



Missing babies from hospitals: Serbia must give credible answers about what has happened to each child and compensate the parents

In today's Chamber judgment in the case of [Zorica Jovanović v. Serbia](#) (application no. 21794/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the alleged death of Ms Jovanović's healthy newborn son in 1983 in a State-run hospital. She was never allowed to see his body and suspects that her son may even still be alive, having unlawfully been given up for adoption.

The Court found that, although the procedure in hospitals when newborns die had been improved and reports had been drawn up by Parliament to investigate the missing babies cases, ultimately nothing had been done to remedy the ordeal suffered by the parents, including the applicant, in the past. Therefore the Court concluded that Ms Jovanović had suffered a continuing violation of the right to respect for her family life due to Serbia's continuing failure to provide her with credible information as to what has happened to her son.

Given the significant number of other potential applicants, the Court also held under **Article 46 (binding force and implementation)** that Serbia had to take measures to give credible answers about what has happened to each missing child and to provide parents with adequate compensation.

Principal facts

The applicant, Zorica Jovanović, is a Serbian national who was born in 1953 and lives in Batočina (Serbia).

On 28 October 1983 Ms Jovanović gave birth to a healthy baby boy in the Čuprija Medical Centre, a State-run hospital. Three days later, when she and the baby were about to be released, she was informed that her son had died. She tried to access the hospital nursery where her son had spent the night, but was restrained by two orderlies. A nurse tried to inject her with a sedative, which she managed to avoid. In a state of shock and with no other options left open to her, she checked out of the hospital.

The baby's body has never been handed over to Ms Jovanović or her family. She has never been provided with an autopsy report or informed as to when and where he was allegedly buried. The hospital simply informed her that her son had died on 31 October 1983 and that there was no indication as to the cause of death.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

In November 2002 the local municipality informed Ms Jovanović that her son's birth but not death had been registered in the municipal records. This was again confirmed in September 2007.

A criminal complaint filed by Ms Jovanović's husband against the hospital staff – following reports in the media about other similar cases - was rejected in October 2003 as unsubstantiated. No further reasoning was given and it was not clear if a preliminary investigation had been carried out or not.

Between 2003 and 2010 certain official steps were taken to improve procedures in hospitals following the death of newborns and to investigate allegations in 2005 by hundreds of parents whose newborn babies had gone missing following their supposed deaths in hospital wards, mostly from the 1970s to the 1990s. Thus, since 2003 parents, family or legal representatives of newborns who have died in hospital have been obliged to sign a special form stating that they have been informed of the death and will personally make funeral arrangements. Furthermore, three reports have been drawn up by the Ombudsman, the Serbian Parliament's investigating committee and a working group set up by Parliament to assess the situation and propose legislative changes. The Ombudsman's and investigation committee's reports found serious shortcomings in the applicable legislation in the 1980s as well as in the procedures and statutory regulations as to what should happen when a newborn died in hospital (the prevailing medical opinion being that parents should be spared the pain of having to bury their newborns) and that parents' doubts as to what had really happened to their children were therefore justified. The reports also found that the State's response to the situation had in itself been inadequate. In December 2010 the working group concluded that no changes to the existing, by that time already amended legislation, were necessary, except as regards the collection and usage of medical data. The group also noted that Article 34 of the Constitution made it impossible to extend the applicable prescription period for prosecution of crimes committed in the past, or to introduce new, more serious, criminal offences and/or harsher penalties.

Ms Jovanović has repeatedly been treated for depression from 2009 to 2011.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy), Ms Jovanović complained of the Serbian authorities' continuing failure to provide her with any information about what has happened to her son and the continuing failure to provide her with any redress.

The application was lodged with the European Court of Human Rights on 22 April 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court noted that Ms Jovanović remains to this day without any credible answer as to what happened to her son in 1983. She has never seen the dead body of her son, the cause of his death has never been determined and his death has never actually even been officially recorded. Nor was any adequate consideration given to the criminal complaint filed by her husband. Indeed, the Serbian authorities themselves have affirmed in a number of reports that there were shortcomings and inadequacies in the applicable legislation at the time, in the procedures and statutory regulations in the event of newborns dying in hospital as well as in the State's response to the allegations of babies going missing from hospitals.

Despite several seemingly promising official initiatives between 2003 and 2010, the working group report of December 2010 ultimately concluded that no changes were necessary to the already amended legislation. However, that clearly only improved the future situation and did not, in effect, do anything for the parents, including the applicant, who had had to go through such an ordeal in the past.

Therefore, the Court concluded that Ms Jovanović had suffered a continuing violation of the right to respect for her family life due to Serbia's continuing failure to provide her with credible information as to what has happened to her son. Accordingly, there had been a violation of Article 8.

The Court held that there was no need to examine separately the complaint under Article 13.

Article 46 (binding force and implementation)

Given the significant number of potential applicants, the Court further held that Serbia had to take – within one year of the present judgment becoming final – appropriate measures to provide individual redress to all parents in a situation similar to the applicant's. That process should be supervised by an independent body, with adequate powers, so that credible answers are given regarding what has happened to each missing child and adequate compensation provided.

In the meantime, the Court decided to adjourn all similar applications already pending before it.

Just satisfaction (Article 41)

The court held that Serbia was to pay Ms Jovanović 10,000 euros (EUR) in respect of non-pecuniary damage.

It also awarded EUR 1,800 for her lawyers' costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.