

Pending cases against Serbia

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
39177/05	V.A.M.	13/03/2007	13/06/2007	1035, 1043	4.1, 4.2
3102/05	EVT COMPANY	21/06/2007	21/09/2007	1043	4.2
25959/06	TOMIC	26/06/2007	26/09/2007	1043	4.2
28443/05	SAMARDZIC and AD PLASTIKA	17/07/2007	17/10/2007	1043	4.2
3150/05	JEVREMOVIC	17/07/2007	17/10/2007	1043	4.2
26642/05	STEVANOVIC	09/10/2007	09/01/2008	1043	4.2
41513/05	MIKULJANAC, MALISIC and SAFAR	09/10/2007	09/01/2008	1043	4.2
30132/04	ILIC	09/10/2007	09/01/2008	1043	4.2
17556/05	MARCIC and 16 others	30/10/2007	30/01/2008	1043	4.2
38350/04	POPOVIC	20/11/2007	20/02/2008	1043	4.2
27935/05	FILIPOVIC	20/11/2007	20/02/2008	1043	4.2
2637/05	JOVICEVIC	27/11/2007	27/02/2008	1043	4.2
37343/05	ZIT COMPANY	27/11/2007	27/02/2008	1043	4.2
13909/05	LEPOJIC	06/11/2007	31/03/2008	1043	4.2

Main pending cases (or groups of cases) against Serbia

Case name :	V.A.M. v. Serbia	Appl N° :	<u>39177/05</u>
Judgment of :	13/03/2007		
Final on :	13/06/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.1(16/09/2008); 1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

39177/05 V.A.M. judgment of 13/03/07, final on 13/06/07
 The case concerns the excessive length of proceedings initiated in 1999 by the applicant, who is HIV positive, before the Fourth Municipal Court of Belgrade seeking dissolution of her marriage, sole custody of her daughter, born in 1995, and child maintenance (violation of Article 6§1).
 The European Court recalled that exceptional diligence was required in dealing with cases in which the plaintiff was HIV positive, as well in all matters where the proceedings concern child custody disputes (§§101, 105 and 106 of judgment).
 The case also concerns the violation of the applicant's right to respect of her family life due to the non execution since 1999 of the domestic court's interim order providing the applicant's access to her daughter, as well as the excessive length of the civil proceedings (double violation of Article 8). The child has not seen the applicant since August 1998 and the interim access order has not been enforced due to the unco-operative attitude of the child's father and impossibility of serving court documents on him due to his repeated changes of addresses, including abroad in Montenegro.
 Finally, the case concerns the lack of an effective remedy under domestic law concerning the excessive length of proceedings (violation of Article 13).
Individual measures: The European Court recalled the obligation of the respondent state to enforce, "by appropriate means", the interim access order of 23/07/1999 and to "bring to a conclusion, with particular diligence, the ongoing civil proceedings" (§166 of judgment).
 • *Information provided by the Serbian authorities and the applicant:* The proceedings concerning the child custody and maintenance were closed on 14/12/2007 and the judgment was confirmed on appeal on

12/03/2008. It has thus become final and repealed the 1999 interim order. The judgment left custody to the father and confirmed the applicant's visitation rights. However, the child's father has persisted in obstructing the applicant's access to her child. So far no contact between the applicant and her child has been established. The Social Care Centre was ordered by the ministry in charge to take a number of legal steps by 20/05/2008, including filing criminal charges against the father, starting an action to deprive him of his parental rights and appointing an interim guardian for the child, and also starting proceedings for enforcement of the access right under the judgment of 14/12/2007.

The court fined the father twice for his failure to produce the child for the purpose of enforcing the interim access order.

• *Assessment:* The Secretariat notes that, since the judgment of the European Court became final in June 2007, it does not appear that the Serbian authorities took the necessary measures required under the Convention to ensure that the applicant's access rights are enforced. Nor has it been demonstrated that the applicant is provided with other means so that she can exercise her access rights.

• *Information is therefore awaited urgently on measures taken to ensure that the applicant may exercise her access rights without further delay.*

General measures: The Serbian authorities provided the following information with respect to the general measures taken:

1) Excessive length of civil proceedings: The Serbian Constitution provides the right to a fair trial within reasonable time (Article 32). Similarly, the 2005 Civil Procedure Act prescribes that a court should decide on claims and motions of the parties within reasonable time (Article 10).

The Serbian authorities provided excerpts from a number of domestic case-files concerning family-law issues, including custody proceedings, corroborating the implementation in practice of this legislation as well as the 2005 Civil Procedure Act (§61 and 62 of the judgment) and the 2005 Family Law (§57 and 58 of the judgment) to avoid the excessive length of proceedings.

• *Assessment:* In view of the examples provided, it appears that the law on ensuring expedient civil proceedings in family matters is implemented in practice. However, it appears that there are several judgments rendered by the European Court (see for example the cases in Section 4.2) and cases pending before it concerning excessive length of proceedings where the problems remain in this respect.

• *Information is therefore awaited on possible measures taken or envisaged to eliminate excessive length of civil proceedings. In particular, information would be helpful on measures envisaged to facilitate acceleration of civil proceedings. These measures might include organisational measures such as developing and/or refurbishing court premises, computerisation of courts, increasing posts for judges and law clerks, trainings and awareness raising, improving organisation and management of courts, increasing court budget.*

2) Violation of right to respect for family life (non-enforcement of a court decision): According to the 2004 Enforcement Procedure Act, courts must act urgently in all enforcement proceedings and decide on any enforcement application within 3 days. Any action by the court contrary to this provision shall be considered as "unprofessional conduct of a judge" within the meaning of the Judges' Act.

The 2004 Enforcement Procedure Act provides an initial period of 3 days for voluntary compliance with a child custody order. Beyond that, however, fines are imposed and, ultimately, if necessary, the child may be taken forcibly in co-operation with the social care authorities. Where, exceptionally, the life, health or proper development of a child is threatened, the child shall be removed and transferred to another person without laying down any period for voluntary enforcement or fining the party in default.

The Serbian authorities delivered to the Secretariat on 04/12/2007 excerpts from a number of domestic case- files evidencing application of the 2004 Enforcement Procedure Act in child custody matters.

• *Assessment:* The information provided is indicative of a positive trend in the effective application of the 2004 Act. However, it appears that there are a number of similar cases where the European Court found violations of right to respect for family life (see for example the cases of Tomić and Jevremović), as well as a number of similar cases pending before the European Court. In these circumstances, the Secretariat considers it to be premature to make any assessment at this stage as to whether or not examples provided demonstrate the application of the Serbian law in compliance with the standards of the Convention.

• *Information is therefore awaited on the effective application of this legislation. Information is also awaited on the application of the Criminal Code (see §74 of the judgment) to ensure enforcement of court decisions in similar situations.*

3) Lack of an effective remedy: The Constitutional Court Act has been adopted in 2007. It provides the possibility to lodge a complaint before the Constitutional Court in case of breach of the right to a trial within reasonable time, even if the other legal remedies have not been exhausted. The law has not determined a term within which a decision must be taken upon constitutional complaints. However, it has limited the time-limit within which state and other authorities, legal entities and natural persons are obliged to respond, specifying that they all must act within the term set by the court, which cannot be less than 15 days. Moreover, the Constitutional Court has not yet rendered any decision demonstrating that the remedy in

question provides redress for excessive length of proceedings. It is noted that the Constitutional Court adopted its Rules of Operation in February 2008 (*Official Gazette*, No. 24/08) in accordance with the new legislative framework.

The Constitutional Court Act further provides that if an individual complaint before the Constitutional Court is upheld, the complainant may submit a claim for damages to the special Damages Commission. The Damages Commission must make a decision on the claim within 30 days failing which the applicant will be entitled to file a claim for damages before a court of law. In March 2008, members of the Damages Commission were appointed by the Minister of Justice and its Rules of Operation adopted (*Official Gazette*, No. 27/08).

• **Assessment:** *Notwithstanding the fact that relevant legislation was introduced, no evidence has been provided concerning the availability in practice of an effective remedy in compliance with the Convention's standards.*

• **Information is thus awaited** *on the text of the law and its implementation as well as effectiveness in practice, including the first experience of the Constitutional Court and Damages Commission in this regard.* In this respect, the authorities' attention is drawn to the Committee of Ministers' Recommendation Rec(2004)6 to member states on the improvement of domestic remedies and to measures adopted in this field by other countries (see e.g. Kudła against Poland, Interim Resolution ResDH(2007)28; Jóri against the Slovak Republic, Final Resolution ResDH(2005)67; Horvat against Croatia, Final Resolution ResDH(2005)60 and Lukenda against Slovenia (992nd meeting, April 2007, Section 4.2).

4) Dissemination: The State Agent promptly issued a press release on the European Court's judgment, which was widely reported in the Serbian press. He also forwarded the translation of the Court's judgment to the Supreme Court of Serbia with a request for further distribution to all domestic courts. During his visits to certain courts the State Agent delivered copies of the translated judgment to them. Finally, the judgment was distributed and discussed at a seminar organised on 14-15/06/2007 by the Department for Human and Minority Rights of the government and the State Agent in co-operation with the Council of Europe, attended by members of judiciary and state authorities.

5) Publication: The European Court's judgment was immediately translated and published in the *Official Gazette* of the Republic of Serbia No. 53 of 13/06/2007, as well as on the website of the State Agent (www.zastupnik.sr.gov.yu). A commentary on the judgment by the State Agent was published in the specialised legal magazine *Paragraf*, including its Internet edition, and in the journal *Selected Case- Law (Izbor sudske prakse)* no. 5/2007.

The Deputies,

1. noted that the applicant's access rights granted by the 1999 interim order had now been confirmed by a judgment given in December 2007 and final as of May 2008;
2. noted that the applicant had started proceedings for enforcement of her access rights in accordance with this final judgment;
3. urged the Serbian authorities to ensure that all necessary measures are taken to enable that the enforcement procedure is carried out expeditiously;
4. took note of the remedy introduced for excessive length of proceedings in the Constitutional Court Act, which provides that the Constitutional Court is empowered to assess whether or not the right to a trial within reasonable time has been violated;
5. invited the Serbian authorities to provide information on the effectiveness of this remedy;
6. took note of the information provided concerning the measures taken to eliminate excessive length of proceedings;
7. noted that information is awaited on further developments with regard to the measures envisaged to eliminate the excessive length of proceedings as well as to ensure effective enforcement of court decisions;
8. decided to resume consideration of this item at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on individual measures and at latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on general measures.

Case name :	EVT COMPANY v. Serbia	Appl N° :	<u>3102/05</u>
Judgment of :	21/06/2007		
Final on :	21/09/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1013-2(03/12/2007)		

NOTES OF THE AGENDA

3102/05 EVT Company, judgment of 21/06/07, final on 21/09/07

The case concerns the violation of the applicant company's right to a fair hearing and to the peaceful enjoyment of its possessions due to the failure of the Serbian authorities, from 1996 onwards, effectively to enforce a final court decision against a debtor company, the police having expressly refused to assist the bailiffs on a number of occasions (violations of Article 6§1 and Article 1 of Protocol No. 1).

Individual measures: The European Court awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicant. It further held that "the applicant's claim for pecuniary damage must be met by the Government ensuring, by appropriate means, the full execution of the Commercial Court's final judgment of 7/05/1996 as modified by the enforcement orders of 17/10/ 1996 and 21/12/1998" (§60 of the judgment).

• *Information provided by the Serbian authorities (letters of 04/12/2007, 05/03/2008, 09/04/2008 and 17/04/2008):* A number of procedural steps have been taken to enforce the domestic judgment. In particular, the domestic court held five hearings in enforcement proceedings, three of which were not attended by the applicant. The domestic court established the facts concerning the assets of the debtor companies, which appear to be largely insufficient to cover the applicant's claim. According to the current state of the enforcement proceedings, on 11/03/2008 the applicant filed a motion to change the particular assets subject to enforcement. However, it turned out that the property specified by the applicant had been subject to prior enforcement proceedings involving over 80 other creditors. The applicant is informed of the situation and is entitled to indicate another debtor's property should there be any free of prior encumbrance. Due to the lack of available debtor's assets the applicant's claim has not been satisfied.

• *Information is awaited on further developments and measures taken or envisaged to ensure full execution of this judgment.*

General measures:

• *Information is awaited on measures taken or envisaged by the authorities to prevent similar violations, in particular by facilitating police assistance to bailiffs in enforcement procedures. Information on current statutory provisions relating to the expediency of the domestic procedures as well as obligation of the police to assist the bailiffs if so requested would be helpful.*

The European Court's judgment has been translated into Serbian and published in the *Official Gazette*, No. 63/07 of 09/07/2007 as well as on the website of the Government Agent (www.zastupnik.sr.gov.yu). It was also published on a CD issued by the magazine *Paragraf* and on the Internet page of that magazine, with expert comments.

The Government Agent forwarded the judgment to the High Commercial Court and the Supreme Court of Serbia requesting its distribution to all courts in Serbia. He also made several public statements relating to the judgment. The Office of the Government Agent is currently preparing a book to include translations of four judgments rendered by the European Court against Serbia, including this one.

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual measures, in particular the enforcement of the final judgment of 07/05/1996, and on general measures.

Case name :	LEPOJIC v. Serbia	Appl N° :	<u>13909/05</u>
Judgment of :	06/11/2007		
Final on :	31/03/2008		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-2(03/06/2008)		
First exam :	1028-2(03/06/2008)		

NOTES OF THE AGENDA

13909/05 Lepojić, judgment of 06/11/2007, final on 31/03/2008

27935/05 Filipović, judgment of 20/11/2007, final on 20/02/2008

These cases concern unjustified interference with freedom of expression of the applicants, both local politicians, who were convicted of criminal defamation or insult and subsequently ordered in civil proceedings to pay substantial damages to the same plaintiff, a local mayor who was also the director of a state-owned company (violations of Art. 10).

In the case of Lepojić, the applicant was sentenced to suspended fine for criminal defamation in relation to his article, written in the run-up to the 2002 elections, alleging that the mayor had spent public funds on sponsorships and gala luncheons in a “near-insane” manner.

In the case of Filipović, the applicant alleged in 2001, at a meeting attended by the Deputy Prime Minister, that the mayor might have been involved in embezzlement and tax evasion, in the absence of any conviction to that effect.

Both applicants were subsequently the object of civil proceedings, founded on the criminal verdicts against them, in which they were ordered to pay damages.

The European Court noted in both cases that although the applicants' statements contained some strong language and serious allegations, they were not “gratuitous personal attacks” directed against the mayor and that the applicants clearly had legitimate reason to believe that the mayor might have been involved in the activities alleged (§77 and §58 of the Lepojić and Filipović judgments respectively).

The European Court noted in the Lepojić judgment that “bearing in mind the seriousness of the criminal sanctions involved, as well as the domestic courts' dubious reasoning to the effect that the honour, reputation and dignity of the Mayor had more significance than ... [the honour, reputation and dignity] ... of an ordinary citizen” the interference in question “was not necessary in a democratic society” (§78 of the judgment).

Individual measures: In the Lepojić case, the European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. The Government Agent requested the Municipal Court of Babušnica to delete the applicant's conviction from his criminal record in accordance with the relevant provisions of domestic law.

• *Information is awaited as to whether the procedure of deletion has been completed.*

In the Filipović case, the European Court dismissed the applicant's claim for just satisfaction, which was submitted out of time. His criminal conviction for insult was not considered, *rationae temporis*.

• *Assessment: no further individual measure appears necessary in the Filipović case.*

General measures:

• *Information provided by the Serbian authorities (26/03/2008 and 17/04/2008):* Bearing in mind the European Court's findings in the present cases as well as Parliamentary Assembly Recommendation 1814 (2007) concerning decriminalisation of defamation, the Government Agent has initiated a review of national criminal legislation in order to bring it “into line with the case-law of the European Court”. The Government Agent also referred in his initiative to at least two other applications pending against Serbia before the European Court concerning alleged violation of freedom of expression. On 30/11/2007, the Government Agent submitted his initiative by letters addressed to the Serbian Parliament, Minister of Justice and appropriate Legislation Department.

The judgments were published in the *Official Gazette* of the Republic of Serbia, Nos. 111 of 04/12/2007 and 114 of 08/12/2007 respectively, as well as on the website of the Government Agent

(www.zastupnik.sr.gov.yu). The Agent forwarded the judgments with a note to the Ministry of Justice, the Supreme Court, the District Court of Pirot and Municipal Court of Babušnica. In addition, he published his comments on these judgments in the *Paragraf* legal journal and in the leading Serbian daily *Politika* on 22/11/2007.

• *Information is awaited on other possible measures taken or envisaged to ensure that domestic courts strike a fair balance in determining the amount of compensation in similar cases, where politicians are involved. In addition, further information is awaited on the outcome of the initiative concerning the decriminalisation of defamation.*

The Deputies decided to resume consideration of these items:

1. at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of just satisfaction, if necessary;
2. at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on individual measures, namely the deletion of the applicant's conviction from his criminal record in the Lepojić case, and on general measures.