ways to become closer, such as finding common topics, taking an interest in the child, actively listening to and playing with him. Sleeping away from his house and bed without his mother's presence could, according to the expert, create a risk of anxiety and feeling of panic, since the child had a routine of going to sleep in his mother's presence.

The child was three and a half years old at the time the report was drafted.

23. On 4 August 2006 the applicant strongly objected to the expert's findings and requested the court to make the expert's appointment in the case null and void.

He also applied for an interim order on his contact rights in order to avoid the type of and schedule for contact between him and the child being unilaterally imposed by the respondent until the end of what were already prolonged matrimonial proceedings (see paragraph 27 below).

24. The proceedings were resumed before a new presiding judge and trial chamber. At a brief fifteen-minute hearing of 16 August 2006, the applicant requested the recusal of the second expert and asked the court to request an additional expert report (*superveštačenje*) from the Belgrade Institute for Mental Health. However, following the respondent's initiative, the court ordered the two experts S.B. and R.R. to try harmonise their divergent findings within ten days.

25. The experts eventually did so a month and a half later, on 5 October 2006, submitting an one-page report. Referring to their different opinions on whether the child should be separated from his mother to spend some overnight time with his father on weekends, the experts recommended commencing with day contact of nine hours (9 a.m. to 6 p.m.) only, three Saturdays a month, without any overnight stay or travelling with the child to Novi Sad. In their brief reasoning, the two experts referred in a general manner to the "latest scientific knowledge" which implied that it

> "would be in the child's best interest (in view of specific psychological characteristics, habits and habitual living arrangements which provide the feeling of primary safety and the basis for future healthy overall development) not to drastically disturb the already-established psychological balance and stability he has with the mother in order to provide for overnight stays with the father and twenty-four hours of separation from the mother. Otherwise, there may be a risk of the appearance of damaging emotional reactions in the child such as anxiety [*strepnja*], fear or even panic, which may permanently negatively affect his future psychological (emotional and social) development. In general, six can be taken as the age at which it can be assumed that

such separation could be achieved [, at which point] further extended contact with the father [could be envisaged]."

26. At a subsequent ten-minute hearing on 11 October 2006, the court exchanged the parties' submissions; the applicant stated that he had not received a copy of the latest expert report, but objected to the experts' findings and repeated his request of 16 August 2006 for an expert report from the Institute for Mental Health (see paragraph 24 above).

A. The first interim order on the applicant's (day) contact rights

27. In the meantime, on 4 August 2006 the applicant asked the court to grant an interim order (a) to allow him access to the child three Saturdays a month from 9 a.m. to 7 p.m. in Kruševac, and (b) to spend from 5 p.m. on Saturday to 6 p.m. on Sunday with him on the remaining weekend, with the right to take him to Novi Sad if he so wished.

28. On 1 September 2006 the court made an interim order, stating that the applicant should have the right to spend some time with his child, it being in the interest of the child, as otherwise the parental relationship could deteriorate and affect the child as well. It reduced the pre-arranged contact arrangements to ten hours every other Saturday, as the parents should be equal and the respondent should therefore have the other two Saturdays to spend with the child. It further stated that it would not decide in its interim order on the applicant's remaining applications concerning the overnight stays, given that this aspect of the applicant's contact rights was precisely the subject matter of the parties' main dispute.

29. Following the applicant's subsequent appeal of 18 September, on 14 November 2006 the District Court quashed the part of the interim order refusing to decide on overnight stays and instructed the first-instance court to issue an interim order also in respect of that matter.

30. The court eventually failed to decide on the application for an interim order, despite the applicant twice requesting that the decision-making process be accelerated, but instead continued the main proceedings and delivered a judgment on 13 June 2007 (see paragraph 36 below).

B. The continuation of the decision-making proceedings concerning daily visits and overnight stays following the first interim order

31. The next hearing fixed for 24 January 2007 was adjourned as none of the parties, or their representatives, appeared in court, although they had allegedly been duly summoned.

32. On 7 February 2007 the court again heard the parties, who repeated their previous requests and statements. The applicant questioned the lack of overnight stays, given the fact that the regular daily visits had been going smoothly. The respondent was against overnight stays, including in Novi Sad,

in view of the father's alleged immaturity, and the fact that a small child should not have to travel so far and that he had not requested to do so himself, as well as his sleeping habits. The court closed the evidence-gathering process and announced that the parties would be informed about the outcome of the case.

33. A month and a half later, on 20 March 2007, the court reinstated the case and scheduled a new hearing for 9 May. It requested the Novi Sad and Kruševac Social Care Centres to submit their opinions and suggestions on the applicant's contact rights by the latter date.

34. The Novi Sad Social Care Centre interviewed the applicant on 20 April 2007 and the court received its summary report (*sintetizovan izveštaj*) two weeks later, on 4 May 2007. Focusing on the applicant's parental competency examined by various methodological tools, the report found that he lived in a very comfortable house in Novi Sad, showed very high and authentic parental motivation and responsibility for the child's development and also wished to improve parental cooperation. Despite the distance at which they lived from each other, he had maintained contact with his son and wished to increase it as much as possible. The Centre recommended the following contact schedule: every other weekend from 5 p.m. on Friday to 8 p.m. on Sunday, and ten and twenty days during the winter and summer holidays, respectively.

35. The court adjourned the hearing scheduled for 9 May 2007 as it had not received the second report. After a reminder, the court received the report by the Kruševac Social Care Centre on 29 May 2007. After hearing the parties, the Centre noted the applicant's high motivation, responsibility and competence, as well as the mutual positive affection between him and the child, which had also been recognised by the respondent. In view of its findings, it recommended increasing the applicant's contact rights with the aim of optimally fulfilling the child's needs, rights and interest and allowing the applicant to spend whole weekends and a part of the holidays with his son in Kruševac and/or Novi Sad.

36. Following the hearing held on 13 June 2007, the court closed the main proceedings and subsequently (i) dissolved the marriage between the applicant and the respondent, (ii) awarded custody of the child to the respondent (*poverio decu na negu, staranje i vaspitavanje majci*), (iii) ordered the applicant to pay 30% of his income in child maintenance (iv) ruled on his contact rights, (v) summarily rejected the applicant's application for contact during the holiday period, and (vi) refused the applicant's claim for costs and expenses.

As regards contact rights (iv), the court decided, following the proposal of the Kruševac Social Care Centre, that the applicant should be allowed to take his son on the first weekend of each month to Novi Sad from 6 p.m. on Friday to 8 p.m. on Sunday, to spend the third weekend with him in Kruševac from 9 a.m. on Saturday to 8 p.m. on Sunday and to see him on the fourth Sunday

in that town between 9 a.m. and 7 p.m. The court provided a summary of the findings in the reports, noting that they were based mostly on assumptions without concrete examples, but that no harm or problems for the continuation of contact between the applicant and his son had been noted in any of the reports.

Lastly, the court dismissed in one sentence as unjustified the applicant's application to spend time with the child during his holidays, considering that a longer separation of the child from his mother than that awarded should be postponed, having regard to the expert reports, the child's age and his appropriate but still developing relationship with his father.

37. The judgment was served on the parties on 27 July 2007.

38. The part of the first-instance judgment on the dissolution of the marriage and sole-custody award became final, but both parties appealed against the remaining part on 2 August 2007.

39. On 4 October 2007 the District Court quashed the part of the judgment concerning contact during the holidays and the costs and expenses, decreased the amount of child maintenance and upheld the remainder, including the ruling concerning the applicant's contact rights.

On contact during the holidays, the appeal court noted that the lower court had failed to establish and assess the relevant facts and that it could not therefore determine whether the law had been applied correctly or not. It remitted that part of the case for fresh consideration and instructed the court to request an additional expert report taking into account the applicant's capabilities, his successful contact with the child and also the fact that the adaptation period of one year, referred to in the first expert report, had already passed (see paragraph 16 above).

The judgment was served on the parties on 29 October 2007. In the meantime, the Municipal Court continued the examination of the applicant's application concerning contact during the holidays (see paragraphs 43-56 below).

40. On 2 November 2007 the respondent lodged an appeal on points of law against the judgment of 4 October 2007, except for the quashed part.

41. Following a hearing, the court decided on a further application for an interim order on contact during the holidays (see paragraph 46 below) and announced its intention to send the case file to the Supreme Court on 26 December 2007, which was to examine the respondent's appeal on points of law concerning the endorsed and reversed parts of the judgment of 4 October 2007 (see paragraph 39 above). It would appear, however, that it failed to do so until the beginning of August 2008 (see paragraph 52 below).

42. On 12 December 2008 the Municipal Court received the main case file from the Supreme Court, together with its decision of 15 October 2008 rejecting the respondent's appeal on points of law.

C. Continuation of the main proceedings concerning the application for contact during the holidays and related interim orders

43. In compliance with the instruction made by the District Court (see paragraph 39 above), on 18 October 2007 the Municipal Court ordered the Kruševac Social Care Centre to submit an additional report on the applicant's contact rights during the school holidays.

44. On 31 October 2007 the applicant sought an interim order in respect of contact with his son during the forthcoming winter holiday.

45. On 24 December 2007 the Kruševac Social Care Centre, after hearing the parties and noting their disagreement on the issue, stated that it would be possible and in the best interest of the child to spend ten and fifteen days with the applicant during the summer and winter holidays, respectively. The Centre made reference to the existence of regular contact between the applicant and his son, including overnight stays, the respondent's affirmative expression on their mutual bond, the child's developing characteristics and the applicant's readiness to recognise, follow and react to his needs, including to shorten the stay if need be.

46. Following a very brief hearing on 26 December 2007, the Municipal Court refused on the same day the applicant's application for an interim order. It found that there would be no irreparable damage to the applicant and his son if they did not spend the winter holiday together in view of the award of regular contact rights to the applicant by the judgment of 13 June 2007 (see paragraph 36 above).

47. On 25 February 2008 the applicant appealed against the refusal to issue an interim order and also, in view of the delayed decision on his application concerning the winter holiday, sought to spend fifteen days of the summer holiday with his son.

48. On 23 May 2008 the District Court quashed the decision of 26 December 2007 because the lower court had given an ambiguous statement instead of assessing the evidence before it, including the expert report (see paragraph 45 above), and providing proper reasoning. Such a failure amounted to a grave breach of civil procedure and prevented the higher court from examining the relevant legal issues. The District Court also instructed the court of first instance that, instead of deciding on the applications for an interim order, it should decide immediately on the merits of the application for contact during holiday, given that it had gathered all the necessary evidence.

49. On 26 June 2008 the applicant informed the Municipal Court that he had not been served with the second-instance decision, but that he had learned about its outcome. He reiterated his request for an interim order in respect of the forthcoming summer holiday and requested the acceleration of the proceedings.

50. On 7 July 2008 the court granted the applicant an interim order to spend the last ten days of the summer holiday with his son. The applicant received this interim order on 31 July 2008 and it would appear that it was enforced on 20 August.

51. On 4 August 2008 the applicant again requested the expedition of the proceedings.

52. It would appear that the case file was only sent to the Supreme Court on 11 August 2008 to examine the respondent's appeal on points of law of 2 November 2007 concerning the endorsed and reversed parts of the judgment of 4 October 2007 (see paragraph 41 above). As set out in paragraph 42 above, on 12 December 2008 the Municipal Court received the main case file from the Supreme Court, together with its decision rejecting the respondent's appeal on points of law.

53. In an application of 24 December 2008, the applicant asked the court to adopt an interim order to allow him to spend a week (24-31 January 2009) with his son in the nearby mountains.

54. On 13 January 2009, the hearing restarted because of changes to the bench. The Municipal Court subsequently granted the interim order as sought, referring to the Centre's report of 24 December 2007 (see paragraph 45 above), the District Court's guidance in its decision of 23 May 2008 (see paragraph 48 above) and the reservation of the travel arrangements by the applicant. The measure appears to have been enforced as granted. The respondent appealed, but it would appear that the appeal was not served on the applicant until 3 February 2009.

55. On 26 January 2009 the Kruševac District Court quashed the interim order on appeal given that the first-instance court had failed to determine all the relevant facts, including the winter holiday schedule for pre-school children and also the absence of proof in the case file that the applicant had actually made a reservation.

However, the court, referring to its earlier remittal of the case for fresh consideration (see paragraph 48 above), found it "unacceptable that, despite the urgent character of the dispute and the statutory duty to conclude it after no more than two hearings, the first-instance court [had] not yet decided on the matter of the holidays". The court added that the first-instance court should deliver a decision on the merits as soon as possible instead of dealing with the matter by interim measures as and when the applications were lodged.

56. On 3 February 2009, after the parties had reached a mutual agreement and following the related hearing, the court gave a decision in which it stated that the applicant was allowed to spend with his son: (i) the day after his son's birthdays, (ii) the applicant's religious holiday (*slava*) on 20 January between 9 a.m. and 8 p.m. in Novi Sad, (iii) ten days during the winter holidays after Christmas, (iv) fifteen days of the summer holidays, and (v) each New Year's Eve between 31 December and 2 January. The court also found that each

party should cover its own expenses. The judgment became final and enforceable the same day it was pronounced, given that the parties had withdrawn their right to appeal at that hearing, except in respect of costs.

D. Continuation of the main proceedings in respect of the costs

57. Following the applicant's subsequent appeal in respect of the costs only, on 30 April 2009 the District Court upheld the first-instance judgment. This decision was served on the applicant four months later, on 29 August 2009.

58. On 5 November 2009 the Supreme Court rejected the applicant's subsequent appeal on points of law in respect of the costs as not being available. This decision was served on the applicant on 26 February 2010.

III. CONSTITUTIONAL APPEAL

59. In his subsequent constitutional appeal of 24 June 2009, as amended on 14 June 2011, the applicant complained that the then protracted and still pending proceedings had deprived him of extended contact with his son, in particular, the right to overnight contact for two and a half years and to spend time with his son during the holidays for almost four years. He argued that there was no reason for the pending proceedings to last that long, more than four years, and in particular that he had not been able to have access to his child even after the adoption of an interim measure on the issue for two and a half years. Referring to Article 32 of the Constitution, to different delays in the proceedings and his requests for expedition, he requested the acknowledgement of the violation, acceleration of the proceedings, and costs.

60. On 2 November 2011 the Constitutional Court dismissed the applicant's appeal. It found, following a detailed presentation of the facts and domestic law, that the overall period of four years and eleven and a half months did not in itself present an issue in respect of the right to a trial within a reasonable time. It went on to examine the relevant criteria as follows: (i) while acknowledging its great relevance for the applicant, the case, which had been examined at three levels of jurisdiction, had been particularly complex, as it had required a decision on several matrimonial issues, several expert reports to be provided for that purpose and various documents, including on the parties' financial status; (ii) the applicant had contributed to the delay to an extent by failing to appear at the hearing of 24 January 2007 and also by lodging an appeal on points of law which was not available (see paragraphs 16 and 31 above; see also *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 36, 15 June 2006); (iii) the domestic courts had, after an initial delay, involving also legislative changes in family law, regularly scheduled the hearings; and (iv) the fact that it had taken two years and seven months for the domestic courts to give a judgment at first

instance, or four and a half years to terminate the proceedings, did not raise any issue in terms of the alleged violation of the right to a trial within a reasonable time, particularly given that the father had had regular contact with his son in the meantime and that overnight stays and contact during the holidays had eventually been granted.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT PROVISIONS CONCERNING CHILD CUSTODY AND MAINTENANCE DISPUTES

61. Articles 310b, 390 and 391 of the Marriage and Family Relations Act (*Zakon o braku i porodičnim odnosima*; published in the Official Gazette of the Socialist Republic of Serbia – OG SRS – nos. 22/80, 24/84 and 11/88, and the Official Gazette of the Republic of Serbia – OG RS – nos. 22/93, 25/93, 35/94, 46/95 and 29/01), which was in force at the time the applicant initiated the matrimonial proceedings, provided that all maintenance-related actions and child custody enforcement proceedings were to be dealt with by the courts urgently.

62. The Family Act (*Porodični zakon*; published in OG RS no. 18/05), came into force on 1 July 2005 in respect of most of its Articles and thereby repealed the Marriage and Family Relations Act referred to above (see, for example, paragraph 63 below). Article 204 provided that all family-related disputes involving children or parents who exercised parental rights had to be dealt with by the court urgently. The first hearing had to be scheduled within fifteen days of the action being instituted. First-instance courts had to conclude the proceedings after no more than two hearings, and second-instance courts had to decide on appeals within a period of thirty days.

63. Article 203 §§ 1 to 3 of the Family Act, which exceptionally came into force on 1 July 2006 in conjunction with Article 363, provided that proceedings regarding family-related matters were to be adjudicated at first instance by a panel composed of one judge who had special knowledge in the field of children's rights, and two lay judges who were to be selected from the ranks of experts with experience in working with children and young people.

64. Article 230 provided for compulsory mediation and conciliation proceedings which had to be conducted in parallel with divorce proceedings if the latter had not been initiated by mutual agreement of the marital partners. These proceedings had to be conducted with the expert assistance of the Social Care Centre. In addition, the authority entrusted with mediation proceedings was obliged to conduct conciliation proceedings within two months of the date of the action being instituted.

65. Article 266 § 1 and Article 270 provided that, in all disputes concerning the protection of children, as well as the exercise or deprivation

of parental rights, the courts had always to act in the best interest of the child and were under an obligation, before giving a decision, to have regard to the reports and expert opinions from Social Care Centres, family counselling services or other institutions specialised in mediation in family relations.

66. Article 280 of the same Act defined all maintenance actions as "particularly urgent". The first hearing had to be scheduled within eight days of the action being instituted and the second-instance courts had to decide on appeals within fifteen days.

II. CONSTITUTIONAL APPEAL PROCESS

67. The Constitution of the Republic of Serbia (*Ustav Republike Srbije*; published in OG RS no. 98/06) came into force on 8 November 2006. The Constitutional Court declines jurisdiction *ratione temporis* to decide on constitutional appeals concerning decisions and/or acts that occurred before that date (see Practice directions adopted by the Constitutional Court as regards the examination of and ruling on constitutional appeals, *Stavovi Ustavnog suda u postupku ispitivanja i odlučivanja po ustavnoj žalbi se odnose na postupak prethodnog ispitivanje ustavne žalbe*, adopted on 30 October 2008 and 2 April 2009).

68. Article 32 § 1 provides, *inter alia*, for the right to a hearing within a reasonable time. The Constitution does not contain a provision on the right to respect for family life, which corresponds to Article 8 of the Convention. Article 65 guarantees that parents have the right and responsibility to support and provide an upbringing and education for their children, in which they are equal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

69. The applicant complained under Article 6 § 1 of the Convention that owing to the excessive length of the proceedings in the domestic courts relating to the contact arrangements and the overall lack of diligence on the part of the domestic authorities, he had been deprived for several years from having, as a non-resident parent, extended and more quality time with his son and from being able to effectively exercise his parental rights.

70. The Court considers that the main legal issue raised by the application concerns the applicant's inability to have extended contact with his son for a protracted period of time, that is, his right to respect for his family life. The Court therefore considers, being the master of the characterisation to be given in law to the facts of any case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114-15, 20 March 2018), that the issues raised by the applicant's complaint under Article 6 § 1 fall to be

examined principally under Article 8 of the Convention in view of the State's positive and procedural obligations in the sphere of family life (see, *mutatis mutandis*, *Süß v. Germany*, no. 40324/98, § 110, 10 November 2005; *Diamante and Pelliccioni v. San Marino*, no. 32250/08, §§ 150-51, 27 September 2011; *S.I. v. Slovenia*, no. 45082/05, § 56, 13 October 2011; and *Milovanović v. Serbia*, no. 56065/10, § 92, 8 October 2019, with further references), the relevant part of which reads as follows:

Article 8

"1. Everyone has the right to respect for his private and family life ...

2. 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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Compliance with the six-month rule

71. The Government submitted that the applicant's complaint should be rejected for non-observance of the six-month rule. Referring to the judgment in *Gobec v. Slovenia* (no. 7233/04, §§ 109-11, 3 October 2013), they invited the Court to examine separately the applicant's different complaints. According to the Government, the applicant had failed to bring his case to the Court within the six-month time-limit, which had started to run as of the date the applicant had or should have become aware that the relevant parts of the courts' judgments concerning his complaints had become final and enforceable. In particular, the relevant part of the court's decision of 13 June 2007 in respect of the applicant's application for overnight stays had allegedly become final on 29 October 2007, as only the respondent had pursued a further remedy, and the applicant had benefited from such contact as of 3 November 2007 (see paragraph 39 above). Furthermore, the applicant's application for contact during the holidays had been decided by a judgment of 3 February 2009 and had immediately become final (see paragraph 56 above), and he had also spent a part of the summer and winter holidays in August 2008 and January 2009 with his son (see paragraphs 50 and 54 above). The Government further challenged the relevance of the Constitutional Court's decision for the calculation of the time-limit, as the present case had not been examined before it from the standpoint of Article 8 of the Convention. Taking into account that the application had been lodged on 26 December 2011, the Government invited the Court to declare the present application inadmissible as out of time.

72. The applicant did not provide any comment in response to the Government's objection.

73. Having regard to the aim of the six-month rule and the relevant general principles (see, for example, *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 48-49, 29 June 2012), the Court considers that the present case does not raise any issue in respect of tardiness in lodging the application. As a matter of clarification, the contact schedule governing the weekly, overnight and holiday contact between the applicant and his son was established within the same civil proceedings, unlike in *Gobec* where it was established in three separate sets of administrative and civil proceedings and no further constitutional remedy was available (see *Gobec*, cited above, § 110). The applicant in the present case availed himself of a constitutional appeal, an available legal remedy at the relevant time (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009). The Court reiterates that Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Having regard to the Constitutional Court's decision of 2 November 2011, it is to be noted that it examined the overall facts and length of the main matrimonial proceedings, without breaking down the matrimonial proceedings itself or making any reference to the applicant's failure to comply with the time-limits laid down in domestic law. The Court considers that it would be unduly formalistic in the present circumstances to require the applicant to have made separate complaints about each and every different part of the main proceedings to the Constitutional Court and subsequently to the Court in the manner suggested by the Government (see, *mutatis mutandis*, *Milovanović*, cited above, §§ 105-07, where the Court also adopted a global approach when considering the domestic proceedings and had regard to the overall facts which it found to be important for the context and merits in the context of the continuous non-enforcement of custody and contact-related rights under Article 8; see also *Šobota-Gajić v. Bosnia and Herzegovina*, no. 27966/06, § 45, 6 November 2007).

74. Given that the final decision in the process of exhaustion of domestic remedies was delivered on 2 November 2011 and that the application was lodged on 26 December 2011, the Court accordingly dismisses the Government's objection that the application was introduced outside the six-month time-limit set out in Article 35 § 1 of the Convention.

2. Conclusion

75. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

76. The Court notes that some of the parties' arguments referring to Article 6 § 1 also concerned in substance the issues raised under Article 8 of the Convention. The Court deems it appropriate to examine these arguments in the context of the latter provision (see, for example, *Kutzner v. Germany*, no. 46544/99, §§ 56-57, ECHR 2002-I; *V.A.M. v. Serbia*, no. 39177/05, § 115, 13 March 2007; and *Z. v. Slovenia*, no. 43155/05, § 130, 30 November 2010).

(a) The applicant's submissions

77. The applicant reiterated his complaint that his right to family life had been breached on account of the delays in the matrimonial proceedings, particularly concerning contact arrangements. He maintained that, despite scheduling fourteen hearings, the domestic authorities had overlooked what was at stake and had failed to take any steps to accelerate the proceedings, which had lasted an excessively long time. He clarified that, as a consequence, he had seen his son once a week or every other week for five hours in Kruševac between 1 November 2004 and 3 November 2007. However, he had not been able to take his son to his home until the latter date, during the summer holidays until 20 August 2008 and during the winter holidays until 24 January 2009, and the final determination of his rights had taken even longer than that.

(b) The Government's submissions

78. The Government argued that the applicant and his son had not been deprived of the "mutual enjoyment of each other's company" because they had benefited from regular weekly contact during the entire proceedings, which had even been expanded by the end of them to include overnight stays and contact during the holidays.

79. As regards the Court's question on the length of the proceedings, the Government principally referred to the Constitutional Court's findings that they had been terminated within a reasonable time and invited the Court to endorse them (see paragraph 60 above). The Government argued that it was not certain whether their length could have affected a fundamental element of family life or whether the domestic courts could have decided faster. The time taken had been necessary in this case to ensure respect for family life "wherein regard [had to] be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole", and in which the State enjoys a certain margin of appreciation. In the present case, the margin of appreciation should be determined by the legitimate aim obliging the courts to be guided by the welfare of the child.

Pursuant to the domestic law, the courts were not allowed to accept any agreement between the parties assessed not to be in the best interest of the child or to base their judgment on the parties' acceptance, renunciation or settlement, but had to obtain and take into account an expert opinion. They submitted that the proceedings had been reasonably lengthy, bearing in mind the considerable complexity and sensitivity of the case. The court had had to obtain five reports, some of which had been contradictory, before delivering the first judgment in 2007, and a sixth additional report necessary for the final judgment of February 2009. While the first report had proposed allowing overnight stays after a year's adaptation period, the second expert report had excluded longer periods of separation from the mother until a child attained the age of six. The third, harmonised, opinion had confirmed the second report as having been based on the latest knowledge on the psychological development of a child into a stable personality. Having decided to reopen the proceedings to further diligently assess all the circumstances, the court had ordered two new reports from the Social Care Centres in the child's and the applicant's places of residence, which had also not been contradictory. Under such circumstances, the court had had to strike a fair balance between the opposing information in the reports: it had granted overnight stays in June 2007 and, while initially excluding extended contact during the holidays, it had granted it even before the child had attained the age of six.

80. The Government further referred to the applicant's contribution to the delay in the proceedings, owing to a large extent to his persistent efforts to extend his contact rights despite the experts' findings, and to his appeals concerning maintenance and costs-related decisions. According to the Government, the applicant had had the option to agree with the reports and judgments and apply for further contact rights after the child had attained the age of six. Attention should be paid to his submission of November 2005, when the child was two years and nine months old, suggesting that to constantly be surrounded by his mother and grandmother, without a man's influence, had already been slowly affecting his proper psychological upbringing (see paragraph 14 above). With such prejudice, it was obvious that his interest had been in direct opposition to and incompatible with the report of an expert specialising in paediatrics and child neuropsychiatry who, based on the latest scientific knowledge, had given more weight to the mother-child relationship until the child was six years old (see paragraph 22 above).

81. According to the Government, this case was not therefore about the protracted proceedings and lack of diligence. On the contrary, it was about careful conduct by the court which had been sufficiently reactive while pursuing a legitimate aim and being guided by the best interests of the child in implementing measures necessary to strike a fair balance between the applicant's persistently expressed interests and the competing interests of the community. Therefore, the applicant had not been deprived of maintaining

family ties with his child in breach of Article 8, but had been limited in this only to the extent necessary to achieve a legitimate aim.

2. The Court's assessment

(a) General principles

82. Even though the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there are, in addition, positive obligations inherent in an effective "respect" for family life (see, among other authorities, *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31). In relation to the State's obligation to implement positive measures, the Court has repeatedly held that Article 8 includes a right for parents to have measures taken with a view to their being reunited with their children, and an obligation for the national authorities to take them to facilitate such reunions (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V). This applies also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; see also *Gluhaković v. Croatia*, no. 21188/09, § 56, 12 April 2011).

83. In both the negative and positive contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and the community as a whole, including other concerned third parties, and the State's margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290, and *Diamante and Pelliccioni*, cited above, § 174). On the one hand, while an applicant's interests in having regular contact with his or her child remain a factor when balancing the various interests at stake (see *Haase v. Germany*, no. 11057/02, § 89, ECHR 2004-III, and *Kutzner*, cited above, § 58, and the numerous authorities cited therein), and regardless of his or her feelings towards the contact arrangements, in the balancing process between the interests of the child and those of the parents primary consideration is to be attached to finding those arrangements which are in the child's best interests, which may, depending on their nature and seriousness, override those of the parents (see for instance, *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts) and the cases cited therein; *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII; *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII). In general, the child's interests dictate that the child's ties with the family must be maintained, except in cases where the family has proved particularly unfit and when contact would present a risk of harm (see, to that effect, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX, and *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 169,

ECHR 2000-VIII). A parent cannot be entitled under Article 8 of the Convention to have measures taken which would harm the child's health and development (see *Ignaccolo-Zenide*, cited above, § 94, and *Nuutinen*, cited above, § 128). The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is therefore not absolute. The key consideration is whether those authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58).

84. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. In particular, when deciding on custody, the Court has recognised that the authorities enjoy a wide margin of appreciation. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, and *Görgülü v. Germany*, no. 74969/01, §§ 42 and 50, 26 February 2004).

85. Lastly, in cases concerning a parent's relationship with his or her child, the effective respect for family life requires that the decision-making procedure provide the requisite protection of parental interests (see *W. v. the United Kingdom*, 8 July 1987, §§ 62 and 64 *in fine*, Series A no. 121). The local authority's decision-making process clearly cannot be devoid of influence on the substance of the decision, notably by ensuring that it is based on relevant considerations and is not one-sided, and hence neither is, nor appears to be, arbitrary. Accordingly, the Court is entitled to have regard to that process to determine whether it has been conducted in a manner that, in all the circumstances, is fair and affords due respect to the interests protected by Article 8 (see *Suur v. Estonia*, no. 41736/18, § 82, 20 October 2020). Also, exceptional diligence should be exercised in view of the risk that the passage of time may result in a *de facto* determination of the matter (see *H. v. the United Kingdom*, 8 July 1987, § 89, Series A no. 120, and *Diamante and Pelliccioni*, cited above, § 177). The latter duty, which is decisive for assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8.

(b) Application of the relevant principles

86. The Court reiterates that it is common ground 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 even when the relationship between the parents has broken down (see *Keegan*, cited above, § 50).

87. As to the Government's argument that the applicant and his son had not been deprived of the "mutual enjoyment of each other's company" owing to their regular contact throughout the entire proceedings, the Court accepts that this fact differentiates the present case from most of the usual cases examined by the Court in this context, in which the delays in the proceedings resulted in a *de facto* determination of the matter at issue (compare and contrast, for example, *Tomić v. Serbia*, no. 25959/06, § 104, 26 June 2007, *Milovanović*, cited above, § 135, and *Ribić v. Croatia*, no. 27148/12, §§ 92-94, 2 April 2015). Nevertheless, the Court considers that both the quantity and quality of contact arrangements, including overnight stays, contact on special occasions and during holidays, if considered to be in the best interest of the child, are of great importance in the context of positive contact between a non-resident parent and a child that may further enhance the relationship in order to achieve quality time with each other. Therefore, despite regular contact between the applicant and his son and a favourable determination of the matters in dispute, the applicant's limited access to his son, given the lack of overnight and holidays contact for a considerable period of time, may also have impact on the exercise of the applicant's right to a family life sufficient to attract the protection under Article 8 of the Convention (see, *mutatis mutandis*, *Improta v. Italy*, no. 66396/14, § 43, 4 May 2017; *Cînța v. Romania*, no. 3891/19, § 43, 18 February 2020; and *Gluhaković v. Croatia*, cited above, § 60 and 68). In any event, the issues involved in these proceedings were clearly of great importance to the applicant, and the Convention, in particular, as well as the relevant domestic law required exceptional diligence on the part of the domestic authorities (see *V.A.M. v. Serbia*, cited above, § 101, and *Veljkov v. Serbia*, no. 23087/07, § 85, 19 April 2011).

(i) General conduct of the decision-making process

88. The Court observes that the child, S.P., grew up with both parents for the first year and nine months of his life. Following the factual dissolution of the marriage in November 2004, the applicant and the child's mother appear to have agreed that the child should continue to reside with his mother and the applicant should pay child maintenance and have contact rights, in respect of which they made a contact schedule allowing him contact on either Saturday or Sunday, between 10.30 a.m. and 3.30 p.m., in the hometown of the applicant's son (see paragraph 6 above). The applicant initiated the matrimonial proceedings on 8 March 2005, when the child was two years old, notifying the above-mentioned arrangements and applying for more extensive contact rights (see paragraph 8 above). The disputed issue between the parties was primarily the extent of the contact arrangements, in particular whether the applicant's contact with the child should have been broader than agreed between the parties and also extended to cover overnight stays and holiday contact, including outside of the child's hometown. The fact that the parties

could not agree on the modalities of the contact arrangements imposed on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child (see, in general, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010, and *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010). The proceedings were eventually terminated on 29 August 2009 (see paragraph 57 above), the part of the proceedings concerning the appeal on points of law having been erroneously pursued and excluded (see paragraph 58 above; see also *Rezgui v. France* (dec.), no. 49859/99, ECHR 2000-XI, and *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 36, 15 June 2006). Hence, they lasted some four years and six months at two levels of jurisdiction, of which the period of four years is relevant in the context of the right to family life.

89. The impugned proceedings may be regarded as involving only a certain degree of complexity owing to the usual sensitive nature of matters concerning child custody and contact rights, including, in the present case, the child's young age and the fact that the applicant resided in another town. The Court cannot, however, endorse the Constitutional Court's finding and the Government's assertions that this case was to be regarded as a particularly complex one. It was not an acrimoniously fought custody dispute, involving issues such as a need to deal with the resumption of contact resulting from separation or a broken bond, child's fragile psychological situation, parental alienation syndrome, estrangement or continuing impeding of the court orders' enforcement by a parent. The prolongation of the proceedings cannot be attributed to any of the parties, who acted with the necessary diligence without obstructing the proceedings, with the exception of the delay caused by the adjournment of the hearing scheduled for 24 January 2007 (see paragraph 31 above). Contrary to the Government's contention that a swifter conclusion was impeded by the applicant's conduct, the Court finds that the applicant made every reasonable effort to expedite the proceedings by repeatedly submitting requests for their acceleration and promptly undertaking procedural steps, having particular regard to the fact that the applicant and his lawyer were coming regularly to the hearings from another town 300 km away. The Court considers that the principal reasons for the protracted character of the proceedings can mainly be imputed to the conduct of the judicial authorities, which, despite scheduling a number of hearings and obtaining six expert reports, did not show the necessary diligence in view of what was at stake for the applicant.

90. As regards the court's diligence in the organisation of the decision-making process, firstly, while the first-instance court cannot be held responsible for the time dedicated to mediation, it cannot be deemed acceptable, having regard also to the domestic standards (see paragraphs 62-63 above), to schedule the first hearing eight months after the date on which the action had been instituted and only then request the

necessary information from social services, and to hold only one additional hearing in the course of the first year (see paragraphs 13 and 18 above). Secondly, the Court must emphasise that it should be avoided, to the extent possible, for four different presiding judges to be switched onto the bench when determining custody and contact rights, in order to avoid losing continuity, even with the understanding that the judge involved in the mediation cannot subsequently sit in the case. Thirdly, instead of the court thoroughly preparing each hearing to ensure the speedy conclusion of the proceedings, it is to be noted that a few hearings were adjourned for reasons related mostly to a lack of the competent authorities' internal organisation (see paragraphs 19, 21 and 35 above), and several of the scheduled hearings lasted only a very short time, being adjourned after several minutes, without making any advances in the case (see paragraphs 18, 24, 26 and 46 above). Fourthly, the parties were heard twice in four years; it took a year and three months to hear the parties for the first time in May 2006 and another nine months to hear them for the second time on 7 February 2007 (see paragraphs 13 and 32 above). The first expert was heard six months after she had submitted her report (see paragraph 13 above), and no measures in respect of her report had been taken in the meantime. Also, it would appear that the court did not have, or did not use, tools to ensure discipline in respect of its own time-limits set up for experts engaged in the proceedings (see paragraphs 25 and 35 above). Fifthly, and rather importantly, the Court observes several unacceptably long delays in the transfer of the files between the domestic courts and the serving of decisions on the parties in such a pressing case (see paragraphs 41 and 52 above). It appears that the originals of the files in the domestic system circulate between different levels of jurisdiction, which also blocked advancement of the case in respect of the unchallenged claims at third instance. Notably, greater diligence was required in adopting a decision affecting the rights guaranteed by Article 8 of the Convention.

(ii) Decision-making process concerning right of contact

91. The Court notes at the outset that it is not its role to substitute itself for the national authorities in the assessment of the modality, the regularity or duration of contact arrangements at different developmental stages, nor of the optimal age of a young child as of which overnight or holiday stays may be possible with a non-resident parent.

92. Turning to the question of the impact of the prolonged proceedings on the gradual extension of the applicant's contact rights, the applicant complained that, despite the regular day contact, he had been unable to benefit from overnight stays for two and a half years and from holiday contact for almost four years. The Court finds it acceptable that in certain cases, depending on the child's age, parental involvement and the existence of a secure bond between them, any establishment of or increasing contact should

be gradual with continuing sensitivity to the child's well-being. The Court observes that the applicant's capability, his demonstrable interest in and high motivation and commitment to maintaining a proper and permanent high-quality relationship with his child, as far as was possible given the distance they lived from each other, was not in dispute from the outset of these proceedings. Despite certain differences of opinion as to the modalities of the contact arrangements, in particular overnight stays, none of the reports indicated that contact between the child and the applicant in general would pose a risk of harm to his well-being or seriously disturb his emotional and psychological balance (compare and contrast *Suur*, cited above, §§ 95-97). In such circumstances, the State authorities are expected to act in a manner designed to enable ties and personal relations and direct contact to be maintained on a regular basis and developed, except if the decision to refuse certain types of contact can be taken to have been made in the interests of the child (see *Sommerfeld*, cited above, §§ 64-65, and *Buscemi v. Italy*, no. 29569/95, § 55, ECHR 1999-VI). The Court will therefore assess whether the competent authorities duly and diligently considered the legitimate interest of the applicant in developing a bond with his child as well as the latter's long-term interest to the same effect (see *Görgülü*, cited above, § 46).

93. The Court accepts that the extent of disagreement between the first two expert reports may have left the domestic court, which found them to be vague, somewhat confused about how to apply their findings. It is noted that in December 2005, the first expert advised very frequent whole-day contact between the applicant and the child, but only sporadic overnight stays, suggesting also that more extensive contact arrangements could usually be deemed appropriate after a year's adaptation period (see paragraph 16 above). The Government have not submitted any information and neither is there any to be found in the case file to show that, in the meantime or afterwards, the competent authorities took measures to monitor the daily contact. Seven months later, the second expert advised that no pressure to be separated from his or her mother overnight should be put on a child until he or she has attained the age of six, but only a several hours during one day each weekend, mostly basing this finding on a general analysis of child-parent relationships, a vague interpretation of the latest scientific findings and a routine of child going to sleep in the mother's presence (see paragraph 22 above).

94. Despite such divergent opinions of the two experts, the new presiding judge requested them to try to produce a harmonised report within ten days (see paragraph 24 above). In a very brief third joint report submitted two months later (see paragraph 25 above), the two experts recommended commencing with daytime contact three Saturdays a month, while six could be taken as the age at which point further extended contact with the father could be envisaged, referring, in a general manner, to the "latest scientific knowledge" and the risk of the appearance of possible psychological strain, unrest and emotional disturbance, such as anxiety (*strepnja*), fear or even

panic, that could be caused in the event of a twenty-four hour separation of a child from his or her mother to provide for overnight stays with the father before such an age.

95. Following these three reports, given that the authorities had still not taken concrete measures to regulate his contact rights for a year and a half of proceedings pending, leaving the modalities of contact arrangements up to the child's mother (see, *mutatis mutandis*, *Improta v. Italy*, cited above, § 51), the applicant applied for an interim contact order in August 2006 to be granted weekly daytime contact and a monthly overnight stay. By an interim order of 1 September 2006, the pre-agreed contact schedule was reduced to alternate Saturdays, on the ground to permit both parents to have equal numbers of Saturdays with the child (see paragraph 28 above), without making any reference to the child's best interest and notwithstanding the parties' provisional arrangements and the experts' recommendation that the applicant and his son initially have regular and very frequent daytime contact instead of overnight stays.

96. In addition, the court refused to decide by that interim order on the application for overnight stays, seeing it as a main issue in dispute. While recognising that a decision on overnight stays in the case of a young child requires careful preparation, the Court notes that according to the domestic law the scope of the interim orders in the matrimonial proceedings may correspond to the scope of the main claim submitted by the claimant. Although the latter refusal was quashed by the higher court in November 2006 (see paragraph 29 above) which had instructed the lower court to eventually decide on the application, one way or the other, the first-instance court did not rule on overnight stays for another eight months, until it delivered its judgment on 13 June 2007, when the child was four years and four months old. The applicant began benefiting from granted overnight stays twice a month (and one daytime visit in addition) almost five months later, as of 3 November 2007 (see paragraphs 36 and 39 above).

97. Moreover, by the same judgment, while disregarding the two newly provided positive assessments of the relationship between the applicant and his son with a clear endorsement of contact during the holidays (see paragraphs 34-35 above), the first-instance court dismissed, in one sentence the applicant's application to spend some time during the child's holidays and on special occasions as unjustified. Between the quashing of the impugned part of the judgement in October 2007 until January 2009, the first-instance court dealt only with applications for interim orders concerning contact during the holidays (see paragraphs 43-56 above). Despite several positive expert reports, the court refused the applicant's second application for an interim order in December 2007 on the sole ground that there would be no irreparable harm to the applicant and his son if they did not have contact during the holidays given the extended, regular contact rights granted by the judgment of June 2007 (see paragraph 46 above), instead of examining the

central issue of whether such contact would be in the child's interest, in particular whether contact would place any psychological strain on the child, or would, on the contrary, enhance the child's well-being.

98. All above-mentioned impugned first-instance court's rulings were admittedly quashed by a higher instance and the applicant was able, owing to the subsequent interim orders, to spend ten days during the summer and seven days during the winter holidays with his son in August 2008 and in January 2009, respectively (see paragraphs 50 and 54 above). Nevertheless, the Court considers that the impugned rulings, without a proper assessment of the evidence and providing reasoning (see, *mutatis mutandis*, *Anđelković v. Serbia*, no. 1401/08, § 27, 9 April 2013), also unnecessarily extended already prolonged proceedings. Likewise, the appeal court ruling on the decisions on interim orders on appeal criticised explicitly a lack of reasoning and/or their protracted character in the circumstances of the case, while prompted the first-instance court to decide immediately on the merits of the application for holidays contact, instead of responding to the applications for interim measures as and when they were lodged (see paragraphs 48 and 55 above).

99. Eventually, it took the first-instance court overall four years of litigation to deliver a favourable final decision, in February 2009, on this part of the applicant's claim, notably on the ground of the parties' amicable settlement that had been reached outside the court proceedings (see paragraph 56 above). The applicant's son was six at the material time. It would appear that the contact rights have been enforced as arranged.

(iii) Conclusion

100. Bearing in mind these findings and without underestimating the sensitivity of the issue of the child's welfare at a young and vulnerable age, in particular at the very outset of the present case, the Court is not persuaded, as the Government argued, that the determination of the applicant's contact rights, which lasted some four years at two levels of jurisdiction, was necessary in order to obtain the objective elements of the case and acceptable in view of the reasons therefor (contrast *Nuutinen*, cited above, § 110). Moreover, the domestic authorities for several years failed to do everything in their power that could reasonably have been expected of them to take into consideration the legitimate interest of the applicant in developing and sustaining a bond with his child and the latter's own long-term interest to the same effect (see, *mutatis mutandis*, *Görgülü*, cited above, § 46), without referring in practice to any exceptional circumstances rendering a more extensive contact schedule undesirable or otherwise running counter to the child's best interests.

101. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

104. The Government contested this claim. They submitted that, should the Court find a violation of the Convention, such finding would constitute sufficient just satisfaction. In the alternative, they submitted that any financial compensation awarded should be consistent with the Court's own case-law in other similar cases.

105. The Court sees no reason to doubt that the applicant suffered distress as a result of not being awarded more extensive contact rights with his son for a prolonged period of time, which is why a finding of a violation alone would not constitute sufficient just satisfaction within the meaning of Article 41.

106. Having regard to the above and on the basis of equity, as required by Article 41, the Court awards the applicant EUR 4,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicant also claimed a total of 348,120 Serbian dinars (approximately EUR 3,014) for the costs and expenses incurred before the domestic courts, including on account of the constitutional appeal, and EUR 685 for those incurred before the Court. In this connection, his lawyer provided a detailed and itemised calculation.

108. The Government contested that claim.

109. 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 were actually and necessarily incurred and are reasonable as to their quantum. Regard being had to all of the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 3,500 covering costs under all heads, plus any tax that may be chargeable to him.

C. Default interest

110. The Court considers it appropriate that the default interest rate 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 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a default interest 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Jon Fridrik Kjølbro President