FIRST SECTION

**CASE OF V.K. v. CROATIA**

*(Application no. 38380/08)*

JUDGMENT

STRASBOURG

27 November 2012

FINAL

29/04/2013

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

In the case of V.K. v. Croatia,

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

Isabelle Berro-Lefèvre, *President,* Elisabeth Steiner, Nina Vajić, Mirjana Lazarova Trajkovska, Julia Laffranque, Linos-Alexandre Sicilianos, Erik Møse, *judges,*  
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1.  The case originated in an application (no. 38380/08) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr V.K. (“the applicant”), on 11 July 2008. The Vice-President of the Section acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2.  The applicant, who had been granted legal aid, was represented by Ms K. Tomašić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3.  On 9 February 2010 the complaints concerning the length of civil proceedings and an effective remedy in that respect, as well as the applicant’s right to respect for his private and family life and his right to marry, were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1964 and lives in Zagreb.

5.  On 30 November 2002 the applicant married M., and on 22 September 2003 a child, K., was born of the marriage.

6.  On 14 April 2004 the applicant filed a petition for divorce with the Z. Municipal Court (*Općinski sud u Z.*).

7.  At a hearing on 14 December 2004 the applicant submitted his proposal concerning contact and child maintenance for K. At the same hearing the parties agreed that the marriage be dissolved.

8.  On 30 December 2004 M. informed the Z. Municipal Court that she did not agree with the applicant’s proposal as regards child maintenance and asked the court to set an appropriate amount.

9.  The applicant lodged a request for expedition of the proceedings with the Z. Municipal Court on 2 February 2005.

10.  On 2 August 2005 the applicant brought a separate action in the Z. Municipal Court, contesting his paternity of K.

11.  The applicant further lodged a request with the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 25 August 2005 asking that the proceedings be transferred to another court.

12.  The Z. Municipal Court on 15 September 2005 ordered the parties to submit information concerning their incomes. On 22 September 2005 the applicant, and on 18 October 2005 M., complied with this order and submitted the requested information.

13.  At a hearing on 31 October 2005 M. failed to appear. At the same hearing the applicant requested the trial court to issue a partial judgment by which the marriage would be dissolved. The trial judge dismissed the applicant’s request and ordered him to submit further documents concerning his financial status.

14.  The applicant complied with the above order and submitted the requested documents on 2 November 2005.

15.  On 14 December 2005 the applicant again lodged a request for expedition of the proceedings with the Z. Municipal Court.

16.  The Z. Municipal Court on 13 March 2006 ordered M. to submit information concerning the child maintenance payments she had received from the applicant. On 19 April 2006 she complied with this order and submitted the requested information.

17.  Another hearing was scheduled for 3 May 2006 but it was adjourned since the applicant informed the trial court that he was ill and could not attend the hearing.

18.  At a hearing on 10 July 2006 the applicant asked the Z. Municipal Court to join the divorce proceedings with the proceedings in which he was contesting paternity of K. This request was granted, but further proceedings were stayed pending a Supreme Court decision on the applicant’s request for transfer of the proceedings to another court.

19.  On 10 November 2006 the applicant asked the Z. Municipal Court to adopt a partial judgment, in respect of the petition for divorce alone.

20.  The Supreme Court dismissed the applicant’s request for transfer of the proceedings to another court on 22 November 2006.

21.  M. informed the Z. Municipal Court on 8 December 2006 and 9 March 2007 that she and K. had been living in Switzerland and that the applicant had refused to give consent for K. to obtain a passport and to come to Croatia to take part in the paternity proceedings.

22.  On 30 March 2007 the applicant informed the Z. Municipal Court that he had given his consent for K. to obtain a passport.

23.  A hearing scheduled for 23 April 2007 was adjourned because the applicant had not been properly summoned.

24.  Another hearing scheduled for 12 June 2007 was adjourned because the applicant failed to appear. At the same hearing the Z. Municipal Court ordered a DNA test.

25.  The Z. Municipal Court ordered the applicant to pay a sum of 10,000 Croatian kunas (HRK) for the DNA test on 26 June 2007.

26.  In the period between 12 September and 21 November 2007 the applicant made four payments in instalments for the DNA test. He also asked the Z. Municipal Court to extend the time-limit for payment. The Z. Municipal Court granted the applicant’s request and extended the time-limit for a further thirty days. On 26 November 2007 he informed the Z. Municipal Court of the amount he had managed to pay for the DNA test.

27.  On 27 November 2007 the applicant lodged a complaint about the length of the proceedings with the Constitutional Court (*Ustavni sud Republike Hrvatske*) which was forwarded to the Z. County Court (*Županijski sud u Z.*) for further examination. In his submissions the applicant complained that the Z. Municipal Court had dismissed his request for the partial judgment by which his marriage could be dissolved. He submitted that the lengthy divorce proceedings had had an adverse effect on his private life and his dignity and that the delay could prevent his marriage to another woman, planned for June 2008. The applicant also asked that the Z. Municipal Court be ordered to adopt a partial judgment by which his marriage with M. would be dissolved.

28.  At a hearing on 11 February 2008 the Z. Municipal Court found that the applicant had failed to pay the full amount required for the DNA test, and adjourned the hearing.

29.  Another hearing scheduled for 10 March 2008 was adjourned because the applicant informed the trial court that he could not attend the hearing.

30.  On 15 May 2008 the applicant asked the Z. Municipal Court to exempt him from the duty to pay for the DNA test, relying on war veterans’ rights, but on 13 June 2008 that court dismissed his request.

31.  Another hearing was held on 9 July 2008; the applicant failed to appear.

32.  On 25 September 2008 the applicant submitted further complaints to the Z. County Court about the length of the proceedings: he argued that he was a practising Christian and would therefore like to marry again, but had been unable to do so because the Z. Municipal Court had refused to issue a partial judgment by which he could be divorced. He also stressed that he would be humiliated if he had to cancel the planned marriage because he had been unable to divorce.

33.  On 26 September 2008 the applicant informed the Z. Municipal Court that he had made a further payment for the DNA test.

34.  At a hearing on 15 October 2008 the Z. Municipal Court found that the amount necessary for the DNA blood test had been almost fully paid, and requested the parties to make an arrangement to have DNA samples taken.

35.  On 27 October 2008 the applicant, relying on the Court’s case-law, complained before the Z. County Court about the manner in which the paternity proceedings and the DNA blood test had been conducted by the Z. Municipal Court. He pointed out that M. had refused to come to Croatia to have a sample of K.’s DNA taken. He again requested the Z. County Court to order the Z. Municipal Court to adopt a partial judgment concerning the divorce.

36.  The Z. County Court accepted the applicant’s complaint about the length of the proceedings on 31 October 2008. It found a violation of the applicant’s right to a hearing within a reasonable time, awarded him HRK 5,000 in compensation and ordered the Z. Municipal Court to adopt a decision as soon as possible, and within six months at the latest. The relevant part of the decision reads:

“ ... the overall length of these civil proceedings cannot be said to have complied with the reasonable time requirement. ... Everything suggests that the court has failed to conduct the proceedings in compliance with the principle of efficiency, since over a period of longer than four years the case has still not been decided by the first-instance court ...

The applicant, as a plaintiff in the proceedings, has contributed to the length of the proceedings, since the court’s summons to some hearings could not be served on him and he failed to appear at these hearings. His contribution to the length of the proceedings can also be observed through the fact that he has failed to comply with the court’s orders in time (for example to pay for the DNA test).”

37. On the same day the applicant informed the Z. Municipal Court that he was insisting on a DNA test, although in the meantime he had been informed by M. that she and K. would not attend to have a DNA sample taken.

38.  On 20 November 2008 the applicant lodged an appeal with the Supreme Court against the Z. County Court decision of 31 October 2008 in the part concerning the amount of the awarded compensation. He also complained that the Z. County Court had ignored his request that the Z. Municipal Court be ordered to adopt an interim judgment on his divorce.

39.  On 26 January 2009 the applicant submitted to the Z. Municipal Court a written statement from the Employment Service (*Hrvatski zavod za zapošljavanje*) confirming that he was unemployed.

40.  Another hearing scheduled for 2 April 2009 was adjourned because the applicant informed the trial court that he could not attend this hearing and M. had failed to inform the court when she and K. would be able to attend to have a DNA sample taken.

41.  On 23 April 2009 the Supreme Court awarded the applicant further compensation of HRK 3,000 in respect of the length of the proceedings. The relevant part of the decision reads:

“... This court considers that the conduct of the applicant had no influence on the length of the proceedings. On the contrary, the case file reveals that the applicant has demonstrated a strong resolve to have the proceedings concluded as soon as possible and within a reasonable time; this can be seen by his numerous requests that [the court] decide on his petition for divorce, to which the defendant also agreed at the hearing of 14 December 2004 ... Although the first-instance court pointed out that the applicant had contributed to the length of the proceedings by not complying with the summons to appear at the hearings, it is to be noted that it was only the hearing of 12 June 2007 at which he failed to appear despite having been properly summoned. As regards the hearing of 11 February 2008, the applicant was not properly summoned, since the court summons was returned with the notice “informed, did not collect”. As to the applicant’s failure to pay for the DNA test, it is to be noted that he requested that the time-limit for this payment be extended since it concerned a significant amount, given his income and his social circumstances, and the fact that he paid certain amounts in instalments on more than one occasion, in accordance with his financial means. This demonstrated his resolve to comply with the court order.”

42.  The applicant further lodged a constitutional complaint with the Constitutional Court on 22 May 2009 against the above decision of the Supreme Court.

43.  At a hearing on 7 July 2009 the Z. Municipal Court commissioned a DNA paternity report from Clinical Hospital Š. (*Klinička bolnica Š.*).

44.  M. informed the Z. Municipal Court on 21 July 2009 that she refused to come to Zagreb to have a DNA sample taken.

45.  On 6 August 2009 the applicant lodged a request for disqualification of the trial judge, president and all judges of the Z. Municipal Court.

46.  On 10 September 2009 the Constitutional Court dismissed the applicant’s constitutional complaint in respect of the length of the proceedings as ill-founded, on the ground that his complaints had been properly addressed by the lower courts.

47.  The Clinical Hospital Š. on 21 September 2009 informed the Z. Municipal Court that the parties had failed to appear to have DNA samples taken.

48.  The Z. Municipal Court rejected the applicant’s request for disqualification of the judges of that court on 23 September 2009.

49.  On 28 September 2009 the applicant again requested the Z. Municipal Court to commission a DNA report.

50.  The president of the Z. County Court rejected the applicant’s request for disqualification of the president of the Z. Municipal Court on 2 October 2009.

51.  On 7 October 2009 the applicant again requested the Z. Municipal Court to adopt a partial judgment in respect of the divorce alone.

52.  The president of the Z. Municipal Court dismissed the applicant’s request for disqualification of the trial judge on 29 October 2009.

53.  The Z. Municipal Court on 13 November 2009 again summoned the parties to have DNA samples taken.

54.  On 30 November and 1 December 2009 the applicant informed the Z. Municipal Court that he was withdrawing his action concerning his paternity of K., on the ground that the payment of the requested sum for the DNA test had created an intolerable financial burden for him since he was unemployed and without any source of income. He also asked that the marriage be dissolved as soon as possible since his social benefits depended on his marital status.

55.  At a hearing on 14 January 2010 the parties reached an agreement on child maintenance and contact between the applicant and K. On the same day the Z. Municipal Court dissolved the marriage of the applicant and M. and decided on the amount of the child maintenance and contact between the applicant and his child. The parties also declared that they would not lodge appeals and the judgment thus became final.

56.  On 11 September 2010 the applicant married J.V.

II.  RELEVANT DOMESTIC LAW

57.  The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990, 135/1997, 113/2000, 28/2001) read as follows:

Article 29

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.”

Article 61

“Family is under the special protection of the State.

Marriage and legal relations in marriage, extra-marital relationship and family shall be governed by law.”

58.  The relevant provisions of the Family Act (*Obiteljski zakon*, Official Gazette nos. 116/2003, 17/2004, 136/2004, 107/2007) read as follows:

Section 29

“Marriage cannot be concluded by a person who is already married.”

Section 34

“(1) Irrespective of the form in which it was contracted, a marriage ceases upon: the death of a spouse, the pronouncement that a missing spouse is deceased, annulment or divorce.

(2) A marriage ceases by annulment or divorce when the judgement of a court concerning the annulment or divorce becomes final ...“

Section 263

“(1) This Act governs special civil proceedings, non-contentious proceedings and special enforcement proceedings concerning the marital and family affairs under this Act.

(2) Proceedings as in paragraph 1 are urgent.”

Section 264

“The provisions of the Civil Procedure Act and the Enforcement Act shall be applicable to proceedings under section 263 of this Act, unless otherwise provided under this Act.”

59.  The relevant provisions of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and the Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008, and 123/2008), read as follows:

Partial Judgment

Section 329

“(1) If only some of a number of claims are ready for a final decision on the basis of the litigation, or if only part of one claim is ready for a final decision, the court may conclude the trial and adopt a judgment (partial judgment) in respect of the claims or the part of the claim that are ready.

(2) The court is obliged to adopt a partial judgment without delay if, on the basis of admission or waiver of several claims put forward only some become ready for a final decision, or if only part of one claim is ready for this decision ...“

60.  The relevant provisions of the Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/2005, 16/2007 and 113/2008), as in force at the material time, read as follows:

III.  PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

Section 27

“(1) A party to court proceedings who considers that the court has failed to decide within a reasonable time on his or her rights or obligations or a criminal charge against him or her, may lodge a request for the protection of the right to a hearing within a reasonable time with a court at the next higher level of jurisdiction.

(2) If the request concerns proceedings pending before the High Commercial Court of the Republic of Croatia, the High Court for Administrative Offences of the Republic of Croatia or the Administrative Court of the Republic of Croatia, the request shall be decided by the Supreme Court of the Republic of Croatia.

(3) Proceedings for deciding on a request as in sub-section 1 of this section shall be urgent. The rules of non-contentious procedure shall apply *mutatis mutandis* in those proceedings and, in principle, no hearing shall be held.

Section 28

(1) If the court referred to in section 27 of this Act finds the request well founded, it shall set a time-limit within which the court before which the proceedings are pending must decide on a right or obligation of, or a criminal charge against, the person who lodged the request, and may award him or her appropriate compensation for a violation of his or her right to a hearing within a reasonable time.

(2) The compensation shall be paid out of the State budget within three months of the date on which the party’s request for payment is lodged.

(3) An appeal, to be lodged with the Supreme Court within fifteen days, lies against a decision on the request for the protection of the right to a hearing within a reasonable time. No appeal lies against a Supreme Court decision, but a constitutional complaint may be lodged.”

61.  Amendments to the Courts Act in connection with the length-of-proceedings complaint procedure, enacted on 11 December 2009 (*Zakon o izmjenama i dopunama Zakona o sudovima*, Official Gazette, no. 153/2009), read as follows:

Section 7

“Section 28 [of the Courts Act] now reads:

...

(5) An appeal, to be lodged with the Supreme Court within fifteen days, lies against a decision on the request for the protection of the right to a hearing within a reasonable time. A further appeal, to be lodged with a panel of judges of the Supreme Court, lies against the decision of the Supreme Court. The panel shall adopt its decision within three months.

(6) The panel of judges referred to in paragraph 5 shall be composed of three Supreme Court’s judges. They shall be elected by a plenary session of the Supreme Court.

... “

THE LAW

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

62.  The applicant complained about the length of the civil proceedings before the Z. Municipal Court. He relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

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

A.  Admissibility

1.  The applicant’s victim status

63.  The Government argued that the domestic authorities, relying on the principles established in the Court’s case-law, had examined the applicant’s complaint about the length of the proceedings, expressly acknowledged that there had been a violation of his right to a hearing within a reasonable time, and awarded him appropriate compensation. Therefore, in their view the applicant could not claim to be a victim of a violation of his rights under the Convention.

64.  The applicant contested that view. He considered that the domestic authorities had failed to examine all relevant facts concerning the length of the proceedings, and pointed out that the first-instance court had failed to adopt a decision within the time-limit set out by the higher courts. Therefore, he considered that he could still claim to be a victim of a violation of his right to a hearing within a reasonable time under the Convention.

65.  The Court notes that the last decision at the domestic level concerning the applicant’s complaint about the length of the proceedings at issue was adopted by the Constitutional Court on 10 September 2009. At that time the proceedings had been pending for more than five years and four months. For this whole period, just satisfaction was awarded by the Z. County Court and the Supreme Court in the total amount of HRK 8,000. It does not correspond to what the Court would have been likely to award under Article 41 of the Convention in respect of the same period. Furthermore, although the County Court ordered the Municipal Court to adopt a decision within six months at the latest, the Municipal Court failed to comply with that order and the decision was adopted more than a year after the County Court’s order.

66.  The compensation awarded cannot therefore be regarded as adequate in the circumstances of the case (see the principles established in the Court’s case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V, or *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-V). In these circumstances the applicant has not lost his status as a victim within the meaning of Article 34 of the Convention.

2.  Exhaustion of domestic remedies

67.  The Government submitted, relying on the Court’s case-law in *Lazić v. Croatia* (dec.), no. 55507/07, 22 April 2010, that the applicant had failed to exhaust domestic remedies, since he had not lodged a new length-of-proceedings complaint concerning the period after the Z. County Court had found a violation of his right to a hearing within a reasonable time.

68.  The applicant argued that the case-law relied upon by the Government could not be applied when the complaints concerned the overall length of proceedings, which was the situation in the present case. In his view the principles from the *Lazić* case were applicable only in respect of the complaints concerning a new violation of the right to a hearing within reasonable time which had taken place in the period after the first domestic court’s decision on that matter. Therefore, he considered that, by lodging his complaint about the overall length of proceedings with the Constitutional Court, he had exhausted domestic remedies.

69.  The Court notes that in the course of exhaustion of domestic remedies concerning his length-of-proceedings complaint, the applicant brought his complaint before the Z. County Court and an appeal, against the decision of that court, to the Supreme Court. Against the decision of the Supreme Court, the applicant lodged a constitutional complaint with the Constitutional Court. On 10 September 2009 the Constitutional Court examined his complaint on merits and dismissed it as ill-founded endorsing the decisions of the lower courts.

70.  The Court observes that the relevant legislation in Croatia, namely the Courts Act, was amended in December 2009 after the Constitutional Court adopted its decision in the applicant’s case. The domestic law has been amended to the effect that a further appeal lies against the second-instance decision of the Supreme Court. The examination of this further appeal is no longer within the competence of the Constitutional Court, but of a panel of judges of the Supreme Court which in this case acts as a court of third-instance (see paragraph 61). Having regard to the fact that the above amendments were introduced subsequent to the facts of the present case, the Court will base its decision on its case-law related to the previous legislation.

71.  In this respect the Court has held that a constitutional complaint was an effective remedy in Croatia as regards complaints about length of proceedings (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002‑VII). In view of that conclusion, the Court has found that if findings of a violation of the applicant’s right to a hearing within a reasonable time and award of just satisfaction by the domestic courts are in compliance with Convention standards and if the applicant cannot claim to be a victim for the period prior to the final domestic courts’ decision, the applicant was obliged to use available domestic remedies in respect of the length of the proceedings, including a fresh constitutional complaint if applicable as regards the period after such decision (see *Juravić v. Croatia* (dec.), no. 3806/03, 24 October 2006; *Becová v. Slovakia* (dec.), no. 3788/06, 18 September 2007; *Lazić* cited above, and *Hrivňák v. Slovakia* (dec.), no. 35170/05, 14 December 2010).

72.  The Court notes, however, that in the present case the applicant could still claim to be a victim of a violation of the right to a hearing within a reasonable time for the period examined by the Constitutional Court (see paragraph 66). In these circumstances, to ask the applicant to lodge a second constitutional complaint would overstretch his duties under Article 35 § 1 of the Convention (see *Antonić-Tomasović v. Croatia*, no. 5208/03, §§ 25-34, 10 November 2005, and *Sukobljević v. Croatia*, no. 5129/03, § 52, 2 November 2006).

73.  Therefore, the Court considers that the Government’s arguments concerning the exhaustion of domestic remedies must be rejected.

3.  Conclusion

74.  Having regard to the above, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ arguments

75.  The applicant submitted that the civil proceedings concerning his paternity and his marital status had lasted an excessively long time. He argued that the divorce should have been resolved five years earlier, when the parties reached agreement on it, and that paternity would have been resolved earlier had the Z. Municipal Court prevented the other party from obstructing the course of the proceedings. As to his conduct during the proceedings, he pointed out that he had not provided a DNA sample because M. had expressly refused to have a sample taken from the child. He also claimed that he had had problems with delivery of mail to his address, which was the reason for his absence from some hearings. Finally, he argued that the proceedings had been concluded not due to the diligence of the Z. Municipal Court but because he had withdrawn his action concerning paternity, which he had done just so as to be able to get the divorce, although this would leave him in eternal doubt about his paternity of the child.

76.  The Government accepted the domestic courts’ findings that the length of the proceedings at issue had exceeded the “reasonable time” requirement, but they did not agree that the delays which occurred after the decision of the Supreme Court had been attributable to the national courts. They argued that the case at issue had been very complex, since it dealt with three closely interrelated legal issues (divorce, paternity, and child maintenance) and that the Z. Municipal Court had conducted the proceedings diligently, particularly having in mind that one of the parties lived outside Croatia. They also pointed out that the Z. Municipal Court had adopted its judgment with a minimum delay from the time-limit ordered by the higher courts.

77.  As to the conduct of the applicant, the Government argued that by his absence from the hearings, not complying with orders for DNA samples to be taken, and unfounded requests for disqualification of the Z. Municipal Court judges, the applicant, together with the other party, had caused the delays in the proceedings. They also pointed out that after he had lodged his paternity petition in 2005 the applicant had withdrawn it in 2009, which had significantly contributed to the overall length of the proceedings.

2.  The Court’s assessment

(a)  General prinicples

78.  The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

79.  The Court would also reiterate that particular diligence is required in cases concerning civil status and capacity (see *Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, p. 23, § 49) and that the competent national authorities are required by Article 6 § 1 to act with particular diligence in ensuring the progress of the proceedings (see *Mikulić v. Croatia*, no. 53176/99, § 44, ECHR 2002‑I). In such cases, 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 enjoyment of the right to respect for family life (see *Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

(b)  Application of these principles to the present case

80.  The Court considers that the period to be taken into account started on 14 April 2004, when the applicant lodged his petition for divorce with the Z. Municipal Court, and ended on 14 January 2010, when the judgment of the Z. Municipal Court was adopted and became final. Thus, the period to be taken into account amounted to five years and eight months at one level of jurisdiction.

81.  The Court considers that the overall length of the proceedings concerning the applicant’s civil status and his paternity could be justified only under exceptional circumstances which must be convincingly demonstrated. In this connection, the Court firstly notes that, contrary to the Government’s submissions, the Supreme Court had not attributed any delays to the applicant but to inefficiency on the part of the Municipal Court. Therefore the Court cannot accept the explanations given by the Government for the length of proceedings, particularly in view of the refusal of the other party to have the DNA test and lack of appropriate response by the trial court in that respect.

82.  As to the applicant’s conduct during the proceedings, the Court notes that the applicant had on more than one occasion requested the expedition of the proceedings and complained about the manner in which the proceedings before the first-instance court had been conducted, asking that they be terminated as soon as possible, which is itself incompatible with the argument that, by using his procedural rights and seeking disqualification of the judges who in his view had not conducted the proceedings properly, the delays in the proceedings can be attributed to him. In this respect the Court would reiterate that an applicant cannot be blamed for taking full advantage of the remedies afforded by national law in the defence of his interests (see *Nankov v. “the former Yugoslav Republic of Macedonia”*, no. 26541/02, § 47, 29 November 2007).

83.  As regards the applicant’s absence from the hearings, the Court notes that the applicant had claimed certain problems with delivery of court summons to hearings, which had also been recognised and accepted by the Supreme Court. In this respect the Court also notes that the applicant had failed to appear only at three hearings without previously having given an appropriate reason, which cannot in any respect justify the delay in the proceedings of more than five years. As to the applicant’s withdrawal of the paternity petition, the Court considers that it has to be viewed in the light of all the circumstances of the present case, and in particular of the fact that the applicant had wanted to have the proceedings before the Z. Municipal Court concluded as soon as possible, because he had an interest in obtaining a divorce on account of his marriage plans. In any event the Court considers that it cannot justify the overall length of the proceedings as the Government suggested, since Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to hear cases brought by the applicants within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006‑VII).

84.  The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the present one (see, for example, *Mikulić*, cited above, § 46; *Szarapo v. Poland*, no. 40835/98, § 45, 23 May 2002; and *Kwiatkowski v. Poland*, no. 4560/04, § 22, 17 October 2006). It holds that in the period which was subject to the scrutiny of the national courts the length of the proceedings was already excessive and failed to meet the “reasonable time” requirement.

85. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of 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

86.  The applicant complained that the prolonged uncertainty as to whether he was the father of K. had violated his right to respect for his private and family life. He relied on Article 8 of the Convention, which reads as follows:

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

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Admissibility

87.  The applicant contended that he had lodged the paternity petition after he had learned from M. that he had not been the father of their child. However, the lack of diligence of the domestic courts during the divorce proceedings had left him in a position to choose between two possibilities; to remain married for an uncertain period of time or to withdraw the paternity petition. He had therefore withdrawn the paternity petition in order to get the decision on divorce although that had left him without the possibility to determine his legal and biological relations with the child.

88.  The Government submitted that there had never been any uncertainty concerning the applicant’s paternity of K. in view of the fact that the domestic law provided a legal presumption that the mother’s husband was also the father of any child born to her during the marriage. They stressed that by withdrawing his paternity petition the applicant had waived his right to rebut this presumption.

89.  The Court reiterates that Article 8 of the Convention, for its part, protects not only “family” but also “private” life and therefore even though the paternity proceedings which the applicant wished to institute were aimed at the dissolution in law of existing family ties, the determination of his legal and biological relations with his child undoubtedly concerned his private life under Article 8 of the Convention (see *Rasmussen v. Denmark*, 28 November 1984, § 33, Series A no. 87; *Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999; *Shofman v. Russia*, no. 74826/01, § 31, 24 November 2005; *Tavlı v. Turkey*, no. 11449/02, § 26, 9 November 2006; and *I.L.V. v. Rumania* (dec.), no. 4901/04, § 33, 24 August 2010).

90.  Private life, in the Court’s view, includes a person’s physical and psychological integrity, and can sometimes embrace aspects of an individual’s physical and social identity. Respect for “private life” must also comprise to a certain degree the right to establish relationships with other human beings (see, *mutatis mutandis*, *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, pp. 33-34, § 29).

91.  In the present case the Court notes that the applicant first lodged his divorce petition with the domestic courts; as part of those proceedings he sought, *inter alia*, to have child maintenance and contact with K. regulated. Only more than a year later did the applicant lodge another, separate action by which he sought to contest the paternity of K.

92.  The Court notes however that, unlike in the other similar cases already dealt with by the Court, as cited above, the applicant failed to pursue his paternity action and moreover, when the judgment concerning child maintenance and contact with K. had been passed, the applicant explicitly waived his right to appeal against that judgment. The Court is aware of the applicant’s desire for the proceedings at issue to be concluded as soon as possible but, disregarding the particular motives, the Court considers that the importance of the legal and biological relations between a parent and a child required the applicant to pursue his paternity action, having in mind the importance and prominence of the concept of respect for family and private life.

93.  Therefore, since the applicant failed to pursue his action contesting his paternity of K., the Court considers that that this complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III.  ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

94.  The applicant complained that the lengthy divorce proceedings had impaired his right to marry again. He relied on Article 12 of the Convention, which reads as follows:

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

A.  Admissibility

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

B.  Merits

1.  The parties’ arguments

96.  The applicant submitted that since September 2005 he had been in a serious relationship with J.V., whom he married as soon as the judgment on his divorce became final. This could have been verified by calling as a witness and questioning J.V. herself and a number of other witnesses. He stressed that he was a practising Christian and that it was of the outmost importance for him to marry J.V. as soon as possible, which the domestic authorities had prevented by not deciding on his divorce within a reasonable time.

97.  The Government argued that there is no right to divorce under Article 12 of the Convention. In any event, the applicant had failed to substantiate his arguments, both before the Court and before the domestic authorities, that he had ever seriously intended to remarry. He had also failed to provide any details of the identity of the person he allegedly wanted to marry. As to the fact that the domestic courts had failed to adopt an interim judgment on the divorce, the Government argued that a decision on the applicant’s divorce could not be adopted without also deciding on the best interests of the child. Therefore, the domestic courts had to first examine all matters relevant to child maintenance and contact between the applicant and his child, as well as the issue of the child’s paternity, before deciding on the applicant’s petition for divorce. As soon as these issues had been settled, the domestic courts had adopted their decision on divorce, against which the applicant had decided not to appeal.

2.  The Court’s assessment

(a)  General prinicples

98.  The Court reiterates that Article 12 of the Convention secures the fundamental right of a man and a woman to marry and to found a family. The exercise of this right gives rise to personal, social and legal consequences. It is “subject to the national laws of the Contracting States”, but “the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired” (see *Rees v. the United Kingdom*, 17 October 1986, p. 19, § 50, Series A no. 106, and *F. v. Switzerland*, 18 December 1987, § 32, Series A no. 128).

99.  The Court also reiterates that although a right to divorce cannot be derived from Article 12 of the Convention (see *Johnston and Others v. Ireland*, 18 December 1986, § 54, Series A no. 112), if national legislation allows divorce, it secures for divorced persons the right to remarry without unreasonable restrictions (see *F. v. Switzerland*, cited above, § 38). In this respect the Court has considered that a failure of the domestic authorities to conduct divorce proceedings within a reasonable time could, in certain circumstances, raise an issue under Article 12 of the Convention (see *Aresti Charalambous v. Cyprus*, no. 43151/04, § 56, 19 July 2007).

(b)  Application of these principles to the present case

100.  The Court firstly notes that there is no dispute between the parties that the Croatian legal system allows for divorce as one of the means of dissolution of a marriage. Moreover, the Family Act provides detailed substantive and procedural rules governing divorce which require, *inter alia*, that divorce proceedings be treated as urgent cases. The Court also notes that the Croatian legal system adheres to the principle of monogamy, and does not allow individuals who are already married to conclude another marriage. Therefore, a failure on the part of the domestic authorities to conduct divorce proceedings with the required urgency may impair the right to marry of an individual who has, for example, sought to have his previous marriage dissolved in order to marry again, or who has acquired a serious and genuine opportunity to remarry after he had instituted divorce proceedings.

101.  As to the present case, the Court notes that the applicant instituted the divorce proceedings in the domestic courts in April 2004 and that in the same year, at the first hearing held **in December (see paragraph 7 above)**, the parties agreed that their marriage should be dissolved. At a hearing held on 10 July 2006 the applicant asked that the divorce proceedings be joined to those where he contested his paternity of K, which was granted. However, he subsequently requested the domestic courts on more than one occasion that a partial judgment be adopted in these proceedings on divorce **(see paragraphs 13, 19, 27, 32, 35, 38 and 51 above)**, and that other issues related to the divorce proceedings be decided on separately. In this connection the Court notes that the domestic system provides for a partial judgment in cases when there is an agreement between the parties concerning a separate issue in the proceedings. The Court also notes that there is nothing in the domestic law that would suggest that this provision could not have been applied in the applicant’s case. However, the domestic courts either dismissed without giving any reasons or ignored the applicant’s request for a partial judgment for more than five years, during which the proceedings were pending before the first-instance court.

102.  The Court further notes that at least on two occasions, when complaining about the length of the proceedings, the applicant informed the domestic courts that he was planning to remarry, and that the lengthy divorce proceedings were preventing him from doing so. He specified the date of his marriage at June 2008, and stressed that he would be humiliated if he had to cancel the planned marriage because he had not been able to obtain a divorce owing to the lengthy court proceedings, which has to be viewed in light of the applicant’s religious feelings which he also raised in his complaints before the domestic courts (see paragraph 32).

103.  The Court considers that these arguments raised by the applicant are substantiated by the fact that he had indeed married J.V. shortly after his marriage to M. was dissolved (see, by contrast, *Capoccia v. Italy*, no. 16479/90, decision of the Commission of 13 October 1993; *S.D.P.* *v. Italy*, no. 27962/95, decision of the Commission of 16 April 1996; *Bolignari v. Italy*, no. 37175/97, decision of the Commission 22 April 1998; *Chau v. France* (dec.), no. 39144/02, 14 June 2005; *Bacuzzi v. Italy* (dec.), no. 43817/04, 24 May 2011; and *Aresti Charalambous*, cited above).

104.  As to the Government’s arguments that the applicant had not provided the domestic courts with any personal details about the woman he wanted to marry, the Court considers that such a requirement has no basis in domestic law or would otherwise be necessary in order to oblige the domestic courts to perform their already existing obligation to conduct the divorce proceedings diligently and expediently. In any event, if the domestic courts considered this to be a relevant and decisive factor in their taking certain procedural measures, such as adopting a partial judgment on divorce, as requested by the applicant, they could have asked for more detailed information which, however, they never did.

105.  Against the above background, the Court bears in mind the Government’s and the domestic courts’ acceptance of the protracted length of the divorce proceedings and the fact that it has also found a violation of the applicant’s right to a hearing within a reasonable time under Article 6 § 1 of the Convention. It notes, in addition, that the applicant substantiated his arguments concerning his intention to remarry (see paragraph 103).

106.  Accordingly, the Court attaches importance to the failure of the domestic authorities to conduct the divorce proceedings efficiently and to take into account the specific circumstances of those proceedings, such as the agreement of the parties to divorce, a possibility of rendering a partial decision and the urgent nature of these proceedings under domestic law. Consequently, in these particular circumstances the applicant was left in a state of prolonged uncertainty which amounted to an unreasonable restriction of his right to marry (see, *mutatis mutandis*, *Mikulić*, cited above, §§ 65-66; and *F. v. Switzerland*, cited above, § 38).

107.  Therefore the Court considers that there has been a violation of Article 12 of the Convention.

IV.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

108.  The applicant complained under Article 13, taken in conjunction with Article 6 § 1 of the Convention, that the Z. Municipal Court had not complied with the orders of the higher courts to adopt a judgment within the specified time-limit. He relied on Article 13 of the Convention, which 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

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

B.  Merits

1.  The parties’ arguments

110.  The applicant submitted that the domestic length-of-proceedings remedy had been ineffective in his case, because the Z. Municipal Court had failed to adopt a judgment within the time-limits specified by the higher courts.

111.  The Government contested that view. They argued that the domestic length-of-proceedings remedies were effective in respect of length-of-proceedings complaints which have also been recognised by the Court.

2.  The Court’s assessment

112.  The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

113.  In the present case, firstly the County Court and then the Supreme Court both accepted the applicant’s complaints about the length of proceedings, found a violation of his right to a hearing within a reasonable time and awarded him compensation. The fact that the compensation awarded to the applicant at the domestic level does not correspond to the amount awarded by the Court in comparable cases does not render the remedy ineffective (see for example, *Jakupović v. Croatia*, no. 12419/04, § 28, 31 July 2007, and *Rišková v. Slovakia*, no. 58174/00, § 100, 22 August 2006).

114. However, the Court considers that the obligation of the States under Article 13 also encompasses the duty to ensure that the competent authorities enforce remedies when granted, and notes that it has already found violations on account of a State’s failure to observe that requirement (see *Iatridis v. Greece* [GC], no. 31107/96, § 66, ECHR 1999-II). For the Court, it would be inconceivable that Article 13 provided the right to have a remedy, and for it to be effective, without protecting the implementation of the remedies afforded. To hold the contrary would lead to situations incompatible with the principle of the rule of law, which the Contracting States undertook to respect when they ratified the Convention (see, by analogy, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

115.  As regards the circumstances of the present case, the Court notes that the Z. County Court ordered a time-limit for the Z. Municipal Court to complete the civil proceedings at issue. However, the Municipal Court failed to comply with the time-limit ordered by the County Court. In these circumstances the Court cannot accept that the remedies provided by the national law in respect of the length of proceedings were effective in the applicant’s case.

116.  This conclusion, however, does not call into question the effectiveness of the remedy as such or the obligation for other applicants to lodge a complaint about the length of pending proceedings under section 27 of the Courts Act and subsequently to pursue their complaints under section 28 of the Courts Act in order to exhaust domestic remedies concerning complaints about length of proceedings, before brining their complaints to the Court (see, *mutatis mutandis*, *Praunsperger v. Croatia*, no. 16553/08, § 49, 22 April 2010).

117.  There has accordingly been a violation of Article 13 in the present case.

V.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

118.  The applicant also complained under Article 5 of Protocol No. 7 without any further substantiation.

119.  In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

VI.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

120.  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

121.  The applicant claimed 16,448.16 euros (EUR) in respect of pecuniary damage, on the grounds that he been travelling to visit J.V., whom he had not been able to marry owing to the lengthy divorce proceedings, and of loss of income, since he had not been working because he had developed health problems caused by the circumstances of the case at issue. In respect of non-pecuniary damage the applicant claimed EUR 16,000.

122.  The Government considered the applicant’s claims excessive, unfounded and unsubstantiated.

123.  As regards pecuniary damage, the Court considers that there is no causal link between the violations found and the amount claimed. Therefore, the applicant’s claim for pecuniary damage is dismissed.

124.  Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B.  Costs and expenses

125.  The applicant also claimed EUR 160 for postal costs and expenses incurred before the Court.

126.  The Government considered that the applicant had failed to substantiate his claim for costs and expenses in any way.

127.  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 are reasonable as to quantum. In the present case, regard being had to the fact that the applicant was granted legal aid, the Court considers that it is not necessary to award him any further amount concerning the costs and expenses for the proceedings before the Court.

C.  Default interest rate

128.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1.  *Declares* unanimously the complaint concerning the length of the civil proceedings and an effective remedy in that respect as well as the complaint concerning the applicant’s right to marry admissible and the remainder of the application inadmissible;

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

3.  *Holds* by six votes to one that there has been a violation of Article 12 of the Convention;

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

5.  *Holds* unanimously

(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 4,000 (four thousand euros), to be converted into Croatian kunas at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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* unanimously the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Isabelle Berro-Lefèvre  
 Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Berro-Lefèvre is annexed to this judgment.

I.B.L.  
S.N.

PARTIALLY DISSENTING OPINION  
OF JUDGE BERRO-LEFEVRE

(Translation)

My disagreement with the majority is limited to point 3 of the operative provisions, to the extent that, for the first time and contrary to the Court’s previous case-law on this question, the Chamber has found a violation of the right to marry as protected by Article 12 on account of the length of the divorce proceedings.

For my part, I consider that, in the light of our case-law as applied to the instant case, there could not have been a breach of the applicant’s right to marry.

In finding a violation, the majority has based its decision on the behaviour of the domestic authorities, who failed to conduct the divorce proceedings efficiently and to take into consideration the specific circumstances of the case. In the opinion of my colleagues, this situation left the applicant in a state of prolonged uncertainty which amounted to an unreasonable restriction of his right to marry (see paragraph 106 of the judgment).

I would make the following observations - firstly factual and subsequently legal - with regard to this conclusion:

1.  Although the spouses accepted the principle of divorce fairly quickly after the divorce proceedings were initiated (in April 2004), it remains the case that the issues of contact and child maintenance continued to be matters of contention.

More than a year after filing the petition for divorce, the applicant, on his own initiative, brought a separate action in the same court contesting his paternity of the child (see paragraph 10).

2.  I note that, having initially asked the court to issue a partial decision on the dissolution of the marriage, in July 2006 the applicant requested that the two sets of proceedings be joined, a request which was granted. Thus, he himself was responsible for the situation of which he subsequently complained; this indicates that, in his opinion, and as the domestic court also held, there was indeed a link between the two cases (to the extent that both concerned the child). It cannot therefore be argued that the court should immediately have granted a divorce as soon as the parties had agreed to dissolve their marriage.

3.  The divorce was pronounced in January 2010, that is, 5 years and 8 months after the initial petition was filed. Such a length of proceedings is clearly unacceptable, particularly in the light of the subject-matter, which, as the Court has frequently reiterated, requires the authorities to act with particular diligence. This situation, however, has been addressed through the finding of a violation of Article 6 of the Convention (see paragraph 85).

Did this length of proceedings, admittedly unreasonable, also entail a violation of Article 12? I do not believe so, and am all the more convinced of this in the light of our case-law.

The Court has held as follows on the interpretation of the right safeguarded by Article 12 of the Convention:

“Article 12 secures the fundamental right of a man and a woman to marry and to found a family. The exercise of this right gives rise to personal, social and legal consequences. It is ‘subject to the national laws of the Contracting States’, but ‘the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired’ (see the *Rees* judgment of 17 October 1986, Series A no. 106, § 50)” (*F. v. Switzerland*, no. 11329/85, 18 December 1987, § 32).

Accordingly, while the right to marry is not subject to specific limitations, it is nonetheless integrated into national legislation: its exercise may be limited, subject to the condition that its very essence is not impaired.

4.  In the case of *Aresti Charalambous v. Cyprus* (no. 43151/04, 19 July 2007), the applicant also complained about the length of divorce proceedings (5 years, 7 months and 21 days for two levels of jurisdiction) and the fact that this meant he had been unable to remarry. The Court, while acknowledging that there had been a violation of Article 6 of the Convention in terms of the excessive length of proceedings, indicated that “the Court would not exclude that a failure to conduct divorce proceedings within a reasonable time could in certain circumstances raise an issue under Article 12 of the Convention. However, in the present case, bearing in mind all the circumstances and the overall length of the proceedings, the Court finds that the applicant’s situation was not such that the very essence of that right was impaired” (§ 56).

5.  Equally, in the decision *Wildgruber v. Germany* (nos. 42402/05 and 42423/05, 7 November 2005), the applicant also complained about the consequences for his right to marry of the district court’s interim decision not to sever the divorce proceedings from the ancillary proceedings (particularly with regard to custody of children). After noting that a divorce had been pronounced 3 years and 9 months after the petition had been filed, the Court concluded: “despite his age (66 years) and the fact that he had had a daughter with the woman he wished to marry, the applicant’s situation was not such that the very essence of his right to marry was impaired”.

6.  It is not therefore the length of proceedings as such and of itself that is likely to raise an issue under Article 12, but the existence, in this context, of circumstances so specific that they amount to interference or an impairment of the very essence of the person’s right to marry. Thus, circumstances that I would describe as essential must be demonstrated in order for there to have been interference with the very essence of the right asserted.

Without a definition of such circumstances, one might ask where the Court will place the “cursor” establishing the waiting period to be considered reasonable in envisaging a new marriage. Will all violations of Article 6 for unreasonable length of proceedings entail, *ipso facto*, a violation of Article 12 if the applicant can demonstrate that he or she has found another soul mate and is contemplating a fresh attempt at matrimony?

Are we to consider that future spouses who are unable to extricate themselves from previous marital bonds have had the very essence of their right to marriage impaired?

7.  What are the circumstances of this Croatian case that would distinguish it from the above-cited examples from the case-law?

The judgment sets them out: the parties’ agreement to divorce, a possibility of rendering a partial decision and the urgent nature of the proceedings under domestic law (paragraph 106).

Yet these are merely elements which are clearly to be taken into account in assessing the length of proceedings, but which cannot be considered, in and of themselves, as restricting or reducing the right in question in such a way or to such an extent that the essence of the right is impaired.

Further, the judgment does not even set out to demonstrate any such impairment, since it simply refers to a restriction of the applicant’s right resulting from the state of prolonged uncertainty in which he was left. In my opinion, a step has been omitted in concluding that there has been a violation: in what way did this restriction attain the level of intensity required for the very essence of the right to be impaired? The grounds relied on by the majority in § 106 (agreement of the parties, lack of partial decision, urgent procedure) are certainly not sufficient to amount to an impairment of the every essence of the right to marriage as alleged by the applicant.

The applicant has been able to marry, admittedly at a later date than he would have wished, and his religious convictions have thus been respected. Accordingly, I consider that there has been no violation of Article 12 of the Convention.