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

SECOND SECTION

CASE OF JEVREMOVIĆ v. SERBIA

(Application no. 3150/05)

JUDGMENT

STRASBOURG

17 July 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jevremović v. Serbia,

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

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Mrs D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 3150/05) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 63 below), lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by, at that time, two citizens of the State Union of Serbia and Montenegro, Ms Ina Jevremović ("the first applicant") and Ms Ljiljana Jevremović ("the second applicant"), on 4 December 2004.

2. The Government of the State Union of Serbia and Montenegro, initially, and the Government of Serbia, subsequently, ("the Government") were represented by their Agent, Mr S. Carić.

3. The President of the Chamber gave priority to the application in accordance with Rule 41 of the Rules of Court.

4. On 27 February 2006 the Court decided to communicate the application to the Government. Under Article 29 § 3 of the Convention, it was also decided that the merits of the application would be examined together with its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the applicants, may be summarised as follows.

A. The paternity/child maintenance proceedings

6. The first applicant is a child born out of wedlock in 1999.

7. On 9 June 1999 the first applicant and her mother ("the second applicant") filed a civil suit against D.K. ("the respondent"), a very popular local singer, before the Fourth Municipal Court in Belgrade ("the Municipal Court") in order to establish paternity and obtain child maintenance.

8. Between 20 September 1999 and 22 January 2002, nine hearings were scheduled, five of which were held and another four adjourned. During that time, though duly summoned, the respondent failed to appear in court on at least two occasions.

9. On 5 November 1999 and in compliance with an order issued by the Municipal Court, the Blood Transfusion Institute conducted blood tests, having taken samples provided by the three parties, and found that the probability that the respondent was the father of the first applicant was 97.14% and, as such, "highly likely".

10. From 10 January 2001 to 12 February 2002, on six separate occasions, DNA testing was attempted but each time, unlike the applicants, the respondent, though duly summoned, failed to appear at the clinic where the appointment was scheduled.

11. On 26 February 2002 the Municipal Court ruled in favour of the applicants. In so doing, it established the respondent's paternity, partly granted the child maintenance requested and issued an interim maintenance order. In its reasoning, *inter alia*, the court relied on the findings of the Blood Transfusion Institute, as well as the respondent's failure to appear at the clinic in order to undergo a DNA test. Finally, it noted that the relevant legislation did not provide for a possibility to subject the respondent to a DNA test against his will and held that there was no evidence that would have justified the rejection of the applicants' claims.

12. On 22 October 2002 the Municipal Court adopted a supplementary judgment, granting the applicants' request for statutory interest.

13. On 12 August 2002 the respondent filed an appeal with the District Court in Belgrade ("the District Court").

14. On 19 November 2002 the District Court quashed the judgments of the Municipal Court and remitted the case for a retrial. In its reasons, *inter alia*, it stated that the respondent had apparently been unable to attend the scheduled DNA tests but that he would now be willing to do so. The court added that the facts of the case concerning child maintenance also required further clarification.

15. From 12 February 2003 to 26 November 2003, another six hearings were scheduled before the Municipal Court, five of which were adjourned and only one held. During that time, though duly summoned, the respondent failed to appear in court on at least three occasions.

16. From 8 May 2003 to 22 July 2003, on three separate days, DNA testing was attempted but each time, unlike the applicants, the respondent, though twice duly summoned, failed to appear at the clinic where the appointment was scheduled.

17. On 26 September 2003 the applicants complained about the delay to the Ministry of Justice.

18. On 27 October 2003 the President of the Municipal Court informed the applicants that he had instructed the presiding judge in their case to proceed expeditiously.

19. On 26 November 2003 the Municipal Court again ruled in favour of the applicants. In so doing, it established the respondent's paternity, partly granted the child maintenance requested and issued an interim maintenance order. The reasons offered, for the most part, were identical to those contained in its prior ruling.

20. On 11 March 2004 the Municipal Court issued a decision correcting an obvious error contained in its judgment.

21. On 19 April 2004 the respondent filed an appeal with the District Court.

22. On 26 May 2004 the District Court again quashed the decisions of the Municipal Court and remitted the case for a retrial. In its reasoning it held that the civil parties needed to be heard again, that the actual moment of conception of the first applicant needed to be determined precisely in order to find out whether the second applicant had sexual relations with the respondent at that particular time, and that the DNA test needed to be attempted yet again. The court further explained that, should the respondent again fail to be tested, the Municipal Court would need to address the Blood Transfusion Institute in order to find out whether the fact that the first applicant was less than one year old when she was last tested (in 1999) meant that a new blood test might now be warranted. If so, following a new blood test and even in the absence of a DNA test, a new judgment should be rendered, due consideration being given to the respondent's refusal to submit to a DNA test. The court concluded by stating that the facts of the case concerning child maintenance also required additional clarification.

23. The actual case file was not physically returned to the Municipal Court until 15 October 2004.

24. The first hearing thereafter was initially scheduled for 24 February 2005. In January 2005, however, this hearing was cancelled by the Municipal Court itself, apparently without any reasons being specified.

25. On 12 April 2005 the Municipal Court decided to request an expert medical opinion in line with the directions given by the District Court.

26. On 28 April 2005 the same court heard the second applicant as well as the respondent. In his statement, *inter alia*, the respondent denied being the biological father of the first applicant and expressly said that he would not accept being subjected to a DNA test.

27. On 5 July 2005 the Municipal Court appointed a medical expert and requested an opinion in line with its decision of 12 April 2005.

28. On 2 October 2005 the medical expert invited the parties in the case to attend a meeting scheduled for 7 October 2005. On the said date, the applicants appeared but not the respondent.

29. On 23 November 2005 the medical expert provided his opinion.

30. On 10 March 2006, following the appointment of a new presiding judge in the case, the Municipal Court relieved the second applicant of her obligation to pay for the costs of the proceedings at issue. It stated, *inter alia*, that she was unemployed and unable to cover these costs without endangering the most basic needs of the first applicant.

31. On 28 March 2006 the Municipal Court, *inter alia*, heard the parties to the proceedings, ordered them to provide the court with the relevant information concerning the maintenance sought and informed them that the DNA test was to be carried out on 3 April 2006 and 18 April 2006, respectively.

32. Both applicants duly appeared on those dates but the respondent did not.

33. On 11 May 2006 the applicants submitted the maintenance-related information requested. The respondent apparently failed to do so.

34. On 12 May 2006 the Municipal Court adjourned the hearing which had been scheduled because it did not have all of the maintenance-related information at its disposal and a forensic expert, who had not been duly summoned, had failed to appear.

35. On 24 May 2006, the Municipal Court accepted the applicants' motion to obtain additional maintenance-related information.

36. On 16 June 2006 the Municipal Court adjourned the hearing scheduled for that day because the forensic expert in question had been "unavailable".

37. At the hearing held on 20 July 2006 the Municipal Court finally heard this expert.

38. On 28 July 2006 the Municipal Court issued a judgement finding that the respondent was indeed the first applicant's natural father and, as such, obliged to pay 32,000 Serbian dinars ("RSD"), approximately 400 euros ("EUR"), monthly for her maintenance, as of 1 July 1999, together with the legal costs and the applicable statutory interest. In its reasoning, based on the relevant provisions of the Family Act 2005, as well as bearing in mind the views expressed by the District Court in its decision of 26 May 2004, the Municipal Court, *inter alia*, attached particular weight to the fact that the respondent had refused to be subjected to a DNA test, as the single most reliable way of confirming or refuting his paternity. Finally, the court noted that the second applicant was unemployed and indigent, which is why the respondent was ordered to pay the said child maintenance. The applicants were served with this judgment on 24 August 2006.

39. In September 2006 the respondent filed an appeal with the District Court in Belgrade.

40. On 25 December 2006 the District Court, relying on the Family Act 2005, upheld the impugned judgment but reduced the costs awarded to the applicants.

41. On 14 March 2007 the respondent filed an appeal on points of law (*revizija*). On 9 May 2007 the Supreme Court confirmed the lower courts' judgments as regards the respondent's paternity and upheld the maintenance ordered in the amount of RSD 15,000 monthly (approximately EUR 190). At the same time, however, it quashed the said judgments in respect of the remainder of the maintenance awarded, as well as the costs, and ordered that these two issues be re-examined by the Municipal Court.

B. Other relevant facts

42. In 2000 the first applicant was diagnosed with asthma.

43. On 21 October 2005 the National Employment Agency confirmed that the second applicant was unemployed and secured her an internship at the Agricultural Faculty in Belgrade. The Agency also accepted to pay the second applicant a total of RSD 6,100 per month (approximately EUR 76) for the next six months.

44. The applicants further referred to numerous reports in the Serbian media concerning the above proceedings, as well as their own and the respondent's personal circumstances. Finally, the second applicant stated that the respondent, through his connections, made sure that she could not find work as a songwriter even though she had been successful in this field previously.

II. RELEVANT DOMESTIC LAW

A. Paternity and maintenance disputes

1. *Marriage and Family Relations Act 1980 (Zakon o braku i porodičnim odnosima; published in the Official Gazette of the Socialist Republic of Serbia - OG SRS - nos. 22/80, 11/88 and Official Gazette of the Republic of Serbia - OG RS - nos. 22/93, 25/93, 35/94, 46/95 and 29/01)*

45. Article 310b provided that all maintenance-related suits were to be dealt with by the courts urgently.

2. Family Act 2005 (Porodični zakon; published in OG RS no. 18/05)

46. Under Article 204 all family-related disputes involving children must be resolved urgently. The first hearing must be held within 15 days of the date when the claim was filed. First instance courts should conclude the proceedings following no more than two hearings, and second instance courts must decide on appeals within a period of 30 days.

47. Similarly, Article 280 defines all maintenance suits as "particularly urgent". The first hearing must be held within 8 days of the date when the claim was filed and the second instance courts must decide on appeals within 15 days.

48. Article 208 provides that an appeal on points of law (*revizija*) shall always be allowed in family disputes, unless this Act states otherwise.

49. The Family Act 2005 entered into force on 1 July 2005, thereby repealing the Marriage and Family Relations Act 1980. Further, Article 357 of the Family Act 2005 provides that it shall be applied to all ongoing judicial proceedings instituted prior to 1 July 2005, unless the competent court, in the specific proceedings at issue, had already adopted a first instance decision before that date.

B. Civil procedure acts

1. Civil Procedure Act 1977 (Zakon o parničnom postupku; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 4/77, 36/77, 6/80, 36/80, 43/82, 72/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91, and the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 27/92, 31/93, 24/94, 12/98, 15/98 and 3/02)

50. Article 8 provided that the courts were to determine civil matters according to their own discretion after carefully assessing all the evidence presented individually and as a whole, and taking into account the results of the overall proceedings.

51. Under Article 221a, the courts could also draw conclusions as to the facts of the case based on the application of the "rules on the burden of proof".

52. In accordance with Article 269, neither the plaintiff nor the respondent could be "forced" to appear in court or, indeed, give a statement. The court itself, however, could take into account the parties' failure/refusal to do so and draw its own conclusions therefrom.

53. Finally, pursuant to Articles 382-400, parties could file an appeal on points of law (*revizija*) with the Supreme Court. They could do so under certain very specific conditions only and against a judgment rendered at second instance. This remedy, however, could not provide the parties with

compensation for any procedural delay that may have occurred, nor could it have expedited the proceeding which had already been concluded before the lower courts.

2. Civil Procedure Act 2004 (Zakon o parničnom postupku; published in OG RS no. 125/04)

54. The language of Articles 8, 223 § 1 and 267 contained in this Act corresponds to Articles 8, 221a and 269 of the Civil Procedure Act 1977 referred to above.

55. Articles 220 and 223 §§ 2 and 3, however, provide that every civil party shall state the facts in its favour and propose the supporting evidence, as well as actively attempt to challenge the other party's factual and/or legal claims.

56. This Act entered into force on 23 February 2005, thereby repealing the Civil Procedure Act 1977. Article 491 § 4 of the Civil Procedure Act 2004, however, states that an appeal on points of law shall be filed in accordance with the relevant provisions of the Civil Procedure Act 1977 whenever the proceedings at issue were instituted prior to 23 February 2005.

C. Court Organisation Act (Zakon o uređenju sudova; published in OG RS nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06)

57. The relevant provisions of this Act read as follows:

Article 7

"A party or another participant in the court proceedings shall have the right to complain about the work of a court when they consider the proceedings delayed, improper, or that there has been an [untoward] influence on their course and outcome."

Article 51

"The President of a higher instance court shall have the right to monitor the court administration of a lower instance court, and the President of a directly higher court shall have the authority to adopt an act from within the competence of the President of a lower instance court, if the latter omits to perform his [or her] duty.

The President of a higher instance court may request from the lower instance court information regarding the implementation of existing legislation, information concerning any problems about trials and all information regarding the work of the court.

The President of a higher instance court may order a direct inspection of the work of a lower instance court."

Article 52

"When a party to a case or another person taking part in the proceedings files a complaint, the President of the court must, having considered it, inform the complainant about his [or her] views concerning its merits as well as any measures taken in this respect, within 15 days of receipt of the complaint.

If a complaint was filed through the Ministry of Justice or through a higher instance court, the Minister and the President of a higher court shall be informed of the merits of the complaint and of any measures taken in this respect."

D. Rules of Court (Sudski poslovnik; published in OG RS nos. 65/03, 115/05 and 4/06)

58. Under Article 8, *inter alia*, the President of a court must ensure that the court's work is carried out in a timely manner. He or she shall also look into every complaint filed by a party to the proceedings in respect of delay and respond within 15 days, giving a decision and, if necessary, ordering that steps be taken to remedy the situation.

59. Article 4, *inter alia*, provides that the Ministry of Justice shall supervise the work of the courts in terms of their timeliness. Should certain problems be identified, the Ministry shall "propose" specific measures to be undertaken within a period of 15 days.

E. Judges Act (Zakon o sudijama; published in OG RS nos. 63/01, 42/02, 60/02, 17/03, 25/03, 27/03, 29/04, 61/05 and 101/05)

60. The relevant provisions of this Act read as follows:

Article 40a §§ 1 and 2

"The Supreme Court of Serbia shall set up a Supervisory Board ["*Nadzorni odbor*"] ("the Board").

This Board shall be composed of five Supreme Court judges elected for a period of four years by the plenary session of the Supreme Court of Serbia."

Article 40b

"In response to a complaint or *ex officio*, the Board is authorised to oversee judicial proceedings and look into the conduct of individual cases.

Following the conclusion of this process, the Board may initiate, before the High Personnel Council, proceedings for the removal of a judge based on his [or her] unconscientious or unprofessional conduct, or propose the imposition of other disciplinary measures."

F. Obligations Act (Zakon o obligacionim odnosima; published in OG SFRY nos. 29/78, 39/85, 45/89, 57/89 and OG FRY no. 31/93)

61. Article 172 § 1 provides that a legal entity ("*pravno lice*"), which includes the State, is liable for any damage caused by one of "its bodies" ("*njegov organ*") to a "third person".

62. Under Articles 199 and 200 of the Obligations Act, *inter alia*, anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of "personal rights" ("*prava ličnosti*") may, depending on their duration and intensity, sue for financial compensation before the civil courts and, in addition, request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction.

G. Relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro

63. The relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 12, 13 and 16-25, 19 September 2006).

III. RESERVATION UNDER ARTICLE 13 OF THE CONVENTION

64. In a reservation contained in its instrument of ratification of the Convention and its Protocols, deposited with the Council of Europe on 3 March 2004, the Government stated that "the provisions of Article 13 shall not apply in relation to the legal remedies within the jurisdiction of the Court of Serbia and Montenegro, until the said Court becomes operational in accordance with Articles 46 to 50 of the Constitutional Charter of the State Union of Serbia and Montenegro (*Službeni list Srbije i Crne Gore*, no. 1/03)".

65. This reservation was withdrawn by a letter dated 11 July 2005 from the Permanent Representation of the State Union of Serbia and Montenegro, registered at the Secretariat General on 15 July 2005.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

66. Both applicants complained that the proceedings at issue had not been concluded within a reasonable time, as required by Article 6 § 1 of the Convention, the relevant part of which reads:

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

A. Admissibility

1. Arguments of the parties

67. The Government submitted that the applicants had not exhausted all available, effective domestic remedies. In particular, they had failed to complain about the delay in question to the President of the Municipal Court, the President of the District Court, the Minister of Justice and the Supreme Court's Supervisory Board, respectively (see paragraphs 57-60 above). Further, they had not made use of the complaint procedure before the Court of Serbia and Montenegro, pursuant to the Constitutional Charter and the Charter on Human and Minority Rights and Civic Freedoms (see paragraph 63 above and the *Matijašević* cross-reference). Finally, the Government maintained that the Convention was directly applicable in the respondent State's legal system, that the applicants had failed to bring a separate civil lawsuit under Articles 199 and 200 of the Obligations Act (see paragraphs 61 and 62 above) and that any incompetence on the part of the applicants' domestic counsel could not excuse their failure to comply with the exhaustion requirement as enshrined in Article 35 § 1.

68. The applicant stated that the above remedies, some of which she had used, could not be considered effective in terms of Article 35 § 1 of the Convention.

2. Relevant principles

69. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, judgment of

20 February 1991, Series A no. 198, pp. 11–12, § 27, and *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgements and Decisions* 1998-I, pp. 87-88, § 38). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, 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 from this requirement (see *Dankevich v. Ukraine,* no. 40679/98, § 107, 29 April 2003).

70. The Court notes that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see, *Akdivar and Others v. Turkey,* judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69).

71. Finally, the Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning a complaint about procedural delay is whether or not there is a possibility for the applicant to be provided with direct and speedy redress, rather than an indirect protection of the rights guaranteed under Article 6 (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195, ECHR 2006, and *Sürmeli v. Germany* [GC], no. 75529/01, § 101, 8 June 2006). In particular, a remedy of this sort shall be "effective" if it can be used either to expedite the proceedings at issue or to provide the litigant with adequate redress for delays which have already occurred (see, *mutatis mutandis*, *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 v. Germany* [GC], cited above, § 99).

3. The Court's assessment

72. The Court considers that requests to the President of the Municipal Court, the President of the District Court, the Ministry of Justice and the Supreme Court's own Supervisory Board to speed up the proceedings at issue, as referred to by the Government, all represent hierarchical complaints or, in other words, no more than mere information submitted to a higher instance with full discretion to make use of its powers as it sees fit (see paragraphs 57-60 above). In addition, even if any of these proceedings had been instituted, they would have taken place exclusively between the supervisory instance in question and the judge/court concerned. The applicants themselves would not have been parties to such proceedings and would, at best, have only had the right to be informed of their outcome (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII). None of these remedies can therefore be considered effective within the meaning of Article 35 § 1 of the Convention.

73. A separate claim for damages caused by procedural delay (see paragraphs 61 and 62 above) would also have been ineffective. Even assuming that the applicants could have obtained compensation for the past

delay, the Government have failed to show that such proceedings would have been speedier than any other "ordinary" civil suit which could have lasted for years and gone through several levels of jurisdiction (see, *mutatis mutandis*, *Merit v. Ukraine*, no. 66561/01, § 59, 30 March 2004, and *Scordino v. Italy (no. 1)*, cited above, § 195). Moreover and for the same reason, the said claim was also not capable of expediting the proceedings at issue.

74. As regards the Government's submission that the applicants should have filed a complaint with the Court of Serbia and Montenegro, the Court recalls that it has already held that this particular remedy was unavailable until 15 July 2005 and, further, that it remained ineffective until the break up of the State Union of Serbia and Montenegro (see *Matijašević v. Serbia*, cited above, §§ 34-37). The Court sees no reason to depart in the present case from this finding and concludes, therefore, that the applicants were not obliged to exhaust this particular avenue of redress.

75. Finally, concerning the general claim that the Convention was directly applicable in Serbia, the Court notes that the Government have failed to show that there was indeed a remedy of this sort, available both in theory and in practice, which could have either expedited the relevant proceedings or afforded compensation for the past delay (see paragraph 69 above).

76. In view of the above, the Court concludes that the applicants' complaints about the length of the proceedings in question cannot be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention. Accordingly, the Government's objection in this respect must be dismissed. The Court also considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The complaints must therefore be declared admissible.

B. Merits

1. Arguments of the parties

77. The Government noted that the respondent State ratified the Convention on 3 March 2004 which is why the impugned proceedings have been within the Court's competence *ratione temporis* for a period of approximately three years only. Further, it was the Marriage and Family Relations Act 1980 rather than the Family Act 2005 which was applicable to these proceedings, meaning that the domestic judiciary had not breached any of the time-limits set forth in the latter (see paragraphs 45-47 above). The applicants' case was complex and sensitive and the domestic courts were both diligent and competent. It was also important to attempt to have the respondent's DNA tested even though he continually refused to submit

to such a test and could not have been forcibly subjected to one under the relevant domestic legislation. Finally, the domestic judiciary made use of the available procedural tools at their disposal and complied with the reasonable time requirement contained in Article 6.

78. The applicants stated that the main reason for the procedural delay complained of was that the respondent could not have legally been forced to undergo a DNA test. Further, the trial judges either made deliberate errors in order to prolong the proceedings at issue or were simply unable to conduct them effectively. Finally, the paternity/child maintenance suit was simple and the applicants did not contribute to the delay at issue.

2. Relevant principles

79. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, as well as the importance of what is at stake for the applicant (see, among other authorities, *Mikulić v. Croatia*, no. 53176/99, § 38, ECHR 2002-I).

80. Further, according to the Court's established jurisprudence, a chronic backlog of cases is not a valid explanation for excessive delay, and the repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in the respondent State's judicial system (see *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1138, § 64, and *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005, respectively).

81. Finally, the Court notes that particular diligence is required in all cases concerning civil status and capacity (see *Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, p. 23, § 49) and that this requirement is additionally reinforced in States where domestic law itself provides that certain kinds of cases must be resolved with particular urgency (see, in the employment context, *Borgese v. Italy*, judgment of 26 February 1992, Series A no. 228-B, § 18).

3. Period to be taken into account

82. The Court observes that the civil suit here at issue was brought on 9 June 1999 and that it is partly still pending at first instance (see paragraph 41 above). Since the respondent State ratified the Convention on 3 March 2004, it has thus been within the Court's competence *ratione temporis* for a period of more than three years and four months. Further, the Court recalls that, in order to determine the reasonableness of the delay complained of, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October

1998, *Reports* 1998-VIII) and notes that on 3 March 2004 the proceedings in question had already been pending for more than four years and nine months.

4. The Court's assessment

83. The Court observes that, following the respondent State's ratification of the Convention, the Municipal Court rendered one judgment while the District Court and the Supreme Court combined issued three separate decisions.

84. There has, however, been at least one significant period of judicial inactivity, from 26 May 2004 to 15 October 2004 (see paragraphs 22 and 23 above; see also *Hefková v. Slovakia*, no. 57237/00, §§ 35 and 36, 31 May 2005). Further, two post-ratification DNA tests, just like numerous others before them, were adjourned because of the respondent's failure to appear, and the hearing scheduled for 24 February 2005 was cancelled by the Municipal Court apparently without any reasons having been given (see paragraphs 31, 32 and 24 above, respectively). Finally, the applicants' conduct had not contributed to the procedural delay complained of, except, perhaps, only in respect of the adjournment of the hearing scheduled for 12 May 2006 (see paragraphs 33 and 34 above).

85. Concerning the Government's contention that the progress of the case was impeded due to the respondent's refusal to be subjected to a DNA test, the Court notes that the Serbian judicial authorities were free to apply the relevant rules on the burden of proof, draw inferences, as well as reach conclusions based on the fact that a party to the proceedings had been obstructing the establishment of the relevant facts (see paragraphs 102-105 below, as well as paragraphs 50-56 above) but that, despite so doing on three prior occasions, they could not definitely resolve the paternity issue until 9 May 2007 (see paragraph 41 above). In any event, the remainder of the child maintenance claim is still pending at first instance and it is for Contracting States to organise their judicial systems in such a way that their courts can guarantee everyone's right to obtain a determination of their civil rights and obligations "within a reasonable time", in accordance with Article 6 § 1 of the Convention (see, among other authorities, *G.H. v. Austria*, no. 31266/96, § 20, 3 October 2000).

86. Having regard to the criteria laid down in its jurisprudence (see paragraphs 79-81 above) and the relevant facts of the present case, including its complexity and status on the date of ratification (see paragraph 82 above), as well as the conduct of parties and of the authorities, the Court considers that the length of the proceedings complained of has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

87. Under Article 8 of the Convention, the first applicant alone complained that: i) the length of the impugned proceedings had left her in a state of prolonged uncertainty as regards her personal identity, and ii) throughout this time she was deprived of any maintenance by her biological father, despite her indigence.

Article 8 of the Convention, insofar as relevant, reads as follows:

> "1. Everyone has the right to respect for his [or her] private and family life ...
>
> 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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

88. The Government and the first applicant both relied on the arguments already summarised at paragraphs 67 and 68 above.

89. In addition, the Government implied that the first applicant could have filed an appeal on a point of law (*revizija*) against the second instance judgment rendered by the District Court.

90. The first applicant made no additional comments.

91. The Court notes that an appeal on points of law could not have expedited the proceedings which had already been concluded before the lower courts or have provided the first applicant with the financial compensation for the procedural delay complained of (see paragraph 53 above). It was therefore not a remedy that had to be exhausted in terms of Article 35 § 1 of the Convention.

92. As regards other admissibility arguments, already described at paragraphs 67 and 68 above, the Court has considered them, but again comes to the same conclusion as described at paragraphs 72-76 above.

93. The Court finds therefore that the first applicant's complaints under Article 8 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Arguments of the parties

94. The Government and the first applicant both relied on the arguments already outlined at paragraphs 77 and 78 above.

95. In addition, the Government stated that the length of the impugned proceedings had clearly had an influence on the first applicant's life but added that the domestic courts had to be thorough given the significance of the issues involved. The Serbian judiciary was diligent and proactive despite the fact that it could not have forcibly subjected the respondent to a DNA test. Finally, the Government announced that the relevant legislation in this respect was about to be amended.

96. The first applicant stated that she had been diagnosed with asthma in 2000, "an illness generally known to be caused by indigence and in her case brought about by the lack of maintenance during the procedural delay complained of" (see paragraphs 30, 42 and 43 above). The first applicant further noted that she has been forced to endure adverse media reports throughout these proceedings.

2. Relevant principles

97. Private life, in the Court's view, "includes a person's physical and psychological integrity" (see *Botta v. Italy*, judgment of 24 February 1998, *Reports* 1998-I, § 32). Further, paternity proceedings which are intended to determine an applicant's relationship with her biological father clearly fall within the ambit of Article 8, there being a "direct link between the establishment of paternity and the applicant's private life" (see *Mikulić v. Croatia*, cited above, § 55).

98. The Court also recalls that, while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in the effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 23, and the aforementioned *Botta v. Italy* judgment, p. 422, § 33).

99. Finally, the Court reiterates that the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition, but that the applicable principles are similar. In determining whether or not such an obligation exists, regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual. In both contexts the State enjoys a certain margin of appreciation (see, for instance, *Mikulić v. Croatia*, cited above, § 58, and *M.B. v. the United Kingdom*, no. 22920/93, Commission decision of 6 April 1994, Decisions and Reports 77-A, p. 116).

3. The Court's assessment

a) As regards the uncertainty concerning the first applicant's identity

100. The Court recalls that it is not its task to substitute itself for the competent Serbian authorities in determining the most appropriate method for the establishment of paternity through a domestic judicial process, but rather to review under the Convention the decisions which those authorities have taken in the exercise of their powers of appreciation (see, for instance, *Mikulić v. Croatia*, cited above, § 59).

101. The Court therefore notes that, given the particular circumstances of the present case, the only avenue by which the first applicant could have established whether or not the respondent was her biological father was through a civil suit.

102. Further, no measures existed under domestic law to compel the respondent to comply with the Municipal Court's order that a DNA test be carried out, nor was there any direct provision governing the consequences of such non-compliance.

103. Serbian judicial authorities, however, could have ruled according to their own discretion, following the assessment of the evidence presented, and have taken into account the fact that a party to the proceedings had been obstructing the establishment of the relevant facts (see paragraphs 85 and 50-56 above, respectively).

104. Indeed, on three separate occasions the Municipal Court actually did so. It concluded that the respondent was the first applicant's biological father and based this conclusion, *inter alia*, on the fact that he had repeatedly refused to be subjected to a DNA test, by way of negative inference.

105. Finally, on 9 May 2007, more than three years and two months following Serbia's ratification of the Convention, the Supreme Court itself accepted this reasoning and confirmed the respondent's paternity at the highest instance (see paragraph 41 above).

106. In the Court's opinion, persons in the first applicant's situation clearly have a vital interest, protected by the Convention, in receiving the information necessary to uncover the truth about an important aspect of their identity. At the same time, it must be borne in mind that the protection of third persons may preclude their being compelled to make themselves available for medical testing of any kind (see *Mikulić v. Croatia*, cited above, § 64).

107. States parties to the Convention have different solutions to the problem which arises when a putative father refuses to comply with court orders to submit to tests which are necessary to establish the facts. In some States the courts may fine or imprison the person in question. In others, non-

compliance with a court order may create a presumption of paternity or constitute contempt of court, which may entail criminal prosecution (ibid.).

108. A system like the Serbian one, therefore, which has no means of compelling the purported father to comply with a court order for a DNA test to be carried out, can, in principle, be considered to be compatible with the obligations deriving from Article 8, taking into account the State's margin of appreciation. The Court considers, however, that under such a system the interests of the individual seeking the establishment of paternity must be secured when paternity cannot be established by means of a DNA test. The lack of any procedural measure to compel the supposed father to comply with the court order is only in conformity with the principle of proportionality if it provides alternative means enabling an independent authority to determine the paternity *speedily* (ibid.).

109. Furthermore, in ruling on an application to have one's paternity established, the courts are required to have special regard to the best interests of the child at issue.

110. The Court finds therefore that the proceedings in the present case did not strike a fair balance between the right of the applicant to have her uncertainty as to her identity eliminated without unnecessary delay (see paragraphs 85 and 102-105 above) and that of her purported father not to undergo a DNA test, and considers that the protection of the interests involved was not proportionate.

111. Accordingly, the length of the impugned paternity proceedings, which ended by 9 May 2007, had left the first applicant in a state of prolonged uncertainty concerning her identity. The Serbian authorities have thus failed to secure to the first applicant the "respect" for her private life to which she was entitled. There has, consequently, been a violation of Article 8 of the Convention.

b) As regards the lack of maintenance afforded to the first applicant

112. Since it stems from the facts already considered under Articles 6 and 8 of the Convention, that is, essentially, the length of the impugned proceedings and having regard to its findings under those provisions, the Court does not find it necessary to examine this complaint as a separate issue under Article 8.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

113. Both applicants also complained under Article 13 about having had no effective domestic remedy at their disposal in order to have the impugned proceedings expedited. Furthermore, the first applicant alone complained that the domestic legal system did not provide for any measure that would oblige defendants in paternity disputes to comply with a court order for a DNA test to be carried out.

Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

114. The Court notes that these complaints raise issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they cannot be declared inadmissible on any other grounds. The complaints must therefore be declared admissible.

B. Merits

1. As regards the absence of an effective remedy for length

a) Arguments of the parties

115. The Government maintained that there has been no violation of Article 13. It further added that given the date of introduction of the application in the present case, as well as the content of its own reservation under Article 13, withdrawn on 15 July 2005, the respondent Sate "could not be responsible for the possible non-compliance of its legislation with the provisions of Article 13" (see paragraphs 64 and 65 above).

116. The applicants reaffirmed their complaints made under Article 13.

b) Relevant principles

117. The Court notes that Article 13 guarantees an effective remedy before a national authority for an alleged breach of all rights and freedoms guaranteed by the Convention, including the right to a hearing within a reasonable time under Articles 6 § 1 (see, *inter alia*, *Kudła v. Poland*, cited above, § 156).

118. It recalls, further, that a remedy concerning length is "effective" if it can be used either to expedite the proceedings before the courts dealing with the case, or to provide the litigant with adequate redress for delays which have already occurred (see *Sürmeli v. Germany* [GC], cited above, § 99).

119. Finally, the Court emphasises that the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is

the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation, since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy. Some States have fully understood the situation by choosing to combine the two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see *Scordino*, cited above, §§ 183 and 186, *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 74 and 77 ECHR 2006, and *Sürmeli v. Germany* [GC], cited above, §100).

c) The Court's assessment

120. The Court notes that the Government have already suggested in their preliminary objection that there were remedies available for the applicants' complaints about length made under Article 6 § 1 and that, in so far as they rely on the same reasoning by way of their response to the Article 13 complaint, their arguments must, just like their objection, be rejected on the grounds described at paragraphs 72-76 above.

121. Further, as regards the Government's argument concerning their reservation made and then withdrawn under Article 13 of the Convention, the Court notes that the reservation concerned the Court of Serbia and Montenegro only, rather than the overall state of Serbian legislation in terms of its compliance with the requirements of Article 13 (see paragraphs 64 and 65 above). The Court thus again comes to the same conclusion as explained at paragraph 74 above.

122. The Court considers, therefore, that there has been a violation of Article 13 taken together with Article 6 § 1 of the Convention on account of the lack of an effective remedy under domestic law for the applicants' complaint concerning the length of their civil case.

2. As regards the absence of measures which would oblige a respondent in a paternity suit to submit to a DNA test

123. Since the Court has already taken this aspect into account in its considerations under Article 8 of the Convention and having regard to its findings under this provision (see paragraphs 100-111 above), it does not find it necessary to examine the same issue under Article 13 (see *Mikulić v. Croatia*, cited above, § 73).

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

124. Finally, both applicants complained about being discriminated against by the domestic courts based on the fact that the respondent was a celebrity, a very well-known and popular public figure with material resources and political connections.

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

125. The Government contested the applicants' submissions.

126. Both parties referred to numerous newspaper articles in the Serbian press dealing with the respondent's personal circumstances as well as the impugned proceedings.

127. In view of the facts of the instant case, however, the Court finds that the available evidence is insufficient for it to conclude that the applicants had indeed been discriminated against on the grounds of their social status. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The first applicant claimed EUR 30,000 for the pecuniary loss suffered. She alleged, in particular, that in 2000 she had been diagnosed with asthma, "an illness generally known to be caused by indigence and in her case brought about by the lack of maintenance during the procedural delay complained of". The first applicant claimed another EUR 40,000 for her mental anguish.

130. The second applicant claimed EUR 20,000 for the pecuniary damage suffered as a result of the loss of business opportunities caused by the first applicant's purported biological father, as well as another EUR 10,000 for her own mental anguish.

131. The Government contested these claims. They added, however, that should the Court find a violation of the Convention any financial compensation awarded should be consistent with the amounts granted in similar cases.

132. The Court considers that both applicants suffered damage of a non-pecuniary nature due to the length of the proceedings in question as well as the absence of an effective domestic remedy. Further, the Court has found that the first applicant alone was also a victim of a violation of Article 8,

this aspect of the case being intimately related to the State's failure to comply with its positive obligations under the Convention (see, also, *Mikulić v. Croatia*, cited above, § 77).

133. The Court concludes therefore that the applicants have sustained non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation of the Convention alone. Making an assessment on an equitable basis, as required by Article 41, the Court awards the first applicant EUR 5,000 and the second applicant EUR 1,000 under this head, plus any tax that may be chargeable on those amounts.

134. As regards the pecuniary damage and to the extent that it has been specified, the Court finds that the applicants have failed to show that there was a causal link between the violations found and the pecuniary harm allegedly suffered. In particular, there is no evidence that the first applicant's asthma was indeed indirectly caused by the procedural delay in question or that the second applicant's lack of career opportunities can be attributed to the Serbian authorities. The Court therefore makes no award in this respect.

135. Finally, the Court points out that, under Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects thereof (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Government should therefore, with particular diligence and by appropriate means, bring to a conclusion the remainder of the ongoing child maintenance dispute (see, *mutatis mutandis*, *Mužević v. Croatia*, no. 39299/02, § 91, 16 November 2006).

B. Costs and expenses

136. The applicants did not seek reimbursement of their costs and expenses. Accordingly, the Court considers that no award should be made under this head.

C. Default interest

137. The Court considers it appropriate that the default interest 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 complaints under Articles 6 § 1, 8 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Articles 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention as regards the first applicant's uncertainty concerning her personal identity;

4. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 6 § 1;

5. *Holds* that it is not necessary to examine separately the complaint under Article 8 of the Convention, concerning the lack of financial support afforded to the first applicant, as well as the related complaint under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the following sums within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, which awards are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 5,000 (five thousand euros) to the first applicant in respect of the non-pecuniary damage suffered,
      (ii) EUR 1,000 (one thousand euros) to the second applicant also in respect of the non-pecuniary damage suffered,
      (iii) plus any tax that may be chargeable on these awards;
   (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;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President