

CASE OF V.A.M. v. SERBIA, DECISION FOR V.A.M. (YUCOM)

In March 2007 YUCOM won a case (V.A.M. v. Serbia) before the European Court of Human Rights (ECHR). YUCOM started the procedure before the European Court in 2005 and the case was immediately granted priority status due to the sensitivity of the victim's situation. The European Court ruled that articles 6, 8 and 13 of the European Convention, i.e. right to a fair trial, right to privacy and right to family life and rights to effective legal remedy, had been violated by state of Serbia. Also, the European Court obliged Serbia to realize the right of V.A.M. to see her child after 8 years. This was the first judgment in which the European Court of Human Rights decided on violations of rights guaranteed in the European Convention on Human Rights and impelled Serbia to stop the violations and compensate the victim justly.

Before the ECHR process

1- In 1994 V.A.M (the petitioner) married D.M (the respondent) and had a daughter, S.M. But as a result of her contracting HIV, her husband left her and took their daughter far away to live in his parents' flat in 1998.

2- On 11 February 1999 the petitioner filed a claim with the Fourth Municipal Court in Belgrade seeking dissolution of

the marriage, sole custody of S.M. and child support.

3- On 23 July 1999 the Municipal Court ordered the respondent to facilitate the petitioner's access to S.M., twice a month, until the adoption of a final decision on the merits of the case, but there was no effective enforcement. The petitioner filed several complaints with the Municipal Court.

4- The respondent could not be served despite summons being sent to a number of addresses, which led the Municipal Court to conclude, on 17 April 2003, that he was "clearly avoiding receipt" of all court documents.

5- Further, despite the fact that it was up to the courts to establish the respondent's correct address, petitioner pointed out that on 31 March 2003 the judge had specifically ordered her to provide the court with the address in question, default of which her claim would be dismissed. The Municipal Court asked her again many times (26 August 2005).

While duration of the process

Faced with such long-lasting and inefficient proceedings, the State has to be responsible for the inefficiency of one of its bodies. **Thus YUCOM lawyers decided to file a complaint before ECHR on behalf of V.A.M (September 2005).** Thanks to the notification by YUCOM and Agent of Republic of Serbia that the process for violation of human rights has started, the proceeding before the national court went faster.

6- On 15 June 2006 the Municipal Court granted provisional custody of S.M. to the petitioner and ordered the respondent to surrender the child, pending a final decision in the ongoing civil suit. Again, the petitioner had to ask the Court for speedier enforcement.

7- In July 2006 the petitioner filed a separate civil claim against the respondent, seeking the removal of his parental rights. These proceedings were also brought before the Municipal Court and were still ongoing at the adoption of this judgment.

8- On 22 September 2006 the Municipal Court heard both the petitioner and the respondent, on which occasion the latter, stated that the former had not been honest about her medical situation, or conscientious in terms of taking medication, which seriously endangered his own life as well as that of S.M. The respondent thus proposed that the petitioner's health be reassessed and the Municipal Court, having so ordered, scheduled the next hearing for 22 December 2006.

9- On 22 December 2006 the Municipal Court adjourned the hearing, stating that the case file was still with the District Court which was about to rule in respect of the respondent's appeal filed against the interim custody order issued on 15 June 2006.

10- The Municipal Court scheduled the next hearing for 12 March 2007, one day before the ECHR judgment.



The ECHR judgment (13th March 2007)

Here are the conclusions of the Court.

1- The Court declared the complaint admissible, relying on the **article 35.1¹ of the Convention for the Protection of Human Rights and Fundamental Freedoms** (Convention). It is apparent that the petitioner exhausted all effective remedies.

2- The Court declared a violation of **article 6.1²**. The hearings cannot be

¹ "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision is taken."

² "...Everyone is entitled to a fair and public hearing within a reasonable time..."

considered fair considering the unreasonable time of the proceedings. It appeared that the proceedings were initiated in 1999, which is unacceptable considering the nature of the case dealing with child custody. The negative consequences for the petitioner were obvious.

3- The Court asserted a violation of **article 8**³. The rights of VAM as a mother were not respected. She proved to be unable to use her rights. The interim access order, as decided by the Municipal Court, was not enforced in spite of many complaints of the petitioner to speed the process. Finally, the Municipal Court did not use all the available domestic procedural tools to have the respondent served formally, such as coercion.

4- **Article 13**⁴ was violated. There is no effective domestic remedy in order to expedite the civil proceedings at issue. All the other proceedings available⁵ for the petitioner would have resulted in additional delay and so are neither effective nor adequate.

5- The ECHR rejected the alleged violation of **article 14**⁶. The available

evidence was insufficient to conclude that V.A.M. had been discriminated against because she was HIV positive.

6- The Convention was violated by the State. **Article 41**⁷ has to be applied. The Court decided the reparations as follows:

-15.000 euros in respect of the non-pecuniary damage suffered.

- 4.350 euros for the costs



After the ECHR process

The ECHR judgment in the V.A.M Case is the first one condemning the State of Serbia and obliging it to pay compensations to the petitioner.

The State has to undertake three types of measures. First, the national authorities must facilitate **meetings between the petitioner and her child**, relying on article 8 of the Convention; second, as an individual measure, it has to **grant 19.350 euros to the petitioner** within 3 months after ECHR

³ "Everyone has the right to respect for his private and family life..."

⁴ "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority..."

⁵ According to the government, the petitioner should have filed a complaint to the President of the Municipal Court, the President of the District Court, the Minister of Justice and the Supreme Court's Supervisory Board. Further, she could have made use of the complaint procedure before the Court of Serbia and Montenegro

⁶ "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such

as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

⁷ "If the Court finds that there has been a violation of the Convention [...] it shall if necessary afford just satisfaction to the injured party."

judgment. (the highest amount Serbia had to pay after trial) Finally, it has **to incorporate the effective remedy into Serbian legislative frame.**

Here is the situation in July 2008:

1- The petitioner received the money from the State on time. (less than 3 months after ECHR judgment)

2- **The final and executive decision was delivered on the 12th March 2008 by the District Court.** It decided to grant the father child custody, allowing V.A.M to see her daughter every Wednesday. But no contact has been established yet between V.A.M and her daughter.

Moreover, unlike ECHR, the District Court recognized **State of Serbia's responsibility for the discrimination undergone by V.A.M.**, as HIV positive.

3- Finally, the European Court insisted on the implementation of a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy. It clearly considered Serbian judicial system as deficient. Its will was reasserted in a few more judgments, and in particular on *Mikuljanac, Malisic and Safar Case*⁸ in October 2007, led and won by YUCOM.

Thus, the Serbian Parliament was prompted to implement the **Act on Constitutional Court**⁹ which guarantees the "effective remedy" (24th November 2007). It implements a national effective remedy in the case of

long-lasting cases in conformity with the article 13 of the Convention. In the case of excessive lengthy proceedings, Serbs can file an appeal before the Constitutional Court.

But still, **the real issue has not been solved yet.** As was the case in Croatia¹⁰ a few years ago, the Constitutional Court proves to be paralyzed by too many requests. Thus, the effective remedy implemented by the Parliament in November 2007 is not sufficient.

So **YUCOM** suggests that Serbia should change its legal system so that higher courts could also be competent to judge these long-lasting processes like in Croatia. If these measures are implemented, Serbia will really be able to grant petitioners "effective remedy" (cf. article 13 of the Convention).

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⁸ Cf. articles 47-48 http://www.ius-software.si/EUII/EUCHR/dokumenti/2007/10/CASE_OF_MIKULJANAC_MALISIC_AND_SAFAR_v_SERBIA_09_10_2007.html

⁹ Cf. articles 57-58-60-62-97

¹⁰

http://www.usud.hr/default.aspx?Show=ustavni_zakon_o_ustavnom_sudu&m1=27&m2=49&Lang=en (articles 62-63)