



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

FIRST SECTION

CASE OF JURIŠIĆ v. CROATIA

(Application no. 29419/17)

JUDGMENT

*This version was rectified on 12 February 2020
under Rule 81 of the Rules of Court*

STRASBOURG

16 January 2020

This judgment is final but it may be subject to editorial revision.

In the case of Jurišić v. Croatia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Aleš Pejchal, *President*,

Tim Eicke,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 17 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 29419/17) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Stjepan Jurišić (“the applicant”), on 10 April 2017.

2. The applicant was represented by Mr H. Čačić, a lawyer practising in Bjelovar. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 31 May 2017 notice of the application was given to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1970 and lives in Sesvetski Kraljevec.

5. The applicant and M.R. were in a relationship, which ended during M.R.’s pregnancy. On 1 November 2006 their son I.R. was born.

6. The applicant brought a civil action before the Daruvar Municipal Court (*Općinski sud u Daruvaru*) seeking establishment of his paternity of I.R. because M.R. had allegedly refused to register his name as the father. On 9 February 2007 the Daruvar Municipal Court issued a judgment establishing the applicant’s paternity of I.R.

A. First set of contact proceedings

7. On 15 May 2007 the applicant filed an application with the Daruvar Municipal Court requesting contact with his son every other weekend from Saturday at 10 a.m. to Sunday at 6 p.m. and for half of his holidays. He submitted that M.R. did not allow him to see their son regularly.

8. After hearing M.R. and obtaining the opinion of the Daruvar Social Welfare Centre (*Centar za socijalnu skrb Daruvar* – hereinafter “the

centre”), on 19 June 2007 the Daruvar Municipal Court decided that contact between the applicant and his son should take place each Saturday and Sunday from 3 to 7 p.m. at M.R.’s home. The parties never appealed against that decision, which became final on 12 July 2007.

B. Enforcement of the first set of contact proceedings

9. On 23 October 2009 the applicant applied for enforcement of the contact order of 19 June 2007, requesting that the mother allow him to see the child as stated in the order (see paragraph 8 above). He submitted that M.R. had continuously sought to prevent his contact with the child and that since August 2009 contact had stopped completely.

10. On 28 October 2009 the Daruvar Municipal Court issued an enforcement order.

11. Following several remittals of the case, on 21 October 2010 the Daruvar Municipal Court ultimately dismissed the applicant’s enforcement proposal since a new contact order had meanwhile been adopted (see paragraph 15 below).

C. Second set of contact proceedings

12. On 20 April 2009 the applicant filed a fresh application with the Daruvar Municipal Court requesting an amendment of the contact order due to the child’s age and a change in circumstances. He proposed contact every Saturday and Sunday from 9 a.m. to 7 p.m. M.R. disagreed, deeming the period excessively long and reiterating that the child suffered from allergies.

13. On 20 July 2009 the applicant filed a submission with the court describing difficulties in maintaining contact with the child.

14. In the resumed proceedings following remittal of the case, two doctors confirmed that, in view of the child’s medical condition, there were no reasons to restrict his contact with the applicant since either parent could provide the child with the necessary treatment.

15. On 14 May 2010 the Daruvar Municipal Court determined that contact between the applicant and the child should take place every first and third weekend of the month, from 6 p.m. on Friday until 6 p.m. on Sunday, for two weeks in July or August and for one week in December or January.

16. Following an appeal by M.R., on 11 October 2010 the Bjelovar County Court upheld the first-instance decision regarding the schedule of contact.

D. Enforcement of the second set of contact proceedings

17. On 20 December 2010 the applicant applied for enforcement of the contact order of 14 May 2010 (see paragraph 15 above). He alleged that

M.R. had refused to hand over the child to him on 5 and 19 November and 3 and 17 December 2010 without any explanation. He asked the court to order M.R. to allow him contact within three days or, alternatively, to order forcible removal of the child.

18. M.R. disputed the applicant's allegations. She stated that the child had spent the weekend of 5 November 2010 with the applicant, and had returned home neglected and bruised. She reiterated that she was not preventing the applicant having contact, but that the child was very attached to her and found separation from her difficult, especially when the applicant arrived with the police, causing the child additional fear and trauma. She enclosed medical reports with the submissions, diagnosing the child's reaction to stress and concluding that there were problems with his basic group of caregivers. The reports recommended therapy for both parents, as well as a gradual extension of contact with the father over several days.

19. On 21 January 2011 the Daruvar Municipal Court issued an enforcement order as requested by the applicant.

20. Following an appeal by M.R., on 7 July 2011 the Bjelovar County Court, Permanent Attendance in Virovitica (*Stalna služba u Virovitici*) quashed the enforcement order.

21. In submissions of 19 August 2011, the applicant alleged that he had had no information on the child's whereabouts for the past two weeks and that M.R. and her parents had been scaring the child in his presence.

22. On 23 December 2011 the competent social welfare centre informed the court that it was imposing a measure of supervision of parental care (*nadzor nad izvršenjem roditeljske skrbi*) with a view to correcting the parents' shortcomings. It also issued a written caution to M.R., who verbally accepted advice, but failed to cooperate with the centre's professionals or the supervisor of the parental care measure (hereinafter "the case supervisor").

23. On 25 January 2012 the Nova Gradiška Municipal Court (*Općinski sud u Novoj Gradiški*) issued an enforcement order instructing M.R. to allow the applicant contact with I.R. within fifteen days, stating that a fine of 5,000 Croatian kunas (HRK) would be imposed on her repeatedly until she complied with the court order. The court stressed that the child needed both parents for a normal and healthy development, observing that neither parent had complied with their parental duties or ensured that their child had a happy childhood. This decision was upheld on appeal.

24. On 20 June 2012 the applicant informed the court that he had been unable to spend time with I.R. on 1 June and 15 June 2012 because M.R. had refused to hand the child over to him. He therefore asked the court to fine her.

25. On 13 July 2012 the court again fined M.R. HRK 5,000 and threatened her with a further fine unless she complied with the court order

and facilitated contact between the applicant and the child. This decision was upheld on appeal.

26. In a submission of 17 July 2012, the applicant requested coercive enforcement of the contact order with the assistance of the police.

27. Meanwhile, on 22 September 2011, M.R. instituted a third set of contact proceedings, in which the court decided that the applicant and the child should meet in the presence of the case supervisor at the social welfare centre from 1 to 3 p.m. on Fridays for one month (see paragraph 61 below). Consequently, on 5 November 2012 the Nova Gradiška Municipal Court postponed the enforcement until the above decision had been implemented. On 12 April 2013 the applicant asked the court to resume the enforcement because the above order had been implemented.

28. In the meantime, on 20 July 2012, the centre applied to the court to have M.R.'s right to live with I.R. revoked because she had consciously obstructed court decisions on the applicant's contact with the child and because her unlawful behaviour was harmful to the child's proper upbringing. The centre asked the court to impose the measure for one year and give the applicant responsibility for the child's care and upbringing. The proceedings were first stayed pending the outcome of the third set of contact proceedings (see paragraph 27 above) and the centre ultimately withdrew its proposal on 6 October 2015.

29. On 15 April 2013, the Nova Gradiška Municipal Court again postponed the enforcement until the conclusion of the third set of contact proceedings (see paragraph 27 above). The applicant unsuccessfully appealed against that decision.

30. On 26 February 2015 M.R. paid the HRK 5,000 fine.

31. On 24 March 2015 the applicant urged the court to resume the enforcement proceedings, emphasising the need for urgency since he had not seen his son for over two years.

32. On 20 April 2015 the Municipal Court decided to resume the enforcement and ordered M.R. to allow the applicant contact with his son as stated in the court order of 14 May 2010 (see paragraph 15 above).

33. On 11 May 2015 the applicant notified the court that M.R. had again prevented him seeing the child on 1 May 2015. He asked the court to fine M.R. and carry out enforcement by taking away the child. Alternatively, he asked the court to threaten M.R. with imprisonment.

34. On 12 May 2015 the court set an enforcement date of 15 May 2015, stating that the child would be taken away from M.R. or any other person he was found with. On that date forcible removal of the child was attempted. An employee of the social welfare centre tried to take the child away from the mother, but the child became ill. An emergency medical team took him to be examined by a doctor and he was diagnosed with acute reaction to stress. The court asked the parties to meet the following day with the case supervisor in order to re-establish communication. It was also decided, in

order to protect the health and interests of I.R., not to take him away as planned, stressing that this did not entail postponement of the enforcement.

35. On 25 May 2015 M.R. submitted a fresh application for postponement of the enforcement. The court dismissed it, pointing out that M.R. was responsible for the fact that I.R. had been exposed to stress at the previous enforcement attempt, in that she had had more than four years to prepare the child for contact with his father.

36. On 3 June 2015 the court set another enforcement date of 5 June 2015. The enforcement attempt failed due to the child's strong negative reaction. The centre's professional team concluded that it was not in his best interests to proceed with the forcible removal.

37. At a hearing held on 31 July 2015, a psychiatrist pointed out that coercion against I.R. might deepen his psychological trauma and that he might develop a neurotic disorder or, in the worst case scenario, psychosis.

38. On 13 July 2016 the court set another enforcement date of 18 July 2016, but M.R. and the child were not found at home that day.

39. On 20 July 2016 the court fined M.R. HRK 10,000 and threatened her with a further fine of HRK 20,000. It noted that she had not only been under an obligation to allow enforcement of the court decision, but also to prepare I.R. for meeting with the father – she had failed to do either. The court also warned M.R. that the next sanction might be imprisonment. She appealed against the decision and again unsuccessfully requested postponement of the enforcement.

40. Another enforcement attempt scheduled for 29 July 2016 was unsuccessful because of I.R.'s negative reaction.

41. On the same day the court fined M.R. HRK 10,000 and set another enforcement date of 16 August 2016. On the date in question M.R. and the child were not found at home.

42. On 24 August 2016 the Slavonski Brod County Court (*Županijski sud u Slavanskom Brodu*) allowed M.R.'s request and postponed the enforcement for six months, so that a detailed assessment of I.R., the applicant and M.R. could be completed. The court considered, based on medical reports, that enforcement could substantially jeopardise the interests of the child, who suffered from deep psychological trauma because of the intolerant relationship between his parents, and that psychological and physical consequences could arise from coercion. A constitutional complaint lodged by the applicant against this decision was declared inadmissible.

43. On 6 April 2017 the court invited the applicant and M.R. to inform it whether they had complied with the decision of the second-instance court. M.R. replied that she had not commenced any proceedings and that it was not her duty to start any treatment. She submitted a doctor's report for each month starting from 12 June 2015 as evidence that she and I.R. had regularly been attending therapy.

44. On 10 May 2017 the applicant asked the court to refer the assessment of the child and the parents to the competent social welfare centre or, alternatively, a specialist psychologist.

45. On 6 October 2017 a hearing was held and on 10 and 20 November 2017 the Slavonski Brod Municipal Court asked a specialist institution about the possibility of an assessment of the family.

46. On 18 April 2018 the court decided to perform a psychological and psychiatric evaluation of the parents and the child. The applicant advanced the costs of the expert evaluation, but M.R. informed the court that she and the child would not attend the scheduled examination because further expert assessments risked aggravating the child's mental state.

47. On 10 October 2018 the court resumed the enforcement proceedings and scheduled another enforcement attempt for 2 November 2018, which was again unsuccessful due to the child's vigorous refusal to go with the applicant.

48. Consequently, on 20 November 2018 the Municipal Court terminated the enforcement of the contact decision finding it unenforceable. It stressed that the child, through no fault of his own, has never developed his own attitude towards the applicant but that instead his impressions and opinions about his father were created on the basis of his mother's opinions and statements. He was therefore completely estranged from his father and any separation from his mother would in these circumstances cause enormous stress for the child.

49. On an appeal by the applicant, on 29 January 2019 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed that decision and remitted the case for enforcement.

50. On 2 January 2019 the applicant lodged a constitutional complaint against the County Court's decision of 20 November 2018 terminating the enforcement proceedings (see paragraph 48 above). He complained about the length of the enforcement proceedings and the consequent violation of his right to family life.

51. On 3 April 2019 the Constitutional Court (*Ustavni sud Republike Hrvatske*) found a violation of the applicant's right to a hearing within a reasonable time and his right to respect for family life, awarded him HRK 13,200 (approximately EUR 1,800) in compensation and ordered the competent Municipal Court to adopt a final decision in his case within six months.

52. On 10 April 2019 the Municipal Court again decided to perform a psychological and psychiatric expert evaluation but M.R. opposed the court's decision. On the same date, the court asked the competent social welfare centre to take child-protection measures due to M.R.'s violation of the applicant's contact rights with his child. The centre lodged another criminal complaint against M.R., but on 28 August 2019 the competent State Attorney's Office refused to lodge an indictment against her.

53. The enforcement proceedings are still ongoing.

54. In the meantime, on 23 November 2015 the applicant had sought protection of his right to a hearing within a reasonable time in relation to the second set of enforcement proceedings. On 23 December 2015 the president of the Slavonski Brod Municipal Court granted his request and ordered that the proceedings be concluded within six months.

55. On 11 May 2017 the Slavonski Brod County Court allowed a claim by the applicant for compensation and awarded him HRK 2,000. It also ordered the first-instance court to conclude the enforcement proceedings in the shortest time possible but in any case within six months. On 7 June 2018 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicant's appeal against the County Court's decision.

E. Third set of contact proceedings

56. On 22 September 2011 M.R. filed a request with the Nova Gradiška Municipal Court to amend the decision on contact between the applicant and I.R. of 14 May 2010 (see paragraph 15 above). She requested that contact take place for two hours on Fridays, at her home in the presence of the case supervisor, or at the centre's premises.

57. The applicant disagreed, claiming that M.R. was psychologically abusing the child by telling him that his father did not love him and that there was a "black hole at the father's house".

58. On 2 April 2012 the centre proposed that the applicant and his son meet, over the period of one month, for two hours a week at the centre's premises in the presence of the case supervisor in order to strengthen their emotional bond. After that period, contact should resume in accordance with the court order of 14 May 2010 (see paragraph 15 above).

59. At a hearing held on 13 June 2012, M.R. submitted that the child refused to see the applicant. The applicant alleged that M.R. was preventing contact with his son. Employees of the centre additionally clarified their opinion by stating that the proposed one-month period would be sufficient to re-establish the emotional bond between the applicant and his son and would also allow the centre to assess their interaction.

60. On 26 June 2012 the case supervisor stated that contact between the applicant and his son had not been taking place because M.R. had presented certificates stating that the child was ill and claimed that the child was frightened, which was why she had not handed the child over to the applicant. The case supervisor stated that she had been present at one of the contact sessions and that the child had not been afraid of the father on that occasion.

61. On 26 June 2012 the Nova Gradiška Municipal Court accepted the centre's proposal and decided that for a period of one month contact between the applicant and I.R. should take place for two hours a week at the

centre's premises and subsequently in accordance with the court order of 14 May 2010 (see paragraph 15 above).

62. Following an appeal by both parties, on 7 September 2012 the Slavonski Brod County Court upheld the part of the order concerning the first month of contact and quashed the remainder, instructing the first-instance court to obtain an expert assessment of the parties and the child.

63. On 24 October 2012 the court ordered an expert assessment of the parties and the child.

64. At a hearing held on 7 January 2013 M.R. alleged that the child had spent a weekend with the applicant on five occasions in accordance with a previous court order, and that on those occasions he had returned home neglected and injured. The most recent contact session between the applicant and the child had taken place on 12 October 2012, and the applicant had arrived on 2 November 2012 with the intention of taking the child with him for the weekend, but the child had screamed and refused to go. In the initial one-month period two of the meetings scheduled at the centre's premises had not taken place. The applicant denied that he had neglected or abused the child and claimed that it had been impossible to establish a relationship with him over the past two months. On 4 January 2013 a meeting had taken place after a psychologist had intervened because the child had initially refused to communicate with the applicant.

65. On 19 March 2013 the centre submitted an additional opinion proposing that meetings take place in accordance with the court order of 14 May 2010 (see paragraph 15 above), but that pickup and return of the child take place under supervision and that the contact sessions be supervised.

66. On 16 April 2013 the Nova Gradiška Municipal Court dismissed M.R.'s proposal and ordered that contact take place in accordance with the decision of the Daruvar Municipal Court of 14 May 2010 (see paragraph 15 above).

67. Following appeals by both parties, on 27 June 2013 the Slavonski Brod County Court quashed the decision and remitted the case for fresh consideration by a different judge.

68. In the resumed proceedings, on 4 November 2013 the Nova Gradiška Municipal Court decided that contact between the applicant and the child should take place every first and third Sunday of the month from 3.30 to 6.30 p.m. under supervision, until the conclusion of the proceedings.

69. On 8 November 2013 the applicant notified the court that he had accepted a job in Germany and that he would not be in a position to maintain contact every first and third weekend. He asked the court to schedule contact for four hours over three or four consecutive days in the period between 22 December 2013 and 7 January 2014. M.R. disagreed.

70. In the resumed proceedings, on 7 May 2014 the court decided to obtain an expert opinion by a psychiatrist and a psychologist.

71. On 27 June 2014 the experts submitted their findings. In relation to M.R. the psychiatrist observed that she was attempting to manipulate the child in order to prove her rights to the applicant. There was no reason to restrict contact between the applicant and his son as there was a justified suspicion that the mother was pressuring the child. The expert psychologist found that the boy's statements about the applicant lacked adequate emotional background and that he seemed to have been taught what to say. He also displayed attention and behavioural disorders, was easily bored and had a short attention span. The psychologist also found no reason to restrict contact between the applicant and the child and observed that M.R. had had a strong influence on shaping the child's image of the father.

72. On 29 December 2014 the court ordered that contact should take place during the first six weeks every other Friday afternoon at the centre's premises, in the presence of the case supervisor. It also ordered that contact for the following three months should take place every first and third weekend of the month from Friday until Sunday night, as well as for fifteen days during the summer holidays and seven days during the winter holidays. It instructed the centre to consider the need to impose a measure of supervision of parental care in respect of I.R.

73. Following appeals lodged by both parties, on 4 March 2015 the Slavonski Brod County Court reversed the first-instance decision and dismissed M.R.'s request for an amendment of the decision of 14 May 2010. Contact was therefore to be resumed in accordance with that order (see paragraph 15 above).

F. Further custody and parental care proceedings

74. On 3 November 2015 the applicant applied for custody of I.R. and sought that M.R. be deprived of her parental care. M.R. opposed the application.

75. At a hearing held on 14 April 2016, the previous case supervisor stated that M.R. had never displayed a positive attitude towards facilitating contact between the applicant and the child. The applicant stated that the most recent contact he had had with the child had been in November 2015.

76. On 24 January 2017 I.R. was interviewed by the centre and stated that he wanted nothing to do with the applicant and for him to leave him alone.

77. On 10 February 2017 the court appointed a lawyer employed by the centre as a special guardian for I.R.

78. At a hearing held on 27 April 2017, the special guardian stated that the child could not imagine separation from the mother and did not want to see the applicant.

79. On 1 June 2017 the court dismissed the applicant's application for custody and his proposal to deprive M.R. of her parental care. Having determined that the relations between the parents were disrupted to the extent that it was impossible to establish normal communication and that they refused to cooperate or establish a common position and attitude towards the child, it observed that M.R. provided adequate care for the child, that the child had been traumatised by previous events and the applicant's frequent calls to the police and that the child refused any contact with the applicant. The court emphasised that the applicant had submitted the application asking that the child live with him only because adequate communication had not been established between him and the child.

80. On 25 August 2017 the Zagreb Country Court quashed the first-instance decision on appeal and remitted the case to the lower court.

81. In the resumed proceedings, on 12 September 2018, the Municipal Court dismissed the applicant's application for custody and deprivation of M.R.'s parental care. The applicant did not appeal.

G. Fourth set of contact proceedings

82. On 25 May 2015 M.R. again requested an amendment of the contact order, proposing that the applicant and the child see each other once a week at the centre's premises, in the presence of the case supervisor and her for a period of four months. For the following four months, M.R. proposed that contact take place on Saturdays from 2 to 6 p.m. in the presence of the case supervisor. After this period of adjustment, the child would spend time with the applicant from 6 p.m. on Friday to 6 p.m. on Sunday. The applicant opposed that proposal.

83. During these proceedings M.R. requested the appointment of a special guardian for I.R. and apparently sought exclusion of the Nova Gradiška Social Welfare Centre from the case.

84. The proceedings were suspended pending the outcome of the parental care proceedings (see paragraph 81 above). They ultimately resumed and are ongoing.

H. Criminal proceedings

85. On 28 April 2015 the Slavonski Brod Municipal Court found M.R. guilty of preventing and failing to comply with measures designed to protect children and minors, an offence under Article 215 of the 1997 Criminal Code (*Kazneni zakon*) in that she had prevented the applicant having contact with I.R. in accordance with a final court decision in the period 21 October 2011 to 6 September 2012. She was sentenced to six months' imprisonment, suspended for two years. Appeals lodged by both parties were dismissed.

86. On 6 November 2015 the applicant filed an indictment against M.R. accusing her of not letting him see I.R. in the period 1 April to 5 June 2015 and not preparing the child for their meetings, thereby failing to comply with decisions for the welfare of a child, an offence under Article 173 of the 2011 Criminal Code. The indictment was confirmed on 7 March 2016 and the proceedings are still ongoing.

87. On 24 May 2017 the Slavonski Brod Municipal State Attorney's Office also lodged an indictment against M.R. under Article 173 of the Criminal Code, for obstructing contact between the applicant and his child between 4 December 2015 and 16 August 2016. The proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW

88. The relevant provisions of domestic law in force at the material time are set out in *K.B. and Others v. Croatia* (no. 36216/13, §§ 96 and 101-06, 14 March 2017), and *Ribić v. Croatia* (no. 27148/12, § 84, 2 April 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

89. The applicant complained that by failing over an unreasonably lengthy period of time to secure regular contact with his son, necessary to maintain family ties between them, the domestic authorities had breached his rights under Articles 6 and 8 of the Convention.

90. The Court, master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that these complaints are closely linked and fall to be examined under Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

91. The Government submitted that the applicant had not exhausted domestic remedies, in that he never filed a constitutional complaint under sections 62 or 63 of the Constitutional Court Act, which would have

afforded the Constitutional Court an opportunity to consider whether there had been a violation of Article 8.

92. The applicant disagreed. He had lodged a complaint about the length of the enforcement in respect of the second contact order with the competent courts, which had taken an excessively long time to decide the matter. Even after the Constitutional Court had granted his complaint and ordered enforcement of the contact decision within six months, that deadline has passed and he was still unable to have regular contacts with his son.

93. As regards the Government's assertion that the applicant should have lodged a constitutional complaint under section 62 of the Constitutional Court Act, the Court has already held that a complaint under that provision may be lodged only against a decision and was thus not considered an effective remedy capable of addressing a continuing situation, like the applicant's (see *K.B. and Others*, cited above, § 126). The Government's non-exhaustion objection in this respect must therefore be dismissed.

94. As regards the Government's argument related to a constitutional complaint under section 63 of the Constitutional Court Act, the Court observes that the applicant had in fact filed such a complaint, which the Constitutional Court granted on 3 April 2019 (see paragraph 51 above). The Court must therefore examine whether, in light of the aforementioned decision of the Constitutional Court, the applicant can still claim to be a victim of the alleged violation of the Convention, a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016).

95. The Court reiterates in that connection that the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the Convention proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V). It further reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V). An applicant's status as a victim of a breach of the Convention may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court (see *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; and *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003). The adequacy of that redress falls to be assessed in the light of all the circumstances of the case seen as a whole (see *R.R. v. Poland*, no. 27617/04, § 97, ECHR 2011 (extracts)).

96. Turning to the present case, the Court observes that the Constitutional Court expressly acknowledged that there had been a breach

of the applicant's right to respect for family life (see paragraph 51 above). In the Court's opinion, such an acknowledgment satisfies the first condition laid down in its case-law.

97. As regards the second condition, the Court notes that the redress offered by the Constitutional Court included an order to the competent first-instance court to adopt a decision in the enforcement proceedings complained of within six months, a deadline which has not been complied with. The Constitutional Court also awarded the applicant EUR 1,800 as compensation for the breach of his rights to a hearing within a reasonable time and to respect for his family life (see paragraph 51 above).

98. The Court observes in this respect that in comparable previous cases against Croatia concerning prolonged failure of the authorities to secure regular contact between parents and their children, it has awarded much higher amounts for a breach of Article 8 (see *Ribić v. Croatia*, cited above, § 105, where it awarded EUR 25,000 and *K.B. and Others v. Croatia*, cited above, § 157, where EUR 12,500 were awarded). In light of the criteria for redress under its case-law (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 202-206 and 268, ECHR 2006-V), the Court considers that the sum awarded to the applicant in the present case cannot be considered sufficient, and that it therefore did not constitute appropriate redress for the violation suffered (see, *mutatis mutandis*, *R.R. v. Poland*, cited above, §§ 108 and 212). In such circumstances, the Court considers that the applicant can still claim to be a "victim", within the meaning of Article 34 of the Convention, of the alleged violation of his right to respect for family life.

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

B. Merits

1. The parties' arguments

100. The applicant submitted that he had been trying to enforce contact rights with his son for over a decade, but to no avail. The domestic courts had failed to undertake measures to facilitate his contact with I.R. in a timely manner, which was evident from their long periods of inactivity. The competent social welfare authorities had also failed to undertake adequate measures in order to protect his rights or the rights of the child.

101. The Government claimed that the competent authorities had undertaken all available and appropriate steps in the circumstances in order for the applicant to maintain family ties with his son. They noted that for the most part contact had taken place regularly until 2011, when the child's reaction to his father had made contact very problematic. The applicant had contributed to the situation in that he had frequently called on the police to

intervene and insisted on coercive measures in order to enforce the court orders.

102. The Government further submitted that M.R. had been fined a number of times and convicted in criminal proceedings for non-compliance with child protective measures and that two further sets of proceedings were still ongoing. The child's forcible removal had also been attempted on several occasions, but had failed because of the child's strong negative reaction. Considering the circumstances of the case, the Government argued that it was unclear which other measures the State could or should have undertaken in the case.

2. The Court's assessment

103. The Court notes that the present case concerns the non-enforcement of judicial decisions whereby the applicant was granted contact rights with his son. In the present case, therefore, the Court's task consists in examining whether the domestic authorities took all necessary steps that could reasonably be demanded in the specific circumstances to facilitate contact between them.

104. The relevant principles regarding the State's positive obligation under Article 8 of the Convention in cases concerning enforcement of contact rights are summarised in the cases of *Ribić* (cited above, §§ 88-89 and 92-95), and *K.B. and Others* (cited above, §§ 143-44). The Court would stress that in this type of cases the adequacy of the measures taken is to be judged by the swiftness of their implementation, as the passage of time can have irremediable consequences for relations between the applicant and child and may result in a *de facto* determination of the matter (see *Ribić*, cited above, § 93).

105. In the present case, contacts between the applicant and his son were regulated by three contact orders, each covering specific periods of time (see paragraphs 8, 15 and 61 above). The first contact order was issued on 19 June 2007, only a month after the applicant applied to the court and while I.R. was still a baby. It would appear that this order was never properly enforced (see paragraphs 9-11 above). In 2009, once I.R. was older, the applicant sought an amendment of the court's first contact order and his request was granted on 14 May 2010, allowing him to spend every other weekend with his son (see paragraph 15 above). However, the ensuing enforcement of that decision was particularly lengthy and is, in fact, still ongoing, more than nine years later. The applicant's son is now almost thirteen years old and refuses to see his father (see paragraph 76 above).

106. The Court considers that this fact, coupled with the Constitutional Court's finding that the inordinate length of the enforcement of the contact order of 14 May 2010 had violated the applicant's right to respect for his family life (see paragraph 51 above), are sufficient to enable it to conclude that in the present case the domestic authorities have not taken the necessary

steps to facilitate the reunion between the applicant and his son that could have reasonably been expected of them. This has resulted in a *de facto* determination of the matter at issue as the applicant has seen his son only sporadically since he was born.

107. It is true that M.R. was fined on several occasions and even convicted in criminal proceedings for failure to comply with a final court order (see paragraphs 23, 25, 39 and 85 above). Another two sets of criminal proceedings are underway against her (see paragraphs 86 and 87 above). However, bearing in mind that her first criminal conviction was pronounced only in 2015, when I.R. was already nine years old, and that the remaining two sets of proceedings are still pending, the Court considers that the inordinate amount of time it took the authorities to institute and conduct such proceedings could not be seen as an adequate response to the urgency of the situation.

108. The Court is mindful of the fact that the domestic authorities' task was made difficult by the strained relationship between the applicant and M.R. However, lack of cooperation between separated parents is not a circumstance which can by itself exempt the authorities from their positive obligations under Article 8. It rather imposes on them an obligation to take measures that would reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child (see *Zawadka v. Poland*, no. 48542/99, § 67, 23 June 2005).

109. Since the boy was born, it was clear that M.R. was unwilling first to register the applicant as I.R.'s father and later on allow them regular contact (see paragraphs 7, 9 and 59 above). Notwithstanding the numerous sets of proceedings the applicant instituted at domestic level, and the two final contact orders in his favour, in the Court's view the domestic authorities failed to take sufficiently effective action against M.R.'s obstructive behaviour and unlawful actions for a number of years, even though they were under a duty to prevent it (see, *mutatis mutandis*, *A.B.V. v. Russia*, no. 56987/15, § 80, 2 October 2018). Specifically, having failed to react to the applicant's plight to have regular contacts with his son in a timely manner, the domestic authorities allowed the passage of time to alienate the boy from his father and never actually allowed them to develop an emotional bond.

110. Having regard to all of the above, and notwithstanding the respondent State's margin of appreciation in the matter, the Court finds that the Croatian authorities have failed to enforce the applicant's contact rights with his child, thereby breaching his right to respect for family life, as guaranteed by Article 8.

111. There has consequently been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

113. The applicant claimed 3,000 euros (EUR) in respect of pecuniary damage for travel costs he incurred travelling between Germany and Croatia for the numerous court hearings. He also claimed EUR 200,000 in respect of non-pecuniary damage.

114. The Government deemed those amounts excessive.

115. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, and bearing in mind the amount already awarded by the Constitutional Court (see paragraph 51 above), it awards the applicant EUR 13,000 in respect of non-pecuniary damage.

B. Costs and expenses

116. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts, EUR 3,000 for those incurred before the Court and EUR 3,000 for the cost of attending court hearings in Croatia.

117. The Government contested those claims.

118. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses incurred in the domestic proceedings, including travel expenses, and considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

119. 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 the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 13,000 (thirteen thousand euros)¹, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one 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 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 claim for just satisfaction.

Done in English, and notified in writing on 16 January 2020 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Aleš Pejchal
President

1. Rectified on 12 February 2020: the text was „EUR 15,000 (fifteen thousand euros)”.