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

SECOND SECTION

CASE OF V.A.M. v. SERBIA

(Application no. 39177/05)

JUDGMENT

STRASBOURG

13 March 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 V.A.M. 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 R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mr V. ZAGREBELSKY,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 20 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 39177/05) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 76 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, a citizen of the State Union of Serbia and Montenegro, Ms V.A.M. ("the applicant"), on 28 October 2005.

2. The President of the Chamber acceded to the applicant's request not to have her name disclosed and gave priority to her application in accordance with Rules 47 § 3 and 41 of the Rules of Court, respectively.

3. The applicant was represented before the Court by the Lawyers' Committee for Human Rights (YUCOM), a human rights organisation based in Belgrade. 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.

4. On 27 February 2006 the Court decided to communicate the application to the Government. Under the provisions of 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

A. Civil proceedings (divorce, custody and child maintenance)

5. In 1994 the applicant married D.M. and in 1995 their daughter S.M. was born.

6. In 1998 the applicant started having marital problems, apparently as a result of her contracting HIV.

7. On 3 July 1998 S.M. left Zemun, a part of Belgrade where she lived with her parents, to stay with her grandparents for a while.

8. In early August of 1998, D.M. brought S.M. back to Zemun.

9. Shortly afterwards, however, the applicant's marriage broke down and D.M. ceased living with the applicant. He also took S.M. to his parents' flat, denying the applicant any contact with her.

10. On 11 February 1999 the applicant filed a claim with the Fourth Municipal Court in Belgrade ("*Četvrti opštinski sud u Beogradu*"), seeking dissolution of the marriage, sole custody of S.M. and child maintenance. In addition, she requested interim relief, granting her temporary custody or, in the alternative, regular weekly contacts with S.M. until the conclusion of the civil proceedings.

11. On 23 July 1999 the Fourth Municipal Court in Belgrade (hereinafter "the Municipal Court") ordered the Social Care Centre ("*Centar za socijalni rad opštine Stari Grad*") to produce an expert opinion as to which party should be granted custody.

12. D.M. (hereinafter "the respondent") appears to have been informed about the applicant's lawsuit during one of the meetings held at the Social Care Centre in 1999.

13. Following the institution of proceedings, the Municipal Court adjourned 15 separate hearings, including the hearings scheduled for 29 October 2003, 7 October 2004 and 19 October 2005, respectively.

14. Throughout this time, though mostly in response to the applicant's numerous proposals, the Municipal Court attempted to obtain information as regards the respondent's correct address from various State bodies, including the tax authorities, municipalities, the Ministry of Education and even the Commercial Court.

15. Summonses were sent to a number of addresses but each time the respondent could not be served, which led the Municipal Court to conclude, on 17 April 2003, that he was "clearly avoiding receipt" of all court documents.

16. On 3 November 2005 the respondent was duly served for the first time, the summons having been sent to Kotor, Montenegro, on which occasion he was both provided with the applicant's claim against him and informed about the next hearing scheduled for 23 December 2005.

17. On 21 December 2005 the applicant's lawyer informed the Municipal Court that she could not attend that hearing.

18. The applicant maintained that during the proceedings in question the presiding judge had stated publicly that she would either rule in favour of the respondent or dismiss the applicant's claim on procedural grounds. The Government contested this submission.

19. In early 2006, the presiding judge was replaced by another and the case itself taken under review by the Municipal Court's Special Committee for Family Relations.

B. Request for the removal of the judge

20. On 31 March 2003, *inter alia*, the applicant complained to the President of the Municipal Court, requesting that the presiding judge in her case be removed.

21. She claimed that the judge in question had tried to serve the respondent via regular mail only but had failed to attempt to do so through the bailiffs, as envisaged by the Civil Procedure Act (see paragraph 60 below).

22. Further, despite the fact that it was up to the courts to establish the respondent's correct address, she pointed out that on 31 March 2003 the judge had ordered her specifically to provide the court with the address in question, in default of which her claim would be dismissed.

23. Finally, the applicant alleged that the judge herself had indicated that she did not know what to do with the case and that the best solution would have been for the applicant to withdraw her claim. The Government contested this submission.

24. On 11 April 2003 the applicant's motion was rejected by the President of the Municipal Court.

C. Interim access order

25. On 23 July 1999 the Municipal Court ordered the respondent to facilitate the applicant's access to S.M., twice a month, until the adoption of a final decision on the merits of the case.

26. On 19 October 1999 the applicant filed a submission with the Municipal Court, stating that the respondent had refused receipt of the said decision and requesting that he be served formally in accordance with the relevant provisions of the Civil Procedure Act (see paragraph 60 below).

27. On 8 November 1999 and 19 February 2001, respectively, the applicant sent two separate requests to the Municipal Court, seeking effective enforcement of the interim access order.

28. On 23 October 2001 the applicant's lawyer withdrew her request of 8 November 1999.

29. On 4 June 2002 the bailiffs attempted to enforce the said interim access order but, apparently, there was no one to be found at the respondent's address. This enforcement would appear to have been envisaged by means of a seizure of the respondent's movable assets and their subsequent sale, the proceeds of which would then have been used to cover the fine apparently imposed on the respondent for his failure to comply with the order in question (see paragraph 65 below).

30. On 5 September 2002 the applicant filed another complaint with the Municipal Court, seeking effective enforcement.

31. From 25 October 2002 until August 2005 the bailiffs tried again, on a number of occasions and at several different addresses, but to no avail.

32. On 26 August 2005 the applicant was ordered by the Municipal Court to provide the respondent's correct address.

D. Relevant medical facts

33. On 10 February 1999 a medical clinic ("*Klinički centar Srbije*") attested that the applicant was HIV positive but that she was being treated and was feeling well. The clinic added that there was no reason why she should not be allowed to see S.M.

34. On 16 March 1999, 18 March 1999 and 21 May 2001, respectively, medical opinions to the same effect were again issued by the said clinic, as well as two other medical institutions ("*Specijalistička poliklinika za građanska lica*" and "*Institut za infektivne i tropske bolesti*").

35. The opinion of 21 May 2001 was addressed expressly to "the competent Social Care Centre".

E. Other relevant facts

36. The applicant stated that she had frequently seen the respondent in the streets of Belgrade throughout the period in question and pointed out that he had also appeared in a television programme on several separate occasions.

37. The applicant further noted that she was informed by the Social Care Centre that the respondent had publicly stated that he did not want to be bothered by any legal proceedings and, in addition, that he had told S.M. that her mother, the applicant, had died.

F. Procedural developments following the communication of the application to the respondent Government

1. Civil proceedings (divorce, custody and child maintenance)

38. It would appear that the Municipal Court held a hearing on 30 March 2006 and that it did so in the respondent's absence given that he had been duly served at one of his addresses in Belgrade.

39. On 8 May 2006 the Kotor Police Department informed the Municipal Court that the respondent could not be found at his address in Kotor but that his neighbours had said that he had moved back to Belgrade.

40. At the hearing held on 22 May 2006, the applicant informed the Municipal Court that the respondent had re-registered his former company and that its seat was now in Belgrade. She then went on to provide the court with this address, as well as the current address of the respondent's parents, and stated that S.M. was in fourth grade in one of the primary schools in Belgrade.

41. On 23 May 2006 the Municipal Court sent a letter to the Commercial Entities Registration Agency ("*Agenciji za privredne registre*") and the tax authorities, seeking information about the respondent's income and his tax situation, as well as whether the respondent was the owner, founder, manager or deputy manager of the said company.

42. On 12 June 2006 the Municipal Court was informed that the respondent was indeed the manager of the company in question.

43. The next hearing was scheduled for 28 June 2006 and the court summonses in this respect were sent both to the respondent's address in Kotor and to his address in Belgrade, via the Kotor and Belgrade police departments, respectively.

44. On 30 March 2006, 23 May 2006 and 7 June 2006, the Municipal Court urged the competent Social Care Centre to "finalise" its report and submit a proposal as to who should get custody of S.M.

45. The Municipal Court thereafter obtained the medical reports concerning the applicant's health of 16 March 1999 and 21 May 2001, respectively (see paragraph 34 above), as well as a new report produced by the Infectious and Tropical Diseases Institute ("*Institut za infektivne i tropske bolesti*") - Centre for HIV/AIDS of 12 April 2006, stating that there was no medical reason why the applicant should not be granted custody of S.M.

46. On 28 June 2006 the Municipal Court heard the applicant and ordered the Social Care Centre to produce its report as to who should be given custody of S.M.

47. On 22 September 2006 the Municipal Court heard both the applicant and the respondent, on which occasion the latter, *inter alia*, stated that the former had not been honest about her medical situation, or conscientious in

terms of taking medication, which seriously endangered his own life as well as that of S.M. The respondent thus proposed that the applicant's health be reassessed and the Municipal Court, having so ordered, scheduled the next hearing for 22 December 2006.

48. On 22 December 2006 the Municipal Court adjourned the hearing, stating that the case file was still with the District Court which was about to rule in respect of the respondent's appeal filed against the interim custody order issued on 15 June 2006 (see paragraphs 50 and 52 below).

49. The Municipal Court scheduled the next hearing for 12 March 2007.

2. Interim custody order

50. On 15 June 2006 the Municipal Court granted provisional custody of S.M. to the applicant and ordered the respondent to surrender the child, pending a final decision in the ongoing civil suit. In its reasoning, *inter alia*, it found that: i) the respondent had made it clear, from the outset, that he would "not allow" the applicant to have contact with S.M. because of his fear that she might also be "infected" with HIV; ii) the applicant was, despite the respondent's claims to the contrary, a responsible and motivated parent whose medical condition was stable, constantly under review, and who presented no danger to S.M.; and iii) the respondent had not only failed to comply with his obligation to inform the court of his correct address but had in addition, for many years, deliberately avoided receipt of court summonses which, in turn, had resulted in the applicant being denied all contact with S.M. and indicated a gross disregard for the interests of S.M. on his part. Finally, the execution of this order was not to be deferred pending any appeal filed against it.

51. On 20 July 2006 the applicant requested enforcement of the above order and again provided the Municipal Court with the respondent's various addresses.

52. On 5 October 2006 the respondent filed an appeal.

53. On 22 November 2006 the applicant complained to the President of the Municipal Court, seeking speedy enforcement.

54. On 13 November 2006 the District Court accepted the respondent's appeal, quashed the impugned order and instructed the Municipal Court to re-examine the issue of the applicant's interim custody.

3. Additional proceedings brought by the applicant

55. In July 2006 the applicant filed a separate civil claim against the respondent, seeking the removal of his parental rights. These proceeding were also brought before the Municipal Court and were at the time of adoption of this judgment apparently still ongoing.

II. RELEVANT DOMESTIC LAW

A. Relevant provisions concerning child custody and maintenance disputes

1. Marriage and Family Relations Act (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 the official Gazette of the Republic of Serbia - OG RS - nos. 22/93, 25/93, 35/94, 46/95 and 29/01)

56. Articles 310b, 390 and 391 provided that all maintenance-related suits and child custody enforcement proceedings were to be dealt with by the courts urgently.

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

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

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

59. This Act entered into force on 1 July 2005 and thereby repealed the Marriage and Family Relations Act referred to above.

B. Civil procedure rules

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)

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

Article 84 §§ 1 and 2

"The court shall appoint a temporary representative to [act on behalf of] the respondent if it finds, in the course of the proceedings before the court of first

instance, that the regular procedure for appointment of ... [such a representative] ... could last too long, resulting in harmful consequences for one or both parties.

Under the conditions set forth in Paragraph 1 of this Article, the court shall appoint a temporary representative ...

4) when the place of residence of the respondent is unknown and the respondent has no counsel ..."

106 § 2

"Written pleadings ... [including initial claims aimed at the institution of court proceedings] ... must state ... the name, occupation and the permanent or current address of the parties ..."

Article 133

" ... [C]ourt documents shall primarily be delivered through regular post but may also be delivered by a designated court employee ["the bailiff"] ... or directly in court."

Article 141 §§ 1 and 2

"If the person to whom a court document is to be delivered does not happen to be [at home], the delivery shall be accomplished by serving the court documents on an adult member of his [or her] household who must receive them. If such persons also happen not to be [at home], the ... [court documents shall be served on] ... the building manager or neighbour, if they agree.

If the delivery is to be performed at the office of a person who does not happen to be there, it may be accomplished by serving the court documents on a person working in the same office, if that person so agrees."

Article 142 §§ 1 and 2

"A complaint ... [as well as] ... a court decision against which a separate appeal may be filed shall be delivered to ... [the respondent] ... in person ...

If a person who is to be served ... does not happen to be at the place where the delivery is to be performed, the bailiff shall find out when and where that person can be found and shall leave a written notice with one of the persons mentioned in Article 141, paragraphs 1 and 2 of this Act, requesting that he [or she] be present on a certain day and hour in his [or her] flat or office. If the bailiff does not find the person to be served even after this, he [or she] shall proceed in accordance with the provisions of Article 141 of this Act and the delivery shall thus be considered as having been carried out."

Article 144

"If the person to be served, an adult member of the household, ... or an employee of a State body or a legal entity refuses to receive the court documents without legal reason, the bailiff shall leave the said documents in the flat or at the office of that person or post it on the door of the flat or the office in question. The bailiff shall make a note on the delivery slip concerning the day, hour and reason for refusal of reception, as well as the place where he or she left the court documents, and thus the service shall be considered accomplished."

Article 145 §§ 1, 2 and 3

"When a party ... changes its place of residence or moves to another flat ... [prior to the adoption of the final decision in the proceedings] ... [it] ... shall immediately inform the court thereof.

If ... [it] ... fails to do so and the bailiff is unable to establish ... [its] ... new flat or place of residence, the court shall order that all further deliveries in respect of this party be posted on the court's own notice board.

Eight days ... [thereafter] ... the delivery at issue shall be deemed duly accomplished."

Article 146

"The court shall invite a party ... who ... [is] ... abroad and does not have a representative in ... [Serbia] ... to ... authorise ... [another person] ... to receive all ... [Serbian court-related correspondence] ... If the party ... fails to do so, the court shall appoint ... [such a person] ... on a temporary basis ... and at the party's own expense ..."

Article 148

"If a party is unable to establish the address of a person to whom the delivery is to be made, the court shall attempt to obtain relevant information from ... [other State bodies] ... or in some other way."

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

61. The substance of Articles 79 § 2 (4), 100 § 2, 127, 135, 136, 138, 139 and 141 of this Act corresponds, in the relevant part, to that of the provisions of the Civil Procedure Act quoted above.

62. In addition, Article 140 provides that, should "normal" delivery during the course of the proceedings prove to be unsuccessful, all court documents shall be posted on the court's own notice board and that eight days thereafter the delivery at issue shall be deemed duly accomplished.

63. Finally, under Article 394 and 396, parties may file an appeal on points of law ("*revizija*") with the Supreme Court. They may do so under

certain very specific conditions only and against a final judgment rendered at second instance.

64. This Act entered into force on 23 February 2005, thereby repealing the Civil Procedure Act referred to above.

C. Enforcement procedure rules

65. Article 209 of the Enforcement Procedure Act of 2000 (*Zakon o izvršnom postupku*; published in OG FRY nos. 28/00, 73/00 and 71/01), while placing special emphasis on the best interests of the child, states that there shall be an initial period of three days for voluntary compliance with a child custody order. Beyond that, however, fines shall be imposed and, ultimately, if necessary, the child taken forcibly, in co-operation with the Social Care Centre. Finally, under Article 7 of the same Act, only the enforcement order and the court's decision in respect of any complaints filed against this order shall be served in accordance with the relevant civil procedure rules. In all other instances the court's own notice board shall be made use of for this purpose.

66. The Enforcement Procedure Act of 2004 (*Zakon o izvršnom postupku*; published OG RS no. 125/04) entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act of 2000. In accordance with Article 304 of this Act, however, all enforcement proceedings instituted prior to 23 February 2005 are to be concluded pursuant to the Enforcement Procedure Act of 2000.

D. 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)

67. 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 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 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."

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

68. 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 his or her decision and, if necessary, ordering that steps be taken to remedy the situation.

69. 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.

F. 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)

70. 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 unconscientious or unprofessional conduct, or propose the imposition of other disciplinary measures."

G. 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)

71. 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".

72. 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.

H. Criminal Code (Krivični zakonik; published in OG RS nos. 85/05, 88/05 and 107/05)

73. Article 134 § 1 provides, *inter alia*, that "whoever" by means of "deceit" removes or holds another with the intent to ... coerce" him or her, or another person, to "endure something" shall be sentenced to a prison term of one to ten years.

74. Under Article 191 anyone who, *inter alia*, obstructs the enforcement of a child custody decision shall be fined or sentenced to a prison term not exceeding two years.

75. Article 340 states that "an official or another 'person in charge' who refuses to enforce a final court decision, or does not enforce it within the period prescribed by law or a period set forth in the decision itself, shall be fined or sentenced to a prison term not exceeding two years".

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

76. 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).

THE LAW

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

77. The applicant complained about the length of the civil proceedings at issue and the bias demonstrated by the presiding judge during those proceedings. In so doing, she relied on Article 6 § 1 of the Convention which, in the relevant part, reads as follows:

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

A. Admissibility

1. Arguments of the parties

a) As regards length

78. The Government submitted that the applicant had not exhausted all available, effective domestic remedies. In particular, she 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 67-70 above). Further, she had not made use of the complaint procedure before the Court of Serbia and Montenegro, pursuant to the Constitutional Charter, the Charter on Human and Minority Rights and Civic Freedoms, and the Court of Serbia and Montenegro Act (see paragraph 76 above). Finally, the Government maintained that the applicant had failed to bring a separate civil lawsuit under Articles 199 and 200 of the Obligations Act (see paragraphs 71 and 72 above).

79. The applicant stated that a complaint to the Court of Serbia and Montenegro, vaguely defined as it was, could not be considered an effective domestic remedy in terms of Article 35 § 1 of the Convention, and that, having complained to the President of the Municipal Court on 31 March 2003, she had not complained to the President of the District Court or the Ministry of Justice as this would only have resulted in additional delay and, in any event, could not have provided her with any effective redress. Finally, the applicant stated that Article 199 of the Obligations Act was irrelevant, as it concerned civil defamation primarily, and that a successful lawsuit based on Article 200 of the same Act could, at best and after years of litigation, have provided her with compensation for the non-pecuniary damage suffered, but could not have expedited the proceedings of which she complained.

b) As regards the alleged bias demonstrated by the presiding judge

80. The Government submitted that in view of the overall conduct of the judge in question this complaint was groundless. In any event, the applicant's request for the judge's removal had been duly considered and subsequently rejected by the President of the Municipal Court personally.

81. The applicant provided no additional comments in this respect.

2. Relevant principles concerning length

82. The Court recalls 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 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* 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).

83. The Court emphasises 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. The Court has recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant (see, *Akdivar and Others v. Turkey,* judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69). It must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected in order to exhaust domestic remedies.

84. Finally, 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 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 *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 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 v. Germany* [GC], cited above, § 99).

3. The Court's assessment

a) As regards the length

85. The Court notes 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 67-70 above). In addition, had any of these proceedings ever been instituted, they would have taken place exclusively between the supervisory instance in question and the judge/court concerned. The applicant herself would not have been a party 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.

86. A separate claim for damages caused by procedural delay (see paragraphs 71 and 72 above) would also have been ineffective. Even assuming that the applicant 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, for the same reason, the said claim was clearly not capable of expediting the proceedings at issue.

87. Finally, as regards the Government's submission that the applicant 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 applicant was not obliged to exhaust this particular avenue of redress.

88. In view of the above, the Court concludes that the applicant's complaint about the undue length of the proceedings 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 this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The complaint must therefore be declared admissible.

b) As regards the alleged bias

89. As regards the applicant's additional complaint concerning the alleged judicial bias demonstrated during the civil proceedings, the Court notes that these proceedings are still pending, so this complaint is premature and must, as such, be rejected for non-exhaustion of domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. Arguments of the parties

90. The Government submitted that the impugned proceedings were extremely complex and sensitive, in view of the applicant's health, the legal and factual issues involved, and what was at stake for the parties.

91. They argued that it was the applicant who had failed in her duty to provide the Municipal Court with the respondent's correct address, which, in turn, led to the delay complained of, and pointed out that the hearing scheduled for 23 December 2005 was adjourned at the applicant's explicit request (see paragraphs 16 and 17 above).

92. The Government maintained that the Municipal Court had, however, acted upon all of the applicant's proposals and done everything in its power to establish the respondent's correct address. Nevertheless, it could not, under domestic law, have ordered that the respondent be brought to court forcibly. Nor indeed could it have appointed a “temporary representative” to act on his behalf (see paragraph 60, in particular Article 84 of the Civil Procedure Act 1977, and paragraph 61 above).

93. Finally, the Government submitted that the proceedings at issue had effectively commenced on 3 November 2005, when the respondent was duly served with the relevant court documents for the first time, although they also pointed out that the respondent State had ratified the Convention on 3 March 2004 which is why these proceedings had been within the

Court's competence *ratione temporis* for a period of "a little more than two years".

94. The applicant argued that the proceedings in question had been pending at first instance since 1999, despite their pressing nature, and that it was up to the State to organise its judicial system in a way which would guarantee everyone's right to a fair hearing within a reasonable time.

95. Further, the applicant maintained that she had provided the respondent's correct address in her initial claim filed with the Municipal Court on 11 February 1999 and, moreover, that the respondent had been duly served at that very address by the Social Care Centre prior to the institution of the civil proceedings, as well as by the Municipal Court recently (see paragraphs 12, 37 and 38 above).

96. In any event, from the outset, the respondent had made it abundantly clear that he would not take part in any proceedings and thereafter had done everything to avoid receipt of the court summonses/documents sent to him (see paragraphs 15, 37 and 50 above). In such circumstances, the applicant could not reasonably have been expected to submit the respondent's new address, time and time again, and nor was she legally obliged to do so. On the contrary, it was up to the respondent to inform the court of any change in his address, while the Municipal Court, for its part, had clearly failed to make use of the numerous procedural tools at its disposal in order to have the respondent served formally (see paragraphs 60-62 above).

97. Finally, the applicant pointed out that the actions of the Municipal Court referred to by the Government were undertaken at her own insistence primarily, as well as in response to proposals made by her lawyer. The applicant's claim contained all of the information necessary for the Municipal Court to proceed effectively, and the applicant herself could not be blamed for the evasive conduct of the respondent or the inactivity of the Serbian judiciary.

2. Relevant principles

98. 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 behaviour of the applicant and the conduct of the relevant authorities.

99. In cases relating to civil status, what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on the enjoyment of the right to respect for family life (see, among other authorities, *Laino v. Italy* [GC], no. 335158/96, § 18, ECHR 1999-I).

100. Further, according to the Court's established case-law, a chronic backlog of cases is not a valid explanation for excessive delay (see *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1138, § 64). Indeed, Article 6 § 1 imposes on the Contracting States the

duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see *Portington v. Greece,* judgment of 23 September 1998, *Reports* 1998-VI, p. 2633, § 33).

101. Finally, the Court has required exceptional diligence in dealing with cases where the plaintiff was HIV positive, as well as in all matters where the impugned proceedings concerned a child custody dispute (see, *mutatis mutandis*, *A. and Others v. Denmark*, judgment of 8 February 1996, *Reports* 1996-I, § 78, and *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII, respectively).

3. Period to be taken into account

102. The Court observes that the proceedings at issue commenced on 11 February 1999, when the applicant lodged her civil claim with the Municipal Court. However, the period which comes within the Court's competence *ratione temporis* did not begin on that date, but on 3 March 2004, after the Convention entered into force in respect of Serbia (see, *mutatis mutandis*, *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, pp. 18-19, § 53). The civil proceedings are currently still pending at first instance. They have thus so far lasted eight years, of which more than two years and eleven months fall to be examined by the Court.

103. The Court further notes that, in order to determine the reasonableness of the length of time in question, regard must also be had to the state of the case on the date of ratification (see, among other authorities, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII) and finds that on 3 March 2004 the proceedings at issue had already been pending for some five years at first instance.

4. The Court's assessment

104. The Court notes firstly that the impugned proceedings involved dissolution of marriage, child custody and child maintenance, and that, as such, they were of a relatively complex nature.

105. Secondly, the issues in these proceedings were clearly of particular significance for the applicant as well as her child, and required special diligence on the part of the domestic authorities (see paragraphs 99 and 101 above).

106. Thirdly, the applicant herself was HIV positive, a fact at the very least known to the Social Care Centre (itself a State agency involved in the proceedings), which required exceptional diligence (see paragraphs 33-35 and 101 above).

107. Fourthly, the applicant made every reasonable effort to expedite the proceedings and can only be held responsible for the adjournment of the hearing scheduled for 23 December 2005 (see paragraphs 16 and 17 above).

108. Fifthly, she spared no effort to provide the Municipal Court with the respondent's address, even though, following the institution of the proceedings, she was clearly under no legal obligation to do so (see paragraphs 14, 40 and 60 above, in particular Articles 106, 145 and 148 of the Civil Procedure Act 1977, as well as paragraphs 61 and 62 above).

109. Finally, the Municipal Court consistently failed to make use of the available domestic procedural tools to have the respondent served formally, which would have facilitated the continuation of the proceedings in question. In particular, even assuming that the legal conditions for the appointment of a "temporary representative" had not been fulfilled, as alleged by the Government, the Municipal Court could and should have resorted to other measures at its disposal, including, though not limited to, the placement of the summonses and other court documents addressed to the respondent on its own notice board (see paragraph 60, in particular Article 145 of the Civil Procedure Act 1977, and paragraph 62 above, as well as paragraphs 60 and 61 passim).

110. In the light of the criteria laid down in its case-law and having regard to the circumstances of the case, as well as the parties' submissions, the Court considers that the length of the proceedings complained of, and which are still pending, has failed to satisfy the reasonable time requirement.

111. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

112. Under Article 8 of the Convention, the applicant complained that the delay in the civil case meant that she has been unable to see her child or exercise any of her parental rights for some eight years.

113. In addition, under Article 6 § 1 of the Convention, she complained about the respondent State's failure to enforce the interim access order of 23 July 1999.

114. Article 8 reads, insofar as relevant, as follows:

> "1. Everyone has the right to respect for his 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."

115. Being the master of the characterisation to be given in law to the facts of any case before it, the Court considers that the applicant's complaint

made under Article 6 § 1 above also falls to be examined under Article 8 of the Convention (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005, and *Hokkanen v. Finland*, judgment of 23 September 1994, §§ 60-62, Series A no. 299-A).

A. Admissibility

116. The Government and the applicant both relied on the arguments already summarised at paragraphs 78 and 79 above.

117. In addition, the Government implied that the applicant had failed to file either an appeal on points of law ("*revizija*") or, in respect of the non-enforcement of the interim access order alone, a criminal complaint under Articles 134 § 1, 191 § 2 and 340 of the Criminal Code (see paragraphs 63 and 73-75 above).

118. The applicant stated that there were no factual or legal bases to allege that any of the crimes referred to by the Government had been committed and, further, that an appeal on points of law could only have been filed against a final court judgment, had there been one.

119. The Court notes that there was indeed no final judgment rendered at second instance against which an appeal on points of law could formally have been lodged. Further, a criminal complaint, though possible, would also have been ineffective: that is, no speedier than any other "ordinary" criminal matter which could have lasted for years and gone through several instances. Finally, the Government themselves offered no evidence to the contrary. Both an appeal on points of law and a criminal complaint were consequently remedies which did not have to be exhausted in terms of Article 35 § 1 of the Convention.

120. As regards other admissibility arguments, already described at paragraphs 78 and 79 above, the Court has considered them, but again comes to the same conclusions as described at paragraphs 85-88 above.

121. The Court notes therefore that the applicant's complaints under Article 8, concerning the non-enforcement of the interim access order as well as the length of the civil proceedings, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

A. Merits

1. Arguments of the parties

a) As regards the non-enforcement of the interim access order

122. The Government noted that the best interests and the opinion of S.M. had to be taken into account, that S.M. had spent the last eight years of her life with her father alone and that the obligation to reunite the parent and the child was not absolute, meaning that the child's interests could override the parent's request for access and/or custody.

123. The Government recalled that any coercion in this area had to be limited, as the interests and rights of all concerned had to be considered carefully.

124. The Government further observed that the Municipal Court had taken all reasonable steps at its disposal in order to facilitate the enforcement of the interim access order in question even though on 23 October 2001 the applicant's lawyer had withdrawn her request to have this order enforced.

125. Finally, the Government pointed out that, on 15 June 2006, the Municipal Court had granted interim custody of S.M. to the applicant and had ordered the respondent to surrender the child, pending a final decision in the ongoing civil suit.

126. The applicant stated that the interim access order had not been enforced because the respondent had openly refused to comply with it and had for years thereafter successfully avoided being duly summoned.

127. She added that throughout this time the Serbian authorities had failed in their obligation to locate the respondent's residence, or make use of any coercive measures aimed at the enforcement of the order in question.

128. Finally, the applicant stressed that the State had an obligation to reunite her with S.M. and that the passage of time alone could result in irremediable consequences for herself and her child.

b) As regards the length of the civil proceedings

129. The Government and the applicant both relied on the arguments already outlined at paragraphs 90-97 above.

2. Relevant principles

130. The Court notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of “family life” within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

131. Further, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

132. In relation to the State's obligation to implement positive measures, the Court has held that Article 8 includes for parents a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunions (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V).

133. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly found that what is decisive is whether the national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case (see, *mutatis mutandis*, *Hokkanen v. Finland*, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen v. Finland*, cited above, §128; *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003).

134. In this context, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit (see *Ignaccolo-Zenide*, cited above, § 102).

135. Finally, the Court has held that although coercive measures against the children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live (see *Ignaccolo-Zenide*, cited above, § 106).

3. The Court's assessment

136. The Court notes that it was common ground that the tie between the applicant and her child fell within the scope of "family life" within the meaning of Article 8 of the Convention (see paragraph 130 above).

a) As regards the non-enforcement of the interim access order

137. The Court observes that the attempts to enforce the interim access order of 23 July 1999 clearly continued beyond 23 October 2001, and, further, that this order became temporarily irrelevant between 15 June 2006 and 13 November 2006, that is whilst the subsequently adopted interim custody order had itself been in force (see paragraphs 25-32, 50 and 54 above).

138. It is also noted that even though the applicant's lawyer had withdrawn her enforcement request of 8 November 1999, on 19 February 2001 the applicant filed another request to the same effect, and that several attempts to enforce the interim access order were made thereafter (see paragraphs 27-31 above).

139. That being so and having regard to more than four years of non-enforcement prior to ratification, it must be determined whether there has been a failure to respect the applicant's family life during the subsequent two years and two months of non-enforcement prior to 15 June 2006, as well as in respect of the time which has elapsed since 13 November 2006, both periods falling within the Court's competence *ratione temporis*.

140. In this context, the Court notes that from 3 March 2004 until 15 June 2006 the Municipal Court attempted enforcement on several occasions, but each time there was no one to be found at the respondent's address. However, after 13 November 2006 no attempts were made to enforce it.

141. Further, throughout the period at issue, the Municipal Court failed to make use of the available domestic procedural tools to have the respondent served formally (see paragraphs 60, in particular Article 145 of the Civil Procedure Act 1977, and 62 above, as well as paragraphs 60 and 61 passim), being content instead occasionally to order the applicant to provide the respondent's address even though she was clearly not under a legal obligation to do so (see paragraphs 32 and 60 above, in particular Articles 145 and 148 of the Civil Procedure Act 1977, as well as paragraph 61).

142. Finally, despite the respondent's consistent attempts to avoid taking part in any proceedings (see paragraphs 15, 37 and 50 above), it would appear that the Municipal Court had not even considered the use of coercion pursuant to the relevant enforcement procedure rules (see paragraphs 29 and 65 above).

143. Having regard to the facts of the case, including the passage of time, the best interests of S.M., the criteria laid down in its own case-law and the parties' submissions, the Court, notwithstanding the State's margin of appreciation, concludes that the Serbian authorities have failed to make adequate and effective efforts to execute the interim access order of 23 July 1999.

144. There has, accordingly, been a breach of the applicant's right to respect for her family life and a violation of Article 8 of the Convention.

b) As regards the length of the civil proceedings

145. The Court has considered the arguments put forward by the parties as described at paragraphs 90-97 above, as well as the relevant facts, and again comes to the same conclusions described at paragraphs 104-110 above.

146. Given the compelling circumstances of the present case, in particular what is at stake for the applicant, the conduct of the Serbian authorities and, indeed, the difference in the nature of the interests protected by Article 6 § 1 and Article 8 of the Convention (see, *mutatis mutandis*, *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, § 91, and *H.N. v. Poland*, no. 77710/01, 13 September 2005), the Court finds that the length of the impugned civil proceedings amounts to a separate breach of Article 8.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

147. Under Article 13 of the Convention, the applicant complained that she had no effective domestic remedy in order to expedite the civil proceedings at issue. Article 13 reads 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

148. The Court notes that this complaint raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it cannot be declared inadmissible on any other grounds. The complaint must therefore be declared admissible.

B. Merits

1. Arguments of the parties

149. The Government contested the applicant's claim and, in so doing, relied on their arguments described at paragraph 78 above.

150. The applicant provided no additional comments in this respect.

2. Relevant principles

151. 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).

152. 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).

153. 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 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).

3. The Court's assessment

154. The Court notes that the Government have already suggested in their preliminary objection that there were remedies available for the applicant's complaint 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 85-87 above.

155. The Court concludes, 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 applicant's complaints concerning the length of her civil case.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

156. Finally, the applicant complained that she had suffered a violation of her rights under Articles 6 § 1 and 8 of the Convention, as described

above, based solely on the fact that she was HIV positive. In so doing, she relied on Article 14, which provides 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."

157. The Government contested the applicant's submissions and pointed out that the Municipal Court was not even aware of the fact that the applicant was HIV positive until after the communication of the application in the present case.

158. The applicant stated that the first presiding judge in her case had been aware of this fact throughout the proceedings, even though this information should have been confidential, and that this may also account for the fact that she was not granted interim custody from the very beginning. As regards the second presiding judge, appointed subsequently, the applicant acknowledged that she had, in fact, been informed only after the communication of the application in the present case.

159. In view of the facts of the instant case and irrespective of whether, and if so when, the two presiding judges each found out about the applicant being HIV positive, the Court finds that the available evidence is insufficient for it to conclude that the applicant had indeed been discriminated against on the grounds of her health. 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

160. 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

161. The applicant initially claimed 30,000 euros (EUR) in respect of the non-pecuniary damage suffered, having subsequently increased this claim to one million euros for each year of procedural delay.

162. The Government contested that claim. They added, however, that should the Court find a violation of the Convention this finding alone should constitute adequate just satisfaction or, in the alternative, that any financial compensation awarded should be consistent with the Court's own case-law in other similar cases.

163. The Court considers that the applicant has suffered considerable non-pecuniary harm as a result the breach of her rights under the Convention, which is why a finding of a violation alone would clearly not constitute sufficient just satisfaction within the meaning of Article 41.

164. The impugned conduct of the respondent State's judiciary, in particular, must have been a constant source of distress for the applicant who last saw her child in 1998, some eight years ago.

165. Having regard to the above, the amounts awarded in comparable cases (see, *mutatis mutandis*, *Ignaccolo-Zenide*, cited above, § 117) and on the basis of equity, as required by Article 41, the Court awards the applicant EUR 15,000 under this head.

166. 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 shall therefore, by appropriate means, enforce the interim access order of 23 July 1999 and bring to a conclusion, with particular diligence, the ongoing civil proceedings (see, *mutatis mutandis*, *Mužević v. Croatia*, no. 39299/02, § 91, 16 November 2006).

B. Costs and expenses

167. The applicant also claimed EUR 2,590 for the costs and expenses incurred before the domestic courts and EUR 6,300 for those incurred before the Court. In this respect she provided a detailed and itemised calculation.

168. The Government contested that claim, but left the matter to the Court's discretion in the event that it finds a violation of any of the rights guaranteed by the Convention.

169. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

170. In the present case, the Court considers that the amounts claimed by the applicant are excessive. Regard being had to all of the information in its

possession and the above criteria, however, the Court considers it reasonable to award the applicant the sum of EUR 1,350 for the costs incurred domestically, in particular those undertaken with a view to expediting the proceedings complained of (see, *mutatis mutandis*, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 18 October 1982 (Article 50), Series A no. 54, § 17; see also, *argumentum a contrario*, *O'Reilly and Others v. Ireland*, no. 54725/00, § 44, 29 July 2004), and another EUR 3,000 for the costs incurred in the proceedings before this Court.

C. Default interest

171. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1 (concerning the length of the civil proceedings), Article 8 and Article 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Articles 6 § 1 and 8 of the Convention as regards the length of the civil proceedings;

3. *Holds* that there has been a violation of Article 8 of the Convention as regards the non-enforcement of the interim access order;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage and a total of EUR 4,350 (four thousand three hundred and fifty euros) for costs, which sums are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President