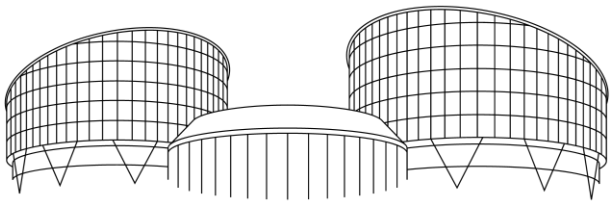

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BOUCKE v. MONTENEGRO

(Application no. 26945/06)

JUDGMENT

STRASBOURG

21 February 2012

FINAL

21/05/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Boucke v. Montenegro**,**

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 26945/06) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Snežana Boucke and Ms Kristina Boucke, both of whom have dual Serbian and German nationality, on 23 June 2006.

2. The applicants were represented by Mr S. Mrdaković, a lawyer practising in Kragujevac (Serbia). The Montenegrin Government ("the Government") were represented by their Agent, Mr Z. Pažin.

3. The applicants essentially complained, under Article 6 of the Convention, about the non-enforcement of two final judgments concerning child maintenance.

4. On 16 December 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) and to give priority to the application in accordance with Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Ms Snežana Boucke ("the first applicant") and Ms Kristina Boucke ("the second applicant"), were born in 1951 and 1988 respectively and live in Kruševac, Serbia.

A. Background information

6. On 21 May 1988 the first applicant gave birth to the second applicant, born out of wedlock.

7. On 18 August 1992 the District Court in Düsseldorf ruled that M.J., from Montenegro, was the father of the second applicant and ordered him to pay child maintenance.

8. On 29 October 1999 the District Court (*Okružni sud*) in Kruševac (*Serbia*) confirmed (*priznao*) the decision of the Düsseldorf District Court. It would appear that enforcement of this judgment has never been sought.

B. The first set of civil proceedings

9. On an unspecified date the second applicant instituted proceedings against M.J. seeking child maintenance. As she was a minor at the time she was represented by the first applicant as her legal guardian.

10. On 23 December 1997 the Municipal Court (*Opštinski sud*) in Kruševac issued a judgment ordering M.J. (hereinafter "the debtor") to pay 62,500 Yugoslav dinars (YUD) for the maintenance accrued between 1 July 1988 and 30 June 1997, with statutory interest, plus YUD 960 for the costs of proceedings. This judgment became final on 10 February 1998.

11. On 13 April 1998 the Court of First Instance (*Osnovni sud*) in Herceg Novi (Montenegro) issued an enforcement order (*rješenje o izvršenju*) providing that the amount due would be paid by the sale of the debtor's movable assets. On 22 October 1998 the debtor's objection (*prigovor*) in this regard was rejected.

12. On 29 October 1998 the court bailiff established that the debtor had no movable assets of his own, as he lived at his father-in-law's house. The debtor, for his part, submitted in addition that he was paying 70% of his salary for the maintenance of two other children.

13. On 12 November 1998 the Court of First Instance informed the second applicant that the debtor was insolvent, as he had no movable assets which could be sold to allow the judgment in question to be enforced.

14. On an unspecified date in 1998 the debtor paid YUD 600 towards his debt.

15. On 14 January 1999 the second applicant sought enforcement of the remainder of the decision by attachment of the debtor's salary, which request was repeated on 7 August 2000, 19 February 2001, and 7 May, 1 July and 3 September 2004.

16. It would appear that on 1 July 2004 the second applicant complained to the Montenegrin Ministry of Justice about the work of the relevant Court of First Instance. On 12 July 2004 the judge who was in charge of the enforcement as of May 2004, in reply to this complaint, informed the

president of the Court of First Instance that he "considered the complaint justified (*osnovana*)."

17. On 12 July 2004 the said judge informed the second applicant that the enforcement proceedings in her case had been resumed.

18. On 24 September 2004 an expert witness submitted to the Herceg Novi court a recalculation of the amount owed in euros, the amount due being 6,352.42 euros (EUR).

19. On 8 November 2004 the Court of First Instance in Herceg Novi requested the second applicant's lawyer to provide the necessary bank details so that a corresponding enforcement order could be issued.

20. Between 13 December 2004 and 28 December 2004 the said court attempted to contact the second applicant and also sought assistance from the relevant Internal Affairs Secretariat as well as a Social Care Centre in Serbia.

21. On 27 January 2005 the first applicant provided the court with the requested bank details.

22. On 4 March 2005 the Herceg-Novi court issued another enforcement order, providing that one third of the debtor's monthly income was to be transferred to the first applicant as the second applicant's legal guardian.

23. On 17 March 2005 the debtor lodged an objection, stating, *inter alia*, that he was supporting a family of four, two of whom were minor children, as well as paying 50% of his salary for the maintenance of another child. He proposed to pay one-sixth of his income for the enforcement in question.

24. On 16 May 2007 the Court of First Instance rejected the debtor's objection and upheld its enforcement order of 4 March 2005, without considering the debtor's arguments in respect of his financial commitments.

25. On 20 October 2010 the same court forwarded the enforcement order of 4 March 2004 to the Power Supply Company (*Elektroprivreda – Filijala Herceg Novi*), the debtor's employer, a State-owned company.

26. On an unspecified date thereafter the second applicant would appear to have informed the Court of First Instance that the said enforcement order had not been complied with, apparently because the debtor was paying off several loans.

27. On 19 November 2010 the Court of First Instance approached the debtor's employer, reminding them that the child maintenance, in accordance with the relevant provisions of the Family Act and the Enforcement Act, had priority over all the other pecuniary obligations of the debtor and that the employer was therefore obliged to comply with the enforcement order.

28. On 14 December 2010 the Court of First Instance ordered the debtor's employer to transfer to the second applicant the amount that was otherwise retained by the employer on a monthly basis on account of a loan owed by the debtor to the employer (see paragraph 37 below).

29. This decision would appear not to have been enforced to date.

C. The second set of civil proceedings

30. On an unspecified date the second applicant instituted another set of civil proceedings against M.J. seeking child maintenance. She was represented by the first applicant as her legal guardian.

31. On 30 June 2004, after two remittals, the Municipal Court in Kruševac gave a judgment ordering M.J. to pay 8% of his monthly income from 18 February 1998, plus YUD 48,600 for the costs of proceedings. This judgment became enforceable on 23 May 2005.

32. The applicants maintain that they sought enforcement of this judgment, but have submitted no evidence in that regard, even though they have been requested by the Court to do so on at least three occasions.

33. This judgment would appear not to have been enforced to date.

D. The third set of civil proceedings

34. On an unspecified date the second applicant instituted another set of civil proceedings against the debtor, seeking an increase of the child maintenance established by the decision of 30 June 2004 (see paragraph 31 above). On 17 September 2009 the Municipal Court in Kruševac gave a decision stating that the second applicant's claim had been withdrawn. On 2 October 2009 the second applicant appealed against this decision. These proceedings appear to be still pending.

E. Other relevant facts

35. On 3 February 1997 the debtor and his spouse at the time lodged with the Court of First Instance in Herceg Novi a plea for dissolution of their marriage, proposing to the court, *inter alia*, that the debtor's spouse be given custody of their two minor children, born in 1990 and 1995 respectively, and that the debtor pay in respect of child maintenance 50% of his monthly income. There is no decision of a domestic court in this regard in the case file.

36. On 17 July 2009, in criminal proceedings, the debtor was found guilty of not paying child maintenance to the second applicant between 23 May 2005 and 30 January 2006, and was sentenced to three months' imprisonment, suspended for a period of one year. It would appear that the decision is still pending on appeal.

37. The debtor's payslip of October 2010 specified that he earned EUR 559.89 per month, 62% of which he was paying towards two loans. The payslip indicates that the debtor had taken one of those loans from his employer in a total amount of EUR 5,500 ten months earlier, to be repaid over ten years, and that the other loan had been taken from a bank that very month in a total amount of EUR 54,295.75, to be repaid over fifteen years.

It also transpires that over an unspecified ten-year period before October 2010 the debtor had been paying off a third loan, the monthly payment of which amounted to approximately 20% of his monthly income.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Montenegro 2007 (Ustav Crne Gore; published in the Official Gazette of Montenegro - OGM - no. 1/07)

38. Article 149 of the Constitution provides that the Constitutional Court shall rule on a constitutional appeal lodged in respect of an alleged violation of a human right or freedom guaranteed by the Constitution, after all other effective legal remedies have been exhausted.

39. This Constitution entered into force on 22 October 2007.

B. Montenegro Constitutional Court Act (Zakon o Ustavnom sudu Crne Gore; published in OGM no. 64/08)

40. Section 48 provides that a constitutional appeal may be lodged against an individual decision of a state body, an administrative body, a local self-government body or a legal person exercising public authority, for violations of human rights and freedoms guaranteed by the Constitution, after all other effective domestic remedies have been exhausted.

41. Sections 49-59 provide additional details as regards the processing of constitutional appeals. In particular, section 56 provides that when the Constitutional Court finds a violation of a human right or freedom, it shall quash the impugned decision, entirely or partially, and order that the case be re-examined by the same body which rendered the quashed decision.

42. This Act entered into force in November 2008.

C. Right to a Trial within a Reasonable Time Act (Zakon o zaštiti prava na suđenje u razumnom roku; published in OGM no. 11/07)

43. This Act provides, under certain circumstances, the possibility to have lengthy proceedings expedited by means of a request for review (*kontrolni zahtjev*), as well as an opportunity for claimants to be awarded compensation by means of an action for fair redress (*tužba za pravično zadovoljenje*).

44. Section 44, in particular, provides that this Act shall be applied retroactively to all proceedings from 3 March 2004, but that the duration of proceedings before that date shall also be taken into account.

45. This Act entered into force on 21 December 2007, but contained no reference to applications involving procedural delay already lodged with the Court.

D. Relevant domestic case-law

46. Between 1 January 2008 and 30 September 2009 the courts in Montenegro considered 102 requests for review pursuant to the Right to a Trial within a Reasonable Time Act. A further two requests were withdrawn, and eight were still being examined. Of the 102 requests that had been considered, in eighty-four cases the applicants were notified that certain procedural measures would be taken within a specified period. There is no information in the documents provided as to whether these time-limits were complied with or not. Eighteen requests were rejected as ill-founded.

47. Between 1 January 2010 and 30 April 2011 an additional ninety-six requests for review were considered. A further two requests were still being examined and one request had been withdrawn. Of the ninety-six requests that had been considered two were rejected on procedural grounds (*odbačeni*), and twenty-six were rejected as ill-founded (*odbijeni*). Ten requests were considered justified (*usvojeni*): in five cases the proceedings were indeed expedited, in three they were not, and in two cases it is unclear if the proceedings advanced. In thirty-eight requests the applicants were notified that certain procedural measures would be taken within a specified period: in twenty-six cases the indicated measure would appear to have been taken, in eight cases "compliance with notifications was controlled" without any further details having been provided, in two cases the proceedings were not expedited, in one case it is unclear what the outcome of the notification was and in one case the impugned proceedings ended at about the same time as the applicant lodged the request. As regards the remaining twenty requests for review, decisions and/or notifications were issued without details as to their specific content.[1]

48. Between 1 January 2008 and 30 September 2009 twenty-two actions for fair redress were submitted, of which sixteen were dealt with and six were still being examined. In one case the courts awarded the plaintiff compensation for non-pecuniary damage in respect of the length of civil proceedings. Between 1 January 2010 and 30 April 2011 an additional fifteen actions for fair redress were examined, in three of which the courts awarded damages.

1. Five cases examined by the Commercial Court, eleven cases examined by the High Court in Podgorica and four cases examined by the Administrative Court.

E. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia no. 28/00, 73/00 and 71/01)

49. Section 2 provides that enforcement proceedings are to be instituted at the request of the creditor, except when this Act specifically provides that the proceedings are to be instituted *ex officio*.

50. Section 4 § 1 provides that the enforcing court is obliged to proceed as a matter of urgency.

51. Sections 63-84 contain, *inter alia*, provisions relating to enforcement in respect of the debtor's movable assets.

52. Section 87 provides that enforcement in respect of the debtor's salary can reach a maximum of half his/her salary.

53. Sections 112-120 contain, *inter alia*, provisions relating to enforcement in respect of the debtor's income. Section 115 § 1, in particular, provides that when there are several people entitled to legal maintenance (*zakonsko izdržavanje*) from the same debtor and the total amount sought by them exceeds the proportion of the debtor's income in respect of which their claims can be enforced, the enforcement shall be carried out in favour of each creditor in proportion to their claim (*izvršenje se određuje i sprovodi u korist svakog od takvih poverilaca srazmerno visini njihovih potraživanja*).

54. This Act entered into force on 8 July 2000. In accordance with section 262 of the Act, however, all enforcement proceedings instituted prior to 8 July 2000 are to be concluded pursuant to this Act.

F. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Montenegro - OG RM - no. 23/04)

55. The Enforcement Procedure Act 2004 entered into force on 13 July 2004, thereby repealing the Enforcement Procedure Act 2000. In accordance with section 286 of this Act, however, all enforcement proceedings instituted prior to 13 July 2004 are to be concluded pursuant to the Enforcement Procedure Act 2000.

G. Family Act 1989 (Porodični zakon, published in OG RM nos. 07/89 and 13/89)

56. Section 273 provided, *inter alia*, that following a debtor's request to that effect, a court could increase, reduce, terminate (*ukine*) or alter the maintenance established by a previous court decision if the circumstances on which the said decision was based have changed.

57. Section 277 further provided that in a case where a parent who has been ordered by a court decision to pay child maintenance does not comply with that obligation on a regular basis, the Social Care Centre (*organ starateljstva*) shall, either at the request of the other parent or of its own motion, take measures to ensure that the child is provided with temporary maintenance in accordance with the regulations on social and child protection, until the said parent starts fulfilling his obligation.

H. Family Act 2007 (Porodični zakon, published in the Official Gazette of the Socialist Republic of Montenegro no. 1/07)

58. The Family Act 2007 entered into force on 1 September 2007, thereby repealing the Family Act 1989. By virtue of section 380 however, if the first-instance decision was given before this Act entered into force, the procedure shall be continued under the Family Act 1989.

I. Civil Proceedings Act 2004 (Zakon o parničnom postupku, published in OG RM nos. 22/04, 28/05 and 76/06)

59. Pursuant to section 44, the court competent to deal with disputes arising from enforcement proceedings is the court in the region of jurisdiction of the court in charge of the enforcement proceedings.

60. This Act entered into force on 10 July 2004.

THE LAW

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

61. The applicants complained, under Article 6 § 1 of the Convention, about the non-enforcement of the judgments, which became final on 10 February 1998 and 23 May 2005 respectively, ordering the second applicant's father to pay child maintenance.

62. The relevant part of this Article reads as follows:

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

A. Admissibility

1. As regards the first applicant (compatibility ratione personae)

63. In the Court's view, although the Montenegrin Government have not raised an objection as to the Court's competence *ratione personae* in this respect, the first applicant's victim status nevertheless calls for its consideration (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Bijelić v. Montenegro and Serbia*, *no. 11890/05*, § 71, 28 April 2009). The Court observes that in the present case the party to the domestic proceedings at issue was the second applicant only, in whose favour both judgments were rendered, the first applicant having merely been her legal guardian and representative. It follows, therefore, that the first applicant's complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. As regards the second applicant (non-exhaustion)

(a) The first judgment issued in 1998

(i) Arguments of the parties

64. The Government submitted that the applicants had not exhausted all effective domestic remedies available to them. In particular, they had failed to lodge a request for review and an action for fair redress, which were provided by the Right to a Trial within a Reasonable Time Act (see paragraph 43 above). Lastly, after using these remedies the applicants could have made use of a constitutional appeal. In this respect the Government referred to *Buj v. Croatia* (dec.), no. 24661/02, 1 June 2006; *Slaviček v. Croatia* (dec.), no. 20862/02, 4 July 2002; and *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002.

65. The second applicant submitted belated comments, which, on that account, were not admitted to the file.

(ii) Relevant principles

66. The Court reiterates that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before they are submitted to the Court.

67. However, the only remedies which the Convention requires to be exhausted are those which relate to the breaches alleged and at the same time are available and sufficient (see *Selmouni v. France* [GC],

no. 25803/94, § 75, ECHR 1999-V; and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

68. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; and *Dalia v. France*, 19 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I).

69. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government had in fact been used, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her of that requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

70. The Court reiterates that the effectiveness of a particular remedy is normally assessed with reference to the date on which the application was lodged (see, for example, *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)), this rule, however, being subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica*, cited above).

71. Finally, the Court has already held that it would be unreasonable to require an applicant to try a request for review on the basis of the Right to a Trial within a Reasonable Time Act in a case where the domestic proceedings had been pending for a number of years before the introduction of this piece of legislation and had still not been decided, and where no conclusions could be drawn from the Government's submissions about its effectiveness (see *Živaljević v. Montenegro*, no. 17229/04, §§ 60-65, 8 March 2011; *Bijelić*, cited above, § 76; and *Parizov v. "the former Yugoslav Republic of Macedonia"*, no. 14258/03, §§ 45-46, 7 February 2008). The Court, however, reserved its right to reconsider its view if the Government demonstrate, with reference to specific cases, the efficacy of the remedy (see *Živaljević*, cited above, § 66).

(iii) The Court's assessment

(α) As regards the request for review

72. The Court notes that the respondent State's case-law on the basis of the request for review would appear to have evolved to a certain extent in comparison to the statistics available earlier, as in thirty-one cases the impugned proceedings would appear to have been expedited after a request for review had been submitted (see paragraph 47 above and *Živaljević*, cited above, § 40). It also observes, however, that to date in a considerable number of cases, notably thirty-six, the domestic courts either have not acted in accordance with their own decisions to expedite the proceedings or

the outcome of the request for review is rather unclear (see paragraph 47 above).

73. It is further noted that while the second applicant has indeed never lodged a request for review as such, she has urged the relevant domestic courts on numerous occasions to expedite the proceedings, but to no avail (see paragraph 15 above). Even though the domestic judge in charge of the enforcement considered the second applicant's complaint justified as early as 2004 (see paragraph 16 above), more than seven years later the proceedings are still ongoing.

74. In view of the above, as well as in view of the fact that the proceedings here at issue had been pending for more than nine years and eight months before the Right to a Trial within a Reasonable Time Act entered into force, out of which more than three years and nine months elapsed after the Convention had entered into force in respect of the respondent State, the Court considers that it would be unreasonable to require the second applicant to try this avenue of redress (see *Živaljević*, cited above, §§ 60-65; *Bijelić*, cited above, § 76; and *Parizov*, cited above, §§ 45-46). Therefore, the Government's objection in this regard must be dismissed.

(β) As regards the action for fair redress

75. The Court has already held that the action for fair redress is not capable of expediting proceedings while they are still pending, which is clearly the second applicant's main concern (see *Mijušković v. Montenegro,* no. 49337/07, §72, 21 September 2010). It sees no reason to hold otherwise in the present case.

(γ) As regards the constitutional appeal

76. The Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning a complaint about the length of proceedings is whether or not it was possible for the applicant to be provided with direct and speedy redress, rather than with indirect protection of the rights guaranteed under Article 6 (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195, ECHR 2006-V; and *Sürmeli v. Germany* [GC], no. 75529/01, § 101, ECHR 2006-VII). In particular, a remedy of this sort shall be "effective" if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays which have already occurred (see *Kudła v. Poland* [GC], no. 30210/96, §§ 157-159, ECHR 2000-XI; *Mifsud v. France* (dec.), [GC], no. 57220/00, § 17, ECHR 2002-VIII; and *Sürmeli*, cited above, § 99).

77. The Court observes that the Constitutional Court could, at best, quash the decision rendered upon the remedies provided by the Trial within a Reasonable Time Act, and order that the applicant's request for review or an action for fair redress be re-examined by the same body which had

rendered the impugned decision in the first place (see paragraph 41 above). The Constitutional Court itself could neither expedite the proceedings nor award any redress, thereby offering indirect protection rather than a direct and speedy redress.

78. The Court further observes that the reasoning applied in the said cases against Croatia, referred to by the Montenegrin Government, cannot be applied in respect of Montenegro, as the relevant legislation in Croatia explicitly provides that the Constitutional Court must examine a constitutional complaint even before all legal remedies have been exhausted in cases where a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations, or a criminal charge against him. The Montenegrin legislation, on the contrary, provides that a constitutional appeal can be lodged against an individual decision only after all other effective domestic remedies have been exhausted (see paragraphs 38 and 40 above), and contains no reference whatsoever to possible complaints in respect of the length of proceedings.

79. In view of the above considerations, the Court considers that a constitutional appeal cannot be considered an effective domestic remedy in respect of length of proceedings. Therefore, the Government's objection in this regard must be dismissed.

(δ) Conclusion

80. The Court notes that the second applicant's 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) The second judgment issued in 2004

81. The second applicant complained also about non-enforcement of the judgment rendered by the Municipal Court in Kruševac on 30 June 2004 (see paragraph 31 above). She maintained that she had requested that an enforcement order be issued, but submitted no evidence in that regard.

82. The Government, for their part, submitted that there was no evidence whatsoever that the second applicant had ever initiated enforcement proceedings in this respect.

83. In the absence of any evidence that the second applicant had indeed requested the enforcement of this judgment, which evidence had been sought from the second applicant on at least three occasions, the Court cannot but conclude that the respondent State has not been made aware of the existence of the said judgment, given that it was issued by a competent court in Serbia, and thus afforded an opportunity of preventing or putting right the alleged violation before it is submitted to the Court. It follows that

this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

1. Arguments of the parties

84. The Government submitted that the second applicant's lawyer contributed significantly to the length of the proceedings, as he had failed to provide in due time the bank account details necessary for the enforcement of the judgment issued in 1998. These details were provided by the first applicant only on 27 January 2005, after the Montenegrin courts had sought legal assistance from the relevant Serbian bodies, which ensured that the first applicant was served with the Montenegrin courts' request (see paragraphs 19-21 above). The respondent State afterwards duly issued another enforcement order, which stipulated that one-third of the debtor's salary was to be transferred to the second applicant, as it had been previously established that the debtor had no movable assets or property which could be sold to pay off the outstanding debt. Lastly, it was impossible to enforce the judgment at issue due to the insolvency of the debtor, as he was paying off several loans as well as paying maintenance for two other children, born in 1990 and 1995, respectively, one of whom had turned eighteen in the meantime.

85. The second applicant did not submit comments within the time-limit set by the Court (see paragraph 65 above).

2. Relevant principles

86. The Court reiterates its settled case-law to the effect that Article 6 § 1 of the Convention, *inter alia*, protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, judgment of 19 March 1997, Reports 1997-II, pp. 510-11, § 40; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; and *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003). The State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

87. Further, the Court notes that, irrespective of whether enforcement is to be carried out against a private or State actor, it is up to the State to take all necessary steps, within its competence, to execute a final court judgment and, in so doing, to ensure the effective participation of its entire apparatus, failing which it will fall short of the requirements contained in Article 6 § 1

(see, albeit in the context of child custody, *Felbab v. Serbia*, no. 14011/07, § 62, 14 April 2009). However, a failure to enforce a judgment because of the debtor's indigence cannot be held against the State unless and to the extent that it is imputable to the domestic authorities, for example, to their errors or delay in proceeding with the enforcement (see, *mutatis mutandis*, *Omasta v. Slovakia* (dec.), no. 40221/98, 10 December 2002).

88. Lastly, the Court reiterates that enforcement proceedings by their very nature need to be dealt with expeditiously (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV).

3. The Court's assessment

89. The period to be taken into account began on 3 March 2004, which is when the Convention entered into force in respect of Montenegro (see *Bijelić*, cited above, § 69). The enforcement proceedings initiated upon the judgment which became final in February 1998 have thus been within the Court's competence *ratione temporis* for a period of more than seven years and nine months and they are still pending. The Court further notes that, in order to determine the reasonableness of the length of proceedings, regard must also be had to the state of the case on 3 March 2004 (see, among other authorities, *Mikulić v. Croatia*, no. 53176/99, § 37, ECHR 2002-I, *Styranowski v. Poland*, 30 October 1998, § 46, *Reports of Judgments and Decisions* 1998-VIII). In this connection it is noted that the enforcement in question had already been ongoing for nearly six years before that date (see paragraph 11 above). The Court considers that the length of the enforcement proceedings here at issue could be justified only under exceptional circumstances.

90. The Court notes at the outset that the impugned proceedings concern child maintenance. While it can be accepted that some such cases may be more complex than others, the Court does not consider the present one to be of such complexity as to justify enforcement proceedings of this length. The issue involved in these proceedings was clearly of great importance to the second applicant, the Convention itself requiring exceptional diligence in all child-related matters (see, among many authorities, *Veljkov v. Serbia*, no. 23087/07, § 87, 19 April 2011).

91. While a period of less than three months can be attributed to the second applicant's lawyer (see paragraphs 19-21 above), the overall delay was caused by several substantial periods of inactivity which have to be attributed to the domestic authorities: after the enforcement proceedings had resumed on 12 July 2004, it took more than seven months for the relevant domestic court to issue another enforcement order attaching the debtor's salary, more than a further two years and two months for the same court to reject the debtor's objection in this regard, and another three years and five months to deliver this decision to the debtor's employer (see paragraphs 22-25 above).

92. As regards the debtor's alleged insolvency, the Government provided only the debtor's payslip of October 2010. They did not provide any domestic court decision which would have established in a clear and precise way how much exactly the debtor was obliged to pay for the maintenance of his other children or, for that matter, how many children he actually had to support. The debtor, for his part, provided in the domestic proceedings inconsistent data in this respect (see paragraphs 12, 23 and 36 above). In any case, the Court notes that a maintenance claim for one child does not exclude a maintenance claim for another child. These claims have to be met proportionally pursuant to section 115 of the Enforcement Procedure Act 2000 (see paragraph 53 above).

93. The Court further notes that the said salary slip reveals that the debtor is burdened by his obligations to pay off various loans rather than to pay the maintenance owed to his other children. The Montenegrin banks and the debtor's employer authorised two loans for him, one in January 2010 and another one in October 2010 (see paragraph 37 above), clearly indicating that the debtor, at least in this period, was not insolvent. This leads to the conclusion that had the enforcement order been delivered to the debtor's employer before the debtor took out the last two loans, he would have been able to pay off the outstanding debt in respect of the second applicant. In any event, even in those circumstances the claim of the second applicant has priority over the debtor's debts based on the loans (see paragraph 27 above).

94. In view of the above, in particular of what was at stake for the second applicant and the failure of the domestic authorities to display adequate diligence, the Court considers that the non-enforcement at issue amounts to a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

95. The applicants also complained, under Article 14 of the Convention, about being discriminated against by the Montenegrin authorities on the bases of their Serbian nationality.

96. The Court considers that the first applicant's complaint in this respect is incompatible *ratione personae*, for the reasons already stated in paragraph 63 above.

97. Quite apart from the fact that the second applicant does not seem to have raised this issue before the domestic courts, the Court, in any event, notes that there is no evidence in the case file that there has been any discrimination against the second applicant on any grounds. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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."

99. In its letter of 25 February 2011 the applicants were invited to submit any claims for just satisfaction and reminded that failure to do so entailed the consequence that the Chamber would either make no award of just satisfaction or else reject the claim in part. They were also informed that this applied even if the applicants had indicated their wishes in this respect at an earlier stage of the proceedings. Even though they were legally represented the applicants did not submit a claim for just satisfaction. The Court, therefore, makes no award in this regard.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the second applicant's complaint concerning non-enforcement of the judgment issued in 1998 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in this regard.

Done in English, and notified in writing on 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Lech Garlicki President