DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/00/3832

Katarina TRIFUNOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 15 January 2004 with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned application introduced to the Human Rights Chamber for Bosnia and Herzegovina pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Article VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement and Rules 50, 54, 56 and 67 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Slovakia who married a citizen of Bosnia and Herzegovina in 1977 and thereafter made her home in Vinska, Srpski Brod Municipality, the Republika Srpska. She lived in Vinska from 1977 through March 1992, when she left due to the hostilities in Bosnia and Herzegovina, and then again from July 1998 through April 1999. During their marriage, they had two children, who are both citizens of the Republika Srpska. On 2 April 1999, the marriage between the applicant and her husband was dissolved, and her ex-husband was granted custody over their then minor child because, *inter alia*, he was the only parent with financial means to provide for her support. Thereafter, the applicant's ex-husband prevented the applicant from living in the family house, and she has been left with no home, no financial support, and no regular access to her children.

2. In May 1999 the applicant initiated two lawsuits before the Basic Court in Derventa: one for financial support from her ex-husband and the other to divide the marital property. To date these proceedings, which are still in the first instance, remain pending before the Basic Court in Derventa. In addition, in May 1999 the applicant further initiated a lawsuit before the Basic Court in Derventa for disturbance of possessions because her ex-husband had forcibly removed her from the family house and refused to allow her to reside there. These proceedings were resolved in the applicant's favour on 11 February 2000, and the Court ordered the applicant's ex-husband to allow her to reside in the family house. However, the applicant has only been able to achieve enforcement of this decision for one day. Since then, her ex-husband has prevented her from living in the family house, and the competent authorities have taken no further action to enforce her right. Finally, in August 1999 the applicant submitted a request for permanent residence in the Republika Srpska after her temporary residence permits based upon her marriage expired. On 25 January 2002, the Ministry of Interior of the Republika Srpska refused the applicant's request, claiming that it did not meet the requirements of the Law on Immigration and Asylum of Bosnia and Herzegovina.

3. The application raises issues under Article 6 paragraph 1 (right to a fair hearing in a reasonable time) of the European Convention on Human Rights (the "Convention") and Article 8 (right to respect for private and family life) of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

4. The Chamber received the application on 28 April 2000 and registered it on 12 May 2000.

5. The applicant submitted letters to the Chamber providing additional information in support of her application and urgently requesting a decision in her case on 15 June, 5 September, 9 and 23 October, 13 November, 12 December 2000; 29 January, 2 and 26 April, 17 May, 29 October 2001; and 27 February, 4 and 22 April, 6 May 2002.

6. On 16 May 2002, the Chamber transmitted the application to the Republika Srpska for its observations on the admissibility and merits with respect to Article 6(1) and Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The application was not transmitted to Bosnia and Herzegovina. Therefore, throughout this decision, "respondent Party" refers only to the Republika Srpska.

7. On 4 July 2002, the Republika Srpska submitted its observations on the admissibility and merits of the application. On 16 July 2002, it submitted further observations prepared by the Ministry of Interior of the Republika Srpska.

8. On 24 and 25 July and 5 August 2002, the applicant submitted her observations in reply. She submitted further letters to the Chamber on 5 and 13 August, 19 September 2002.

9. On 12 November 2003, the Chamber requested the parties to submit updated information. On 20, 24, 25, and 28 November 2003, the respondent Party submitted most of the requested information. On 11 December 2003, the applicant submitted the requested information.

10. The Chamber deliberated on the admissibility and merits of the application on 10 May 2002. The Commission deliberated upon the admissibility and merits of the application on 15 January 2004 and it adopted the present decision on the same day.

III. STATEMENT OF THE FACTS

A. Proceedings concerning the marriage and divorce

11. The applicant is a citizen of Slovakia. On 29 July 1977, in the present-day Republic of Slovakia, the applicant married Velimir Trifunović. On 21 August 1977, a daughter Jovanka was born to them, and on 6 April 1983, a second daughter Natalija was born to them. The applicant's husband and children are citizens of the Republika Srpska. During the marriage, the applicant was a housewife and did not earn income outside the family house in Vinska, Srpski Brod Municipality. It appears that she resided in the Republika Srpska with temporary residence permits based upon her marriage. According to the applicant, on 29 March 1992, she and her children, with the consent of her husband, moved to Slovakia to escape from the hostilities. The entire family returned to Vinska on 3 July 1998, and they resided together once again in the family house until 19 April 1999.

12. After twenty-three years of marriage and upon the request of Velimir Trifunović, the Basic Court in Derventa declared the marriage between the applicant and her husband dissolved on 2 April 1999. The main hearing on the divorce was held on 2 April 1999. The Court ordered that custody of their minor child Natalija be given to Velimir Trifunović for "protection, education, and support". The claimant, Velimir Trifunović, had proposed to the Court that he be given custody over Natalija because he "has the possibility to provide basic means for supporting the child as he has a job from time to time and income thereof, and that is also the child's will. The mother does not have any income and the claimant is supporting her to date". The applicant did not object to this proposal. During the proceedings, the Court conducted an insight into the relevant records, heard pleadings from both parties, heard testimony from the representative of Social Work Centre Sprski Brod regarding the custody of Natalija, and heard testimony from Natalija concerning with whom she wished to live. In support of its decision to assign custody of Natalija to her father, the court reasoned, "it is beyond dispute that both [the defendant mother and the claimant father] are unemployed, but the claimant has some income occasionally and has certain means for support, while the defendant does not have sufficient means even to support herself". This decision was supported by the recommendation of the representative of Social Work Centre Srpski Brod and the stated preference of Natalija. The judgment of 2 April 1999 became valid on 19 April 1999.

B. Proceedings concerning financial support

13. On 22 April 1999, the applicant submitted a request to the Srpski Brod Municipality for one-time financial aid after her ex-husband threw her out onto the street following their divorce. On 26 April 1999, the Srpski Brod Municipality denied her request, as the budget does not provide funds for such purposes.

14. On 25 May 1999, the applicant filed a lawsuit before the Basic Court in Derventa requesting financial support from her ex-husband in the amount of 50% of the guaranteed monthly salaries in the Republika Srpska.

15. On 10 May 2001, the Basic Court in Derventa issued a procedural decision postponing the main hearing in the applicant's lawsuit for financial support until 21 June 2001.

16. The Commission has no further information about the proceedings for financial support. However, based upon the case file and the applicant's submissions, which have not been contested by the respondent Party, it appears that these proceedings are still pending before the Basic Court in Derventa.

C. Proceedings concerning the division of marital property

17. On 13 May 1999, the applicant filed a lawsuit before the Basic Court in Derventa to divide the marital property between her and her ex-husband.

18. On 9 February 2000, the Basic Court in Derventa notified the applicant that the main hearing in the proceedings to divide the marital property initially scheduled for 7 February 2000 was postponed indefinitely due to the appointment of a new presiding judge. After the assignment of the case to Judge Snežana Lazarević, a hearing was conducted on 26 April 2000. The applicant proposed certain witnesses. These witnesses were summoned to a hearing held on 9 May 2000, and, with the exception of two witnesses who failed to appear, their testimony was heard.

19. On 11 May 2000, the applicant submitted a proposal to the Basic Court in Derventa for a judicial settlement of the marital property dispute; she requested a settlement in the amount of 150,000 KM. At a hearing held on 23 May 2000, the defendant rejected the proposed settlement.

20. At a hearing held on 22 June 2000, further witnesses testified before the Basic Court. The applicant's attorney further proposed that, due to the complexity of the case, they should attempt to reach an out-of-court settlement; thus, the main hearing was indefinitely postponed. It appears that no settlement was reached, as the proceedings to divide the marital property have continued.

21. At the hearing scheduled for 31 October 2000, the applicant's lawyer failed to appear, and she refused to participate in the hearing in his absence.

22. On 20 November 2000, the applicant submitted a request to disqualify Judge Snežana Lazarević from presiding over the proceedings to divide the marital property due to her alleged partiality towards the applicant's ex-husband. At the hearing scheduled for 23 November 2000, neither the applicant nor her lawyer appeared. The hearing scheduled for 7 December 2000 was postponed until the President of the Basic Court reached a decision upon the applicant's request to disqualify Judge Lazarević. On 15 December 2000, the President of the Basic Court issued a procedural decision rejecting the applicant's request to disqualify Judge Lazarević. This procedural decision was delivered to the parties after 18 January 2001.

23. A hearing was held in the proceedings to divide the marital property on 22 March 2001, during which the parties testified and the Basic Court ordered the applicant's lawyer to specify the claim regarding moveable property and savings deposits. The applicant submitted the requested specification of moveable property on 27 March 2001.

24. A further hearing was held on 20 April 2001. The hearing scheduled for 31 May 2001 was postponed because the lawyers for both parties failed to appear. On 14 June 2001, Judge Lazarević sent a letter to the applicant's lawyer asking him to confirm whether he represented the applicant as he had consecutively failed to appear at hearings without justification. Thereafter, the lawyer cancelled his representation of the applicant in a submission of 26 June 2001.

25. The applicant requested that the hearing scheduled for 9 July 2001 be postponed in order to allow her time to engage another lawyer. On 20 August 2001, the applicant authorised a new lawyer, who appeared at hearings held on 5 September 2001 and 2 October 2001. The parties pursued an agreement on indisputable common marital property, but at the hearing on 15 November 2001, the applicant's lawyer informed the Basic Court that no agreement could be reached with the defendant regarding indisputable common marital property.

26. On 27 November 2001, the applicant specified her claim regarding moveable property. The defendant challenged this claim at the hearing on 13 December 2001 and proposed that witnesses testify. Further evidence was presented at the hearing on 22 January 2002. At that hearing, the applicant's lawyer proposed that, due to the complexity of the case resulting from the claim for moveable property, the parties pursue a settlement on the payment of compensation. At the hearing on 5 March 2002, the applicant's lawyer reported that the parties had been unable to reach any settlement regarding any of the marital property. At the hearing on 28 March 2002, the parties

settled the applicant's claim for certain moveable property and she withdrew her legal action in this limited respect, whilst the remainder of the dispute over the marital property continued.

27. The Basic Court scheduled an on-site examination for the preparation of an inventory list of the moveable property on 24 April 2002; however, on that day the defendant's lawyer requested a postponement because the defendant had gone to Germany where he worked. At the hearing on 7 June 2002, the defendant's lawyer informed the Basic Court that he could not provide entry into the family house in order to prepare the inventory list and he requested time to contact his client.

28. At the hearing on 17 June 2002, the Basic Court ordered geodetic and construction experts to present evidence.

29. As of 10 November 2002, twenty hearings had been scheduled in the proceedings to divide the marital property, only four of which did not take place.

30. According to information provided by Judge Lazarević of the Basic Court in Derventa dated 19 November 2003, the proceedings to divide the marital property are still pending. A preliminary hearing was scheduled on 25 September 2003. At that hearing, the applicant's lawyer requested a postponement of the hearing in order to collect evidence upon the defendant's savings deposits abroad. Accordingly, the preliminary hearing was scheduled for 24 October 2003. At that hearing, the main hearing was scheduled for 25 November 2003. Meanwhile, the applicant initiated another request to disqualify the judge as of 11 November 2003, complaining that the judge had scheduled hearings in short time periods, thereby preventing her from collecting evidence upon the defendant's savings deposits abroad, upon which, in the applicant's view, her success in the dispute depends.

31. Judge Lazaravić further notes in the information dated 19 November 2003 that the applicant has changed lawyers frequently during the proceedings to divide the marital property. It appears that since the beginning of the proceedings in 1999, the applicant has been represented by six different lawyers. Three lawyers were private lawyers and a fourth was employed by an international legal aid organisation. The two most recent lawyers were appointed *ex officio* to represent her: the first represented her from 15 October 2002 until 15 April 2003, and the second represented her thereafter until the present time.

D. Proceedings concerning disturbance of possessions

32. After their divorce, the applicant alleges that her ex-husband forcibly removed her from their family house in Srpski Brod, changed the locks, and refused to allow her to reside in the house.

33. On 25 May 1999, the applicant filed a request for a provisional measure and a lawsuit for disturbance of possessions against Velimir Trifunović before the Basic Court in Derventa, requesting that she be given a key to the family house and be permitted to reside there. On 14 July 1999, the Basic Court in Derverta issued a procedural decision rejecting the applicant's claim against Velimir Trifunović as ill-founded. The applicant appealed against this procedural decision. On 29 October 1999, the District Court in Doboj issued a procedural decision accepting the applicant's appeal, annulling the decision of the Basic Court in Derventa of 14 July 1999, and returning the case to the Basic Court in Derventa for renewed proceedings.

34. On 12 January 2000, the Basic Court in Derventa issued a procedural decision finding the defendant, Velimir Trifunović, guilty of disturbing the applicant in her peaceful enjoyment of possessions, *i.e.* the family house, by forcibly removing her from the premises, changing the locks, and not allowing her to use the living space. The Basic Court ordered the defendant to give the applicant a key to the new lock and to allow her to use the house. The defendant appealed against this procedural decision. On 11 February 2000, the District Court in Doboj issued a procedural decision rejecting the defendant's appeal.

35. On 4 June 2000, the applicant submitted a request for enforcement of the procedural decision of 11 February 2000 to the Basic Court in Srpski Brod.

36. The applicant alleges that on 26 October 2000, the court bailiff, with the assistance of the local police, reinstated her into possession of the family house. However, she could only use the premises for one day because on 27 October 2000, she was again prevented from using the house, presumably by her ex-husband. Therefore, on 20 November 2000, the applicant again submitted a request to the Basic Court in Derventa requesting enforcement of the procedural decision of 11 February 2000.

37. Based upon the submissions to the case file, it appears that the applicant has not been permitted to reside in the family house and she describes herself as "homeless".

E. Proceedings concerning the request for permanent residence

38. According to the applicant, her permit for temporary residence in the Republika Srpska, which was based upon her marriage to Velimir Trifunović, expired on 30 July 1999. On 1 November 1999, the Petty Offence Court in Srpski Brod issued a procedural decision finding the applicant guilty of residing in Vinska for longer than two days after the expiration of her temporary residence permit without submitting a request for extension of her permit. She was fined 100 KM.

39. On 10 and 31 August 1999, the applicant submitted requests to be granted permission for permanent residence in Sprski Brod, the Republika Srpska, as that is the residence of her two children. She noted that she wished to live with her children, as they still need their mother. She further noted the existence of her marital property in the Republika Srpska. On 14 March 2000, the Ministry of Interior of the Republika Srpska issued a procedural decision refusing that request because the applicant had failed to fulfil the conditions set forth in Article 44 of the Law on Movement and Residence of Foreign Nationals of the Republika Srpska (see paragraph 51 below).

40. On 11 April 2000, the applicant submitted an appeal against the procedural decision of 14 March 2000 to the Ministry of Interior of the Republika Srpska. She explained that she had lived in the Republika Srpska since 1977, for over 23 years, that she was divorced in the Republika Srpska, that her children were born in Bosnia and Herzegovina and are citizens of the Republika Srpska, that she acquired marital property in the Republika Srpska, and that she became ill and disabled in the Republika Srpska. She received no response. She further submitted a similar appeal to the Ministry for Human Rights and Refugees of Bosnia and Herzegovina.

41. On 26 July 2001, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina issued a procedural decision upon the applicant's appeal against the procedural decision of 14 March 2000. The Ministry upheld the applicant's appeal, annulled the procedural decision of 14 March 2000, and returned the case to the first instance body for renewed proceedings. The Ministry reasoned that the challenged procedural decision was issued on the basis of an incorrect application of the substantive law. The Law on Immigration and Asylum of Bosnia and Herzegovina, which entered into force on 31 December 1999, is the applicable law (see paragraph 52 below). Accordingly, the Ministry ordered the first instance body to renew the proceedings and assess the applicant's claim in accordance with the Law on Immigration and Asylum, and specifically to determine the applicant's claim in light of Article 18, paragraph 2 of this Law.

42. On 25 January 2002, the Ministry of Interior of the Republika Srpska issued a procedural decision in renewed proceedings refusing the applicant's request for permanent residence in the Republika Srpska. The Ministry of Interior explains that "Article 18 paragraphs 1 and 2 of the Law on Immigration and Asylum of Bosnia and Herzegovina provides that the approval of permanent residence shall be issued to a foreign national living in the territory of the Republika Srpska, Bosnia and Herzegovina, for a minimum of 5 years, on the basis of temporary residence approval" or, prior to the expiration of the time-limit, when the request is filed by a family member. Applying this law to the applicant's request, the procedural decision reasons as follows:

> "On the grounds of direct insight into the attached documentation, it is clear that Katarina Trifunović had her temporary residence approved within the Doboj Municipality, Bosnia and Herzegovina, continually for the period from 3 October 1988 until 2 October 1992 and then again from 31 July 1998 until 30 July 1999. The period from 3 October 1992 until 31 July 1998, she spent in Slovakia. The ground used for approval of her temporary residence was her marriage to a citizen of

Bosnia and Herzegovina, Velimir Trifunović. They had two children, Jovanka and Natalija. The marriage was dissolved on 19 April 1999 and the then underage daughter Natalija was placed under the custody of Velimir Trifunović. The adult daughter Jovanka decided to live with her father in the family house, which is the subject of proceedings on the division of marital property, pending before the competent court. Due to the disrupted family situation, the above-mentioned has no contact with her children and she is currently unemployed.

"In addition, this organ has made an official note with a view to creating a complete picture of the factual background.

"It is evident from the above-stated that the aforementioned person does not meet any of the requirements for permanent residence approval in the Republika Srpska, Bosnia and Herzegovina, prescribed by the Law on Immigration and Asylum of Bosnia and Herzegovina, and it is, therefore, decided as in the operative part of this procedural decision."

43. On 24 May 2002, the Ministry of Interior of the Republika Srpska delivered the procedural decision of 25 January 2002 to the applicant by posting it on the door of her contact address.

44. The applicant filed an appeal against the procedural decision to the Ministry of Interior of the Republika Srpska on 20 June 2002. However, her appeal was rejected as out of time by the conclusion of 1 August 2002, as it was filed more than 15 days after her receipt of the procedural decision of 25 January 2002. The Ministry was unable to deliver its conclusion to the applicant personally as it claims she has left the territory of the Republika Srpska and is now residing in Slavonski Brod in the Republic of Croatia. Therefore, the Ministry affected service by posting the conclusion on the bulletin board in the local police station.

45. In her submission of 11 December 2003, the applicant confirms that her request for permanent residence in the Republika Srpska was rejected. She claims that she was "exposed to threats and intimidation and received false information from the officials of the Foreign Nationals Department, the Ministry of Interior, and the local police". She further claims that she is "in no way provided with regular contact with [her daughter Natalija], either by the competent institution or by the father".

IV. RELEVANT LEGAL PROVISIONS

A. Family Law

46. The Family Law of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 21/79 and 44/89) was amended in 2002 by the Family Law of the Republika Srpska (Official Gazette of the Republika Srpska no. 54/02 of 27 August 2002). Since the applicant's lawsuits to divide the marital property and to obtain financial support are still pending before the Basic Court in Derventa, the Commission quotes below the relevant provisions of the current Family Law of the Republika Srpska. The Family Law regulates, *inter alia*, the rights and obligations of family members, marriage and legal relations in marriage, relations between parents and children, custody of children, and financial support.

1. Provisions regulating life support

47. Chapter VI of the Family Law regulates "life support". The general provisions state as follows:

Article 231

"(1) Mutual life support of family members and other relatives is their duty and right.
"(2) In the cases when the mutual life support of family members or other relatives cannot be fully or partially realised, the community provides, under conditions stipulated by law, the means necessary for life support to unsecured family members.
"(3) A waiver of the right to life support bears no legal effect."

Article 232

"(1) Family members and other relatives contribute to the mutual life support, in the extent proportionate to their possibilities and abilities, in accordance with the needs of the recipients of the life support.
"(2) Parents are in the first place obliged to support their underage children, and they must use all their abilities while exercising that obligation."

48. Specifically with respect to "life support of a spouse", Chapter VI of the Family Law provides as follows:

Article 241

"A spouse who does not have sufficient means for living or cannot obtain such means from his/her property and is incapable of working or cannot gain employment, is entitled to life support from his/her spouse in proportion with his/her abilities."

Article 242

"(1) If the proceedings for divorce or annulment of marriage are pending, the request for life support of a spouse may be raised only before the conclusion of the main hearing.
"(2) As an exception to the provision of the aforementioned Article, a spouse may file a special lawsuit claiming life support, within one year after the termination of marriage, only if the conditions for life support, provided for in Article 241 of this Law, existed at the time of the conclusion of the main hearing and continued until the conclusion of the main hearing in the life support proceedings."

Article 243

"The Court may reject a request for life support if it is filed by a spouse who acted roughly or inappropriately in the marriage without serious cause, or in the event his/her request would constitute apparent injustice against the other spouse."

Article 244

"The Court may reject a request for life support raised in divorce proceedings or after the annulment of a marriage in the event the obligation of life support would constitute apparent injustice against the other spouse."

Article 245

"The Court may reject a request for life support in the event the spouses have completely and independently provided the means for their own living during a long period of separated existence, or if the circumstance of the case provide evidence that the termination of a short marriage did not cause the spouse who claims life support to be faced with a more difficult financial position than the one he/she had before the marriage."

Article 246

"(1) The Court may decide that the obligation to provide life support to a spouse shall last for a certain period of time, particularly in cases when the marriage has lasted for a shorter time or when the claimant of life support is capable of providing means for living in some other way in a foreseeable time.
"(2) The Court may prolong the obligation for payment of life support in justified cases.
"(3) The lawsuit for prolongation of life support may be filed only before the expiry of the time determined for life support."

Article 247

"The right to life support shall cease if the divorced spouse or a spouse from an annulled marriage who exercises that right concludes a new marriage or if the Court decides that he/she became unworthy of such right."

2. Provisions regulating the division of marital property

49. Chapter VII of the Family Law regulates "property relations" between spouses. With respect to the "property of spouses", it provides as follows:

Article 269

"The property of spouses may be separate and common."

Article 270

"(1) The property that a spouse possesses at the time of the conclusion of the marriage shall remain his/her separate property.
"(2) The property given as a dowry shall be considered the wife's separate property.
"(3) Gains realised from a lottery shall constitute common property.
"(4) Royalties for a copyright and other similar rights realised during the marriage shall constitute common property.
"(5) The property that the spouses acquired by work during the marriage, as well as the income derived from such property, shall constitute common property.
"(6) Gifts by third persons made during the marriage (money, items, service, *etc.*), shall be included in the common marital property, regardless of which spouse received them, unless the purpose of the gift renders it otherwise, or it may be concluded from the circumstances at the moment when the gift was made that the person who made it wanted to make the gift to only one of the spouses.
"(7) The property one spouse acquires during the marriage on other legal grounds shall be his/her separate property."

Article 271

"(1) The spouses shall manage their common property in agreement with each other.
"(2) A spouse shall not independently manage his/her share of the common property nor shall s/he encumber it with a legal business among the living.
"(3) The bride and bridegroom, *i.e.* the spouses, may regulate their relations as to common property by a marriage contract. ...
"(6) The provisions of property law and the law on obligations shall be applied to common property, unless provided otherwise by this Law."

50. With respect to "division of common property of spouses", Chapter VII of the Family Law provides as follows:

Article 272

"(1) One half of the common property belongs to each spouse.
"(2) Spouses may, in agreement with each other, divide the common property by defining shares in the entire property, a certain part of the property, or a single item, or by each spouse obtaining single items or the rights deriving from such property, or one spouse may pay the other the monetary value of his/her share."

Article 273

"(1) Each spouse may request that the court determine a larger share for him/her in the common property than the share of the common property he/she is entitled to if he/she proves that his/her contribution in acquiring the common property is obviously larger than the other spouse.
"(2) In the cases from the previous paragraph, the court shall determine the size of a spouse's share according to his/her contribution in acquiring the common property. In doing so, the court shall take into account not only each spouse's personal income and profit, but also the assistance one spouse rendered to the other, work in the household and in the family, educating and raising children, as well as any other form of work and cooperation in managing, maintaining and enlarging the common property.
"(3) The circumstances when a spouse enlarged the common property after the divorce shall not effect the size of the other spouse's share in property that was mostly acquired in the marriage, if the first spouse by his/her conduct prevented the participation of the spouse in further acquisition.

"(4) The spouse who by his merit contributed to maintaining and enlarging the other spouse's separate property (*e.g.*, by advancing a farm, *etc.*) during the marriage, may claim in a lawsuit that the other spouse provide him/her adequate monetary compensation.
"(5) The spouse whose share in the acquisition of common property or a single item from the common property is significantly smaller than the other spouse's share, or when special circumstances justify such action, may claim in a lawsuit the division of the common property by requesting the court to oblige the other spouse to provide him/her with equivalent monetary compensation, equivalent to the value of the common property on the day the judgement was issued."

Article 274

"(1) When dividing common property, those items from common property that one spouse uses in his work, shall, on his/her request, be included in his/her part.
"(2) Items acquired by work during the marriage exclusively for one spouse's personal use shall be set aside and handed to that spouse, apart from his/her share.
"(3) If the value of the items from paragraphs 1 and 2 of this Article is disproportionately large in comparison with the value of the entire common property, those items shall be divided too, unless the spouse who was supposed to obtain such items adequately compensates the other spouse or cedes other items to the other spouse, with his/her consent."

Article 275

"(1) The spouse who was awarded custody of common children, apart from his/her part, shall receive the items serving exclusively or aimed for the children's direct use.
"(2) When dividing common property, the spouse who was awarded custody of common children shall be awarded the items that should obviously be in the possession of and owned by the spouse who was awarded custody of the children."

Article 276

"(1) When diving common property, the proportional value of debts arising from common acquisition in the marriage shall be calculated into each spouse's share.
"(2) Claims of third persons arising from maintaining and enlarging the existing common property shall be calculated as debts from the previous paragraph and such claims shall burden only one spouse in terms of the other on the grounds of Article 267(3) of this Law.
"(3) Unsettled debts from paragraph 2 of this Article shall not be taken into account when determining the share in common property."

Article 277

"If a sale of items from the common property is ordered in enforcement proceedings for the purpose of settling the share of a spouse, that spouse shall have the right of first refusal."

B. Law on Movement and Residence of Foreign Nationals of the Republika Srpska

51. The Ministry of Interior of the Republika Srpska initially refused the applicant's request for permanent residence in accordance with the following provisions of the Law on Movement and Residence of Foreign Nationals of the Republika Srpska (Official Gazette of the Republika Srpska no. 20/92 of 30 December 1992):

Article 44

"A foreign national may be granted permanent residence in the territory of the Republika Srpska territory when:

1. His/her immediate family member (spouse, child or parent) is a citizen of the Republika Srpska or is a foreign national who has a permanent residence permit in the territory of the Republika Srpska;
2. He/she entered into a marriage with a citizen of the Republika Srpska;
3. He/she obtained such right under an international agreement.

"Other foreign nationals may also exceptionally be granted permanent residence.
"A foreign national shall be obliged to submit proof of means of support with his/her request for residence permit."

Article 45

"The competent body of the Ministry of Interior of the Republika Srpska shall approve permanent residence in the Republika Srpska territory."

C. Law on Immigration and Asylum of Bosnia and Herzegovina

52. The Law on Immigration and Asylum of Bosnia and Herzegovina entered into force on 31 December 1999 (Official Gazette of Bosnia and Herzegovina no. 23/99 of 23 December 1999) and was applicable during the proceedings in the present case. It regulates, *inter alia*, "the conditions and procedures for the entry and stay of aliens on the territory of Bosnia and Herzegovina" (Article 1). The Commission notes that a new Law on Movement and Stay of Aliens and Asylum entered into force on 14 October 2003, at which time the Law on Immigration and Asylum of Bosnia and Herzegovina was put out of force. However, for purposes of the present decision, the provisions of the Law on Immigration and Asylum of Bosnia and Herzegovina will be cited. The provisions relevant to the present case provided as follows:

Article 3

"Aliens who stay in Bosnia and Herzegovina under the conditions provided for by the present law enjoy the right to move freely within the country and to choose freely their place of residence."

Article 17

"A temporary residence permit may be issued for justified reasons such as marriage with a citizen of Bosnia and Herzegovina or education, employment or business as specified in the work permit granted, or medical treatment.

"A temporary residence permit may be issued for a valid period of one year or for the time of validity of the alien's passport if that passport is valid for less than one year.

"A temporary residence permit may be extended."

Article 18

"A permanent residence permit shall be issued to an alien who has been living on the territory of Bosnia and Herzegovina for a minimum of five years on the basis of temporary residence permits.

"A permanent residence permit shall be issued to an alien before the five-year period mentioned in paragraph 1 above when the permit is applied for by a family member, as defined in Article 19, of a citizen of Bosnia and Herzegovina. However, the issuance of a permanent residence permit to an alien who is the spouse of a citizen of Bosnia and Herzegovina shall be subject to a waiting period of one year following the date of the marriage."

Article 19

"Notwithstanding the above provisions, family members of an alien who holds a permanent or temporary residence permit shall be granted residence for the same period of time as the alien.

"Family members are defined for the purposes of this provision as:

(a) spouse;
(b) children under 18 years of age or who are supported in the joint household;
(c) parents and grandparents supported in the joint household."

Article 21

"The Ministry of Civil Affairs and Communication of Bosnia and Herzegovina may by way of regulations further specify rules for implementation of Articles 17, 18, and 19.

"An application for a residence permit shall be submitted to the competent authority of the Entity.

"An application must be submitted before entry or, where applicable, before the date of expiry of the lawful period of stay, and be accompanied by evidence justifying the request.

"The competent authority of the Entity shall decide upon the application without unnecessary delay and within a maximum period of thirty days. It shall issue to the applicant and simultaneously copy to the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina an attestation of the application, which shall be considered as a residence permit until the application is finally decided upon.

"Copies of all decisions on residence permits, accompanied by copies of all documentation relevant to the decisions, shall be sent within seven days by the competent authority of the Entity to the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina."

Article 22

"Decision of refusal of residence permits shall be reasoned and issued through a written order specifying that an appeal may be lodged with the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina.

"The applicant whose application has been denied has a period of fifteen days from receiving notification of the decision to lodge an appeal; he/she cannot be expelled from the territory of Bosnia and Herzegovina before the expiry of that period.

"An applicant having lodged an appeal shall not be expelled from the territory of Bosnia and Herzegovina until a final decision has been taken by the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina.

"The final decision of the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina shall be reasoned on legal grounds and issued through a written order."

53. The Instructions on the Condition and Manner of Entry of Foreign Nationals, Issuance of Visas and other Travel Documents and Issuance of Residency Permits for Foreign Nationals in Bosnia and Herzegovina (hereinafter: "the Instructions") was published in the Official Gazette of Bosnia and Herzegovina on 4 December 2001 (no. 29/01) and entered into force on 12 December 2001. The Instructions provided further explanation as to the issuance of permanent residence permits to aliens. Article 63 of the Instructions provided as follows:

Article 63

"Permanent residence may be granted to an alien:

1. who, based on approval for temporary residence, lives on the territory of Bosnia and Herzegovina at least five years;

2. who is a family member of a citizen of BiH, on the condition that the citizen of BiH has residency in the territory of BiH;

3. who, at least for a year, is married to a citizen of BiH.

"For approval of permanent residence from point 1 of this article, an alien is obliged to, on the back of the request, indicate organs which issued, in continuity, for the last five years, approval for temporary residence and the grounds for this approval. The first instance organ shall, *ex officio*, perform such checking, upon the alien's request for permanent residence.

"For approval of permanent residence from point 2 of this article, an alien is obliged to submit evidence that the close family member is presently residing in BiH, supports the alien, and lives in the same family household with the alien.

"For approval of permanent residence from point 3 of this article, as evidence of marriage, an alien must attach a marriage certificate of the competent service in Bosnia and Herzegovina or corresponding document of another country in an internationally recognised format. With the request, the alien is obliged to submit evidence that the BiH citizen spouse has residence in the territory of BiH, and proof that the alien has resided in the territory of BiH based on a temporary residence permit issued due to the marriage, for a minimum of one year."

V. COMPLAINTS

54. The applicant alleges violations of her right to an effective remedy and right to respect for her private and family life. She complains that during her divorce proceedings, she was not provided with a court interpreter or translator and moreover, her legal counsel was not adequate. After her divorce, she was not granted permanent residence in the Republika Srpska or Bosnia and Herzegovina, and at the time she filed her application, she claimed she resided in Bosnia and Herzegovina illegally. In addition, she complains because the proceedings regarding the division of marital property and her

right to financial support from her ex-husband are still pending before the competent bodies of the Republika Srpska. As a result, she cannot obtain the right to live in her marital family house, and she cannot contact her underage daughter, over whom her ex-husband was granted custody. The applicant further alleges that she believes that she has suffered such "irresponsible behaviour in the Republika Srpska" because she is Catholic.

55. As a remedy for the alleged violations, the applicant requests to be granted the right of permanent residence in the Republika Srpska and to obtain a decision on the division of marital property so that she may enjoy her share of that marital property.

VI. SUBMISSIONS OF THE PARTIES

A. The Republika Srpska

56. In its observations of 4 July 2002, the Republika Srpska contends that the application is inadmissible for non-exhaustion of effective domestic remedies. With respect to her request for permanent residence in the Republika Srpska, it submits that the applicant could have lodged an appeal against the silence of the administration in order to accelerate the proceedings and satisfy the conditions to initiate an administrative dispute before the Supreme Court of the Republika Srpska. With respect to her complaints under Article 6(1) of the Convention related to her divorce proceedings, the applicant could have submitted an appeal against the judgment on divorce of 2 April 1999 and also pursued extraordinary remedies. The Republika Srpska further notes that the proceedings concerning the division of marital property are still pending. Therefore, the applicant has failed to exhaust the available remedies and her application is premature.

57. In the event the application is not declared inadmissible, the Republika Srpska argues that it is ill-founded on the merits. As to the applicant's complaint that she was not provided with an interpreter during the divorce proceedings, the Republika Srpska highlights that the minutes of the hearing held on 2 April 1999 establish that the applicant was informed of her right to an interpreter, but she stated that she speaks the Serbian language. Further, the applicant's claim that she had no legal counsel is contrary to the facts as she was represented by two lawyers, Nada Nović and Slobodan Bihać, both practicing in Derventa.

58. Concerning the claims under Articles 8 and Article 1 of Protocol No. 1, the Republika Srpska highlights that "the relationship between the applicant and her husband is of a private nature and the public authority shall not interfere with the exercise of that right".

B. The applicant

59. The applicant maintains all her complaints. In her numerous submissions, she repeatedly emphasises that the combined result of the lack of any decision on her lawsuits to divide the marital property and gain financial support from her ex-husband, her inability to live in the family house due to the illegal conduct of her ex-husband, as well as the rejection of her request for permanent residence in the Republika Srpska have left her "without any means for life", desperate, "homeless", and without access to her children. She has suffered tremendously since her divorce in 1999, and none of the institutions of the Republika Srpska she has approached have provided her with assistance to date. She claims the local authorities have denied their competence over these matters or left her complaints sitting idle.

60. The applicant further complains about the partiality of the court and judges where her proceedings have been pending. She alleges that Judge Lazarević, who presides over the lawsuit to divide the marital property in the Basic Court in Derventa, "is biased due to family connections with [the applicant's ex-] husband, and that this is the reason for such long length of the proceedings". She claims that Judge Lazarević "would maltreat, humiliate, provoke, and mock [her] during the hearings". She also complains about the "inactivity of the judicial and administrative bodies in scheduling hearings, issuing decisions, and deciding upon appeals".

VII. OPINION OF THE COMMISSION

A. Admissibility

61. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

62. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept.... In so doing, the [Commission] shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ...." and "(c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Complaints concerning financial support and division of marital property (Article 1 of Protocol No. 1 to the Convention)

63. The applicant's complaints concerning the lack of division of her marital property and lack of award of financial support raise issues under Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions). The Republika Srpska notes that the proceedings to determine the applicant's right to marital property and financial support are still pending before the Basic Court in Derventa. Therefore, it contends that the applicant has failed to exhaust the available remedies and this part of her application is premature. However, the Commission notes that in the present case, the issue of whether the domestic remedies are effective, within the meaning of Article VIII(2)(a) of the Agreement, is inextricably linked to the issue of the reasonable length of the pending domestic proceedings. Accordingly, the Commission finds it appropriate to declare the applicant's complaints under Article 1 of Protocol No. 1 admissible and to consider them on the merits.

2. Complaint concerning the right to home (Article 8 of the Convention)

64. The applicant complains that due to the illegal conduct of her ex-husband and the failure of the competent authorities to protect her, she has not been allowed to live in her marital family house and she is now desperate and homeless. This complaint raises issues under Article 8 of the Convention, which protects the right to respect for home. The respondent Party contends that this complaint is of a private nature and does not invoke its responsibility.

65. The Commission notes that the applicant lived in the marital family house in Vinska in the Srpski Brod Municipality for the duration of her 23-year marriage to Velimir Trifunović, with the exception of the period during the armed conflict in Bosnia and Herzegovina when she resided in Slovakia with her children to escape the hostilities. The respondent Party has not disputed these facts. Therefore, it is clear that the marital family house in Vinska should be considered her "home" for the purposes of Article 8 of the Convention.

66. The Commission further recalls that after her divorce in April 1999, the applicant's ex-husband forcibly removed her from their family house, changed the locks, and refused to allow her to reside in the house. In May 1999, the applicant filed a lawsuit for disturbance of possessions against Velimir Trifunović before the Basic Court in Derventa. On 12 January 2000, the Basic Court in Derventa issued a procedural decision finding the applicant's ex-husband guilty of disturbing her peaceful enjoyment of the family house by forcibly removing her from the premises, changing the locks, and not allowing her to use the living space. The Basic Court ordered the defendant to give the applicant a key to the new lock and to allow her to use the house. On 26 October 2000, after the applicant submitted a request for enforcement, the competent authorities reinstated her into possession of the family house. However, she could only use the premises for one day because on 27 October 2000, her ex-husband again prevented her from using the house. On 20 November

2000, the applicant submitted a new request for enforcement to the Basic Court in Derventa. It appears that the authorities took no action on this request because the applicant has not been permitted to reside in the family house, and she describes herself as homeless.

67. Both the Chamber and the European Court of Human Rights have held that, "although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees" (*see, e.g.*, case no. 96/17, *Blentić*, decision on admissibility and merits of 5 November 1997, paragraph 26, Decisions March 1996—December 1997; Eur. Court HR; *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, paragraph 32; *Velosa Barreto v. Portugal*, judgment of 21 November 1995, Series A no. 334, paragraph 23). There are no allegations in the present application that the authorities of the respondent Party are in any way responsible for taking an active role in removing the applicant from the family house or in affirmatively preventing her return thereto. However, it does appear from the application that the authorities of the respondent Party have failed to take necessary actions to enforce the procedural decision in the applicant's favour that grants her the right to reside in the family house.

68. Therefore, the application raises an allegation that the respondent Party has violated its positive obligation to respect the applicant's right to home, as guaranteed by Article 8 of the Convention. This alleged violation commenced on 20 November 2000, when the applicant submitted her renewed request for enforcement, and it continues to the present day. Accordingly, the applicant's complaint of a violation of the positive obligation of Article 8 of the Convention is admissible.

3. Complaint concerning the request for permanent residence (Article 8 of the Convention)

69. The applicant's complaint about her inability to gain the right to permanent residence in the Republika Srpska raises issues under Article 8 of the Convention, which protects the right to respect for private and family life.

70. The respondent Party suggests that the applicant has failed to exhaust domestic remedies because she could have lodged an appeal against the silence of the administration in order to accelerate the proceedings upon her request and to satisfy the conditions to initiate an administrative dispute before the Supreme Court of the Republika Srpska. However, such argument is based upon the application of the Law on Movement and Residence of Foreign Nationals of the Republika Srpska. In its decision of 26 July 2001, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina explicitly instructed that the Law on Movement and Residence of Foreign Nationals is not applicable to the applicant's request for permanent residence; rather, the Law on Immigration and Asylum of Bosnia and Herzegovina is applicable to her request.

71. In addition, on 25 January 2002, the Ministry of Interior of the Republika Srpska issued a procedural decision in renewed proceedings refusing the applicant's request for permanent residence. Although explicitly recognising that "due to the disrupted family situation, the above-mentioned has no contact with her children", the Ministry concluded that the applicant had not satisfied the conditions for permanent residence provided by the Law on Immigration and Asylum of Bosnia and Herzegovina, and it refused her request. This decision appears to have become final and binding on 1 August 2002, when the applicant's appeal against it was rejected.

72. It appears that the applicant took all actions available to her in accordance with the Law on Immigration and Asylum of Bosnia and Herzegovina, yet she still was not granted a permanent residence permit or other status which would allow her to reside lawfully in the Republika Srpska. As a result, contact with her children has been hindered. Accordingly, the Commission concludes that the applicant has exhausted the available remedies within the meaning of Article VIII(2)(a) of the Agreement, and it rejects this ground for declaring the complaint inadmissible.

4. Complaints concerning interpreter and legal counsel (Article 6 of the Convention)

73. The applicant's complaints concerning the lack of an interpreter during her divorce proceedings and the inadequacy of her legal counsel appear to raise the issue of equality of arms, incorporated into the right to a fair hearing protected by Article 6 paragraph 1 of the Convention. However, the Commission notes that the applicant's numerous submissions to the case file clearly establish that she is well versed in the Serbian language and not in need of an interpreter into her mother tongue of Slovakian. Moreover, according to the respondent Party, she confirmed that she speaks Serbian at the hearing on 2 April 1999, and the applicant has not contested this fact. The applicant has further not substantiated her claim that her private legal counsel was inadequate. Considering that all the proceedings at issue are civil in nature, the Commission does not find sufficient evidence of inadequate legal representation in the case file to raise an issue under Article 6 paragraph 1 of the Convention. Therefore, the complaints concerning equality of arms fail to disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that these parts of the application are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement.

5. Complaint concerning the fairness of the proceedings (Article 6 of the Convention)

74. The applicant complains that the court before which her civil proceedings have been pending, and in particular Judge Lazarević, who presides over her lawsuit to divide the marital property, is biased due to family connections with the applicant's ex-husband. She further alleges that Judge Lazarević has maltreated and humiliated her during hearings. These complaints raise issues under Article 6 paragraph 1 of the Convention concerning the fairness of the proceedings.

75. However, the Commission observes that the applicant has failed to substantiate her allegations that Judge Lazarević or the Basic Court in Derventa are biased against her; there is no evidence in the case file to suggest that Judge Lazarević or the Basic Court have failed to act fairly as required by Article 6 of the Convention. The Commission further recalls that the applicant twice submitted requests to disqualify Judge Lazarević from the lawsuit to divide the marital property, and on both occasions, these requests were rejected by the President of the Basic Court in Derventa (see paragraphs 22 and 30 above).

76. In these circumstances, the Commission finds that the applicant's complaint concerning the fairness of the proceedings does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Commission therefore decides to declare this part of the application inadmissible.

6. Complaint concerning the length of the proceedings (Article 6 of the Convention)

77. The applicant further complains about the length of the proceedings to divide the marital property and to obtain financial support, pending before the Basic Court in Derventa since May 1999. The respondent Party submits that the applicant has failed to exhaust domestic remedies because the proceedings in question are still pending. However, as the Chamber has repeatedly held, the fact that proceedings are still pending does not prevent it from examining an applicant's complaint in relation to the length of the proceedings (*see, e.g.*, case no. CH/02/8770, *Dobojputevi d.d.*, decision on admissibility and merits of 5 December 2003, paragraph 46). The Commission therefore decides not to declare inadmissible the applicant's complaint under Article 6 paragraph 1 concerning the length of the proceedings to divide the marital property and to obtain financial support.

7. Complaint of discrimination

78. The applicant alleges that she has suffered "irresponsible behaviour in the Republika Srpska" because she is Catholic. This allegation appears to raise a complaint of discrimination based on religion. However, the applicant has failed to substantiate this allegation. Therefore, the Commission finds that the allegation of discrimination does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of the

application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Commission therefore decides to declare the discrimination claim inadmissible.

8. Admissibility as against Bosnia and Herzegovina

79. The applicant directs her application against Bosnia and Herzegovina and the Republika Srpska. However, it does not appear to the Commission that Bosnia and Herzegovina is responsible for the actions she complains of. In particular, it is the authorities of the Republika Srpska before which the applicant's lawsuits to divide the marital property and obtain financial support are pending, who failed to take any action to reinstate her into possession of the family house after the procedural decision in her favour, and who refused her request for permanent residence in the Republika Srpska. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina.

9. Conclusion as to admissibility

80. As no other grounds for declaring the application inadmissible have been raised or are apparent from the application, the Commission declares the application admissible as against the Republika Srpska with respect to the length of the proceedings to divide the marital property and to obtain financial support under Article 6 paragraph 1 of the Convention; with respect to the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention; with respect to the applicant's right to home under Article 8 of the Convention; and with respect to the applicant's right to respect for her private and family life in relation to her request for permanent residence in the Republika Srpska under Article 8 of the Convention. The Commission declares the remainder of the application inadmissible as against the Republika Srpska as manifestly ill-founded, as explained above. It further declares the applicant inadmissible as against Bosnia and Herzegovina as incompatible *ratione personae* with the Agreement.

B. Merits

81. Under Article XI of the Agreement, the Commission must next address the question of whether the facts established above disclose a breach by the Republika Srpska of its obligations under the Agreement. Under Article I of the Agreement, the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 6 paragraph 1 of the Convention (length of proceedings)

82. The Commission has declared the application admissible under Article 6 paragraph 1 of the Convention concerning the length of the proceedings to divide the marital property and to provide financial support for the applicant. These claims have been pending before the Basic Court in Derventa since May 1999, and they have not been resolved to date.

83. Article 6 paragraph 1 of the Convention states as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

84. The European Court of Human Rights (the "European Court") has explained that by requiring in Article 6 paragraph 1 that cases be heard "within a reasonable time", "the Convention underlines the importance of rendering justice without delays which might jeopardise its effectiveness and credibility" (Eur. Court HR, *H. v. France*, judgment of 24 October 1989, Series A no. 162, paragraph 58).

85. The proceedings at issue concern the applicant's civil right to a portion of the marital property acquired during her 23-year marriage to Velimir Trifunović, as well as her right to financial support from him. As such, the Commission finds these claims, which flow from the dissolution of the

applicant's marriage, to constitute civil rights, within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, that provision is applicable to the pending proceedings in the present case.

86. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The applicant initiated her lawsuit to divide the marital property on 13 May 1999, and she initiated her lawsuit to obtain financial support from her ex-husband on 25 May 1999. Both of these lawsuits are still pending in the first instance before the Basic Court in Derventa to date, more than 4 and one-half years after they were initiated.

87. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the European Court and the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and the other circumstances of the case (*see, e.g.,* case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with reference to the corresponding case-law of the European Court). In civil cases, the defendant's behavior and what is at stake in the litigation for the plaintiff are also taken into account (Eur. Court HR, *Buchholz v. Germany*, judgment of 6 May 1981, Series A no. 42, paragraph 49).

88. With respect to the complexity of the case, the Commission notes that the respondent Party has not argued that the proceedings to divide the marital property and to decide the applicant's request for financial support are complex, nor is there any indication in the information submitted to the Commission that these proceedings are abnormally complex. Such proceedings are common after a divorce, and the domestic courts should be equipped to deal with them efficiently, absent evidence that in the particular case there are unique factual or legal issues which overly complicate the proceedings. Admittedly, the proceedings in this particular case could have been significantly simplified had the parties been able to reach an amicable agreement on the division of their marital property or at least on the indisputable items of common or separate property. However, in the context of proceedings after a divorce, such disputes between ex-spouses are common, and the domestic courts must be able efficiently to resolve marital property disputes between antagonistic parties. In the Commission's view, the proceedings at issue in the present case do not appear so complex as to require over four and one-half years of proceedings in the first instance.

89. With respect to the conduct of the applicant, the respondent Party has pointed out that the applicant changed her lawyer five times during the course of the proceedings, for a total of six different lawyers. The Commission also notes that between October 2000 and September 2001, delays in the proceedings were caused by the applicant (see paragraphs 21-25 above). Moreover, although she requested urgency in the early phase of the proceedings, recently, in 2003, she has complained that the Basic Court in Derventa is scheduling hearings too quickly for her to obtain necessary information about her ex-husband's savings deposits abroad, which are critical to the outcome of her lawsuits. Thus, it appears that a number of the delays in the proceedings have occurred upon the request of the applicant. However, as the European Court has explained, "the person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings" (Eur. Court HR, *Union Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 187, paragraph 35). Notwithstanding the delays caused by the applicant, she appears to have been diligent in pursuing her case and exercising her legal rights, and there is no evidence that she has engaged in any delaying tactics.

90. With respect to the conduct of the competent authorities of the respondent Party, the Commission is aware of the difficulties, caused by a variety of factors, which sometimes cause the delay of proceedings before the domestic courts. However, the respondent Party has not provided any information to the Commission adequately to explain why the first instance proceedings in the present case have progressed so slowly, especially since the applicant previously requested urgency and she is clearly in a desperate financial situation. Although the Basic Court in Derventa has scheduled over twenty hearings, most of which took place, it appears that little actual progress has been made to resolve the marital property dispute. In fact, after four and one-half years of first instance proceedings, the parties and the Court are still gathering critical evidence. The Commission further notes with concern that the Basic Court took no measures to ensure the defendant's participation in the proceedings, highlighted by his departure to Germany when the Court had

scheduled an on-site examination at the family house, thereby preventing that examination (see paragraph 27 above). Moreover, the respondent Party has not shown any efforts it has taken to assist the applicant in obtaining the necessary information about her ex-husband's savings deposits abroad or other evidence necessary to resolve the marital property dispute.

91. Considering what is at stake for the applicant, the Commission recalls that the applicant was a housewife, living with her husband and raising their two children during twenty-three years of marriage, whilst living as a foreign national in the Republika Srpska. After her divorce from Velimir Trifunović in April 1999, she was left with no financial support, no family house, and no custody or regular access to her children. For this reason, she filed two lawsuits before the Basic Court in Derventa for financial support and to divide the marital property, both entitlements provided to her by the Family Law of the Republika Srpska (see paragraphs 47-50 above). The Basic Court must be aware of her desperate living situation and failing health, as well as the disruption caused to her relationship with her children in the aftermath of her divorce. In this respect, the Commission especially notes that the Basic Court granted custody over their minor child Natalija to the applicant's ex-husband because he had the possibility to provide basic means for her support, whilst the applicant had insufficient means to support even herself (see paragraph 12 above). Yet, even realising this, the Basic Court then failed to expedite the proceedings designed to provide the applicant with some means to provide for her own survival and perhaps even restore her ability to care for her children. The applicant clearly had an important personal interest in securing a prompt judicial decision on the division of the marital property and her request for financial support so that she could resume a normal life after her divorce.

92. Reviewing the proceedings to divide the marital property and to determine financial support for the applicant, the Commission does not find it reasonable that these proceedings are still pending in the first instance over four and one-half years after they were initiated, especially considering what is at stake in these proceedings for the applicant. Granted, the applicant has in recent months requested additional time to gather critical evidence, and she should be allowed this time, but this does not explain the earlier periods of protracted delay and ineffective proceedings. Since the respondent Party has not offered adequate information or arguments to explain this delay, the Commission concludes that it is mainly the responsibility of the respondent Party.

93. For these reasons, the Commission concludes that the Republika Srpska has violated the applicant's right to a hearing within a reasonable time for the division of the marital property and the determination of her right to financial support, as guaranteed by Article 6 paragraph 1 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions)

94. The applicant raises complaints concerning the lack of division of her marital property and lack of financial support. These complaints raise issues under Article 1 of Protocol No. 1 to the Convention, which states as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> "The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

95. As the Commission has explained above, in the present case the issue of whether the domestic remedies are effective for the purposes of the applicant's complaints under Article 1 of Protocol No. 1 to the Convention is inextricably linked to the issue of the reasonable length of the pending domestic proceedings (see paragraph 63 above). In addressing the reasonable length of the proceedings, the Commission has found that the Republika Srpska has violated the applicant's right to a hearing within a reasonable time for the division of the marital property and the determination of her right to financial support (see paragraph 93 above). These proceedings have been pending

before the domestic courts for over four and one-half years in the first instance. However, some of the delays in these proceedings have been due to the conduct of the applicant or her lawyers. In these circumstances, and taking into account its finding of a violation of Article 6 paragraph 1 of the Convention, the Commission concludes that it is not necessary separately to examine the application with respect to Article 1 of Protocol No. 1 to the Convention.

3. Article 8 of the Convention (right to respect for private and family life)

96. Article 8 of the Convention provides, in relevant part, as follows:

> "1. Every one has the right to respect for his private and family life, his home... .
>
> "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."

97. According to the European Court, "the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities" (Eur. Court HR, *Ciliz v. The Netherlands*, judgment of 11 July 2000, Reports of Judgments and Decisions 2000-VIII, paragraph 61). Additionally, there are certain "positive obligations inherent in effective 'respect' for family life". "However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition." In both contexts there are similar applicable principles: a fair balance must be "struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation" (*id.*).

a. Right to respect for home

98. The Commission has declared the application admissible with respect to the applicant's complaint that the respondent Party has violated its positive obligation to respect the applicant's right to home, as guaranteed by Article 8 of the Convention (see paragraph 68 above). In particular, the applicant complains that due to the illegal conduct of her ex-husband and the failure of the competent authorities to protect her and enforce the procedural decision in her favour, she has not been allowed to live in her marital family house since her divorce in April 1999, and she is now desperate and homeless.

99. As explained above, the applicant lived in the marital family house in Vinska for the duration of her 23-year marriage, with the exception of the period during the armed conflict in Bosnia and Herzegovina when she resided in Slovakia with her children, and as such, the marital family house should be considered her "home" for the purposes of Article 8 of the Convention.

100. The Commission recalls that after her divorce from Velimir Trifunović in April 1999, the applicant's ex-husband forcibly removed her from their family house, changed the locks, and refused to allow her to reside in the house. On 25 May 1999, the applicant filed a lawsuit for disturbance of possessions against Velimir Trifunović before the Basic Court in Derventa. On 12 January 2000, in renewed proceedings, the Basic Court in Derventa issued a procedural decision finding the applicant's ex-husband guilty of disturbing her peaceful enjoyment of the family house by forcibly removing her from the premises, changing the locks, and not allowing her to use the living space. The Basic Court ordered the defendant to give the applicant a key to the new lock and to allow her to use the house. This procedural decision was confirmed on appeal by the procedural decision of the District Court in Doboj of 11 February 2000. On 26 October 2000, after the applicant submitted a request for enforcement, the competent authorities, with the assistance of the local police, reinstated her into possession of the family house. However, she could only use the premises for one day because on 27 October 2000, her ex-husband again prevented her from using the house. On 20 November 2000, the applicant submitted a new request for enforcement of the procedural decision of 11 February 2000 to the Basic Court in Derventa, but it appears that the authorities failed to respond. Thus, since the procedural decision in her favour, the applicant has only been able to reside in the family house for one night (see paragraphs 34-37 above).

101. With respect to the alleged violation of Article 8, the respondent Party has stated only that the relationship between the applicant and her ex-husband is private in nature and public authorities should not interfere with it (see paragraph 58 above). However, this argument neglects the respondent Party's positive obligation to ensure respect for the applicant's right to home. Such positive obligation "may involve the adoption of measures designed to secure respect for" the rights protected by Article 8, even in the sphere of private relations (*see* Eur. Court HR, *X and Y v. The Netherlands*, judgment of 26 March 1985, Series A no. 91, paragraph 23). In the context of the present case, the authorities of the respondent Party were obliged to take all necessary action to enforce the procedural decision of 11 February 2000 upon her submission of a proper request for enforcement. In that manner, they could respect her right to home by ensuring her ability to exercise her right to reside in the family house. The authorities of the respondent Party did not do so in response to her renewed request for enforcement submitted on 20 November 2000. It has not offered any justification for its failure to enforce the procedural decision in the applicant's favour, and the Commission can envision no justification on its own motion.

102. For these reasons, the Commission concludes that the Republika Srpska has violated its positive obligation to secure respect for the applicant's right to home, protected by Article 8 of the Convention, in that it has failed to enforce the procedural decision in her favour and thereby allow her to exercise her right to reside in the family house.

b. Right to respect for private and family life

103. The applicant further complains about her inability to gain the right of permanent residence in the Republika Srpska. From her numerous submissions to the case file, she appears to contend that her inability to gain the right of permanent residence in the Republika Srpska is not only infringing upon her private life, but also infringing upon her family life because her two daughters are citizens of Bosnia and Herzegovina and reside in the Republika Srpska.

i. Sphere of private and family life

104. Firstly the Commission must consider whether the applicant's complaints fall within the sphere of "private and family life", as protected by Article 8 paragraph 1 of the Convention. In general, the notion of "private life" is broad and not subject to an exhaustive definition:

> "However, it would be too restrictive to limit the notion to an 'inner circle' in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings" (Eur. Court HR, *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251, paragraph 29).

105. In addition, the European Court has explained the following basic principles concerning "family life":

> "The Court likewise does not see cohabitation as a *sine qua non* of family life between parents and minor children. It has held that the relationship created between spouses by a lawful and genuine marriage … has to be regarded as 'family life'. It follows from the concept of family on which Article 8 is based that a child born of such a union is *ipso jure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to 'family life', even if the parents are not then living together.
>
> "Subsequent events, of course, may break that tie…" (*Berrehab v. The Netherlands* (Eur. Court HR, judgment of 21 June 1988, Series A no. 138, paragraph 21) (citations omitted).

106. In the present case, there is no allegation that the applicant's family ties with her daughters have been broken. Therefore, the existence of "family life" is established by virtue of the fact that

her two daughters were born into the marital union. Furthermore, her ability to continue to reside in the Republika Srpska, where she has lived for many years, concerns her "private life".

ii. Interference with private and family life

107. Secondly, the Commission must consider whether, by failing to grant the applicant permanent residence in the Republika Srpska, in the context of the circumstances of the present case, the respondent Party has interfered with the applicant's private and family life.

108. In *Ciliz v. The Netherlands*, where the divorced father had been refused a visa and expelled from The Netherlands whilst his son resided there with his mother, the European Court described the case as featuring both the positive and negative obligations of Article 8: "on the one hand, a positive obligation to ensure that family life between parents and children can continue after divorce, and, on the other hand, a negative obligation to refrain from measures which cause family ties to rupture" (Eur. Court HR, *Ciliz v. The Netherlands*, judgment of 11 July 2000, Reports of Judgments and Decisions 2000-VIII, paragraph 62) (citations omitted). The European Court found that the State's decision not to allow the father continued residence and his resulting expulsion from the country frustrated his access to his child, thereby involving an interference with his right to respect for his "family life" (*id.*).

109. Also in *Berrehab v. The Netherlands* (Eur. Court HR, judgment of 21 June 1988, Series A no. 138), the European Court considered a father's complaint that the State's refusal to grant him a new residence permit after his divorce and the resulting expulsion order infringed upon his right to respect for private and family life protected by Article 8 of the Convention because it denied him access to his child. The father, a citizen of Morocco, had been permanently residing in The Netherlands, and his daughter and ex-wife are both citizens of The Netherlands. The European Court noted that the father was granted a temporary visa to travel to The Netherlands from Morocco, and, therefore, the interference with his access to his child was "somewhat theoretical". None the less, the European Court found that the refusal of his residence permit and the resulting expulsion order, which forced him to return to Morocco while his child remained in The Netherlands, "in practice" prevented him from maintaining regular contacts with his child and interfered with the exercise of his right secured by Article 8 of the Convention (*id.* at paragraphs 22-23).

110. Similarly, in the present case, the refusal to grant the applicant's request for permanent residence resulted in her being compelled to leave the territory of the Republika Srpska, whilst her daughters remained. In her request for permanent residence the applicant specifically noted that she wished to live with her children (see paragraph 39 above). In the procedural decision of 25 January 2002 refusing her request, the Ministry of Interior of the Republika Srpska recognised that "due to the disrupted family situation, the [applicant] has no contact with her children" (see paragraph 42 above). The applicant has confirmed this, stating that she is "in no way provided with regular contact with [her daughter Natalija], either by the competent institution or by the father" (see paragraph 45 above). The respondent Party has further explained that the applicant is now residing in Slavonski Brod in the Republic of Croatia, although the Commission notes that its most recent correspondence received from the applicant on 11 December 2003 indicates an address in Odžak in the Federation of Bosnia and Herzegovina. None the less, both parties agree that as a result of her failure to gain permanent residence in the Republika Srpska, her contact with her daughters has been hindered. Following the approach of the European Court, this constitutes an interference with her right to respect for her private and family life.

iii. In accordance with the law

111. Paragraph 2 of Article 8 of the Convention stipulates that any interference by a public authority with the exercise of the right to private and family life must be, *inter alia*, "in accordance with the law".

112. The procedural decision of the Ministry of Interior of the Republika Srpska of 25 January 2002, refusing the applicant's request for permanent residence in the Republika Srpska, is based upon Article 18 of the Law on Immigration and Asylum of Bosnia and Herzegovina (see paragraph 52 above). The Commission notes that Article 18 does not explicitly provide that a permanent residence permit shall be issued to an alien living on the territory of Bosnia and Herzegovina for a minimum of five "consecutive" years, nor does it specify the date from which to count the requisite number of years of residence. However, Article 63 of the Instructions makes clear that this provision was intended to require the alien to have resided continuously in Bosnia and Herzegovina for five years prior to submitting the request for permanent residency. Moreover, as to paragraph 2 of Article 18 (see paragraph 52 above), the Instructions also provide more details regarding the conditions upon which an alien may be granted a permanent residency permit based on close family members who are BiH citizens. Given the fact that the applicant was not able to live with her daughters and support them financially, it appears that the applicant did not fufill these conditions either (see paragraph 53 above).

113. In the procedural decision of 25 January 2002, the Ministry of Interior states that "it is clear that Katarina Trifunović had her temporary residence approved within the Doboj Municipality, Bosnia and Herzegovina, continually for the period from 3 October 1988 until 2 October 1992 and then again from 31 July 1998 until 30 July 1999. The period from 3 October 1992 until 31 July 1998, she spent in Slovakia." From these facts, the Ministry concluded that "it is evident from the above-stated that the aforementioned person does not meet any of the requirements for permanent residence approval in the Republika Srpska, Bosnia and Herzegovina, prescribed by the Law on Immigration and Asylum of Bosnia and Herzegovina" (see paragraph 42 above).

114. The Commission notes that Article 21 of the Law on Immigration and Asylum of Bosnia and Herzegovina provides that "the competent authority of the Entity shall decide on the application without unnecessary delay and within a maximum period of thirty days". However, the Ministry of Interior of the Republika Srpska delayed six months in issuing its procedural decision upon the applicant's request for permanent residence in the renewed proceedings. That is, the Ministry for Human Rights and Refugees issued its procedural decision ordering renewed proceedings on 26 July 2001, and the Ministry of Interior did not issue its procedural decision refusing the applicant's request until 25 January 2002.

115. Although with delay, it appears that the refusal of the applicant's request for a permanent residence permit was issued in accordance with the then applicable law. Therefore, the Commission will next address whether the authorities' interference with the applicant's right was "necessary in a democratic society".

iv. Necessary in a democratic society

116. Paragraph 2 of Article 8 stipulates that any interference by a public authority with the exercise of the right to private and family life must be "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." The Commission recalls that the respondent Party has not identified any legitimate aim in its decision to refuse the applicant's request for permanent residence.

117. In determining whether an interference is "necessary in a democratic society", "'necessity' implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued" (Eur. Court HR, *Berrehab v. The Netherlands*, judgment of 21 June 1988, Series A no. 138, paragraph 28). Thus, the legitimate aim to be pursued must be "weighed against the seriousness of the interference with the applicants' right to respect for their family life" (*id.* at paragraph 29). Throughout this determination, the State enjoys a margin of appreciation (*id.* at paragraph 28).

118. When addressing the issue of parental rights in the context of immigration and residence policy, the European Court has accepted that "the Convention does not in principle prohibit the Contracting States from regulating the entry and length of stay of aliens" (Eur. Court HR, *Berrehab v. The Netherlands*, judgment of 21 June 1988, Series A no. 138, paragraph 28). Moreover, the

function of the European Court is not to pass judgment on a State's immigration and residence policy as such. Rather, the Court must only "examine the interferences complained of, and it must do this not solely from the point of view of immigration and residence, but also with regard to the applicants' mutual interest in continuing their relations" (*id.* at paragraph 29). The analysis depends upon the facts of the specific case (Eur. Court HR, *Gül v. Switzerland*, judgment of 19 February 1996, Reports of Judgments and Decisions 1996-I, paragraph 38). Article 8 does not, however, "impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise family reunion in its territory" (*id.*).

119. In *Berrehab v. The Netherlands*, a case in which the State refused a father's request for a new residence permit after his divorce, thereby forcing him to return to Morocco while his child remained in The Netherlands, the European Court observed that the case did not concern an alien seeking admission to the State for the first time, but rather, "a person who had already lawfully lived there for several years, who had a home and a job there, and against whom the Government did not claim to have any complaint. Furthermore, Mr. Berrehab already had real family times there — he had married a Dutch woman, and a child had been born of the marriage" (judgment of 21 June 1988, Series A no. 138, paragraph 29). According to the European Court, the State's refusal of an independent residence permit for the applicant threatened to break his close ties with his young daughter. Taking these circumstances into account, the European Court concluded "that a proper balance was not achieved between the interests involved and that there was therefore a disproportion between the means employed and the legitimate aim pursued" (*id.*).

120. Similarly, in *Ciliz v. The Netherlands*, the State refused a father's request for a visa and expelled him from the country while his son remained in The Netherlands; meanwhile, proceedings upon the father's request for a formal access arrangement with his son were pending before the court. The European Court noted that although the father was granted the right to supervised meetings with his son, delays occurred in scheduling the meetings due to the workload of the Child Care and Protection Board, and he was taken into detention in pursuance of his expulsion without any such meetings having occurred (Eur. Court HR, *Ciliz v. The Netherlands*, judgment of 11 July 2000, Reports of Judgments and Decisions 2000-VIII, paragraphs 67-68). When his visa was refused, he could neither attend visitation meetings with his son nor attend the proceedings upon his request for a formal access arrangement. Then the court refused to establish a formal access arrangement because he had not had visitation meetings with his son and his return to The Netherlands was uncertain (*id.* at paragraph 70). According to the European Court, "the authorities, through their failure to coordinate the various proceedings touching upon the applicant's family rights, have not, therefore, acted in a manner which has enabled family ties to be developed" (*id.* at paragraph 71). The European Court considered that "the decision-making process concerning both the question of the applicant's expulsion and the question of access did not afford the requisite protection of the applicant's interests as safeguarded by Article 8." The interference was therefore not necessary in a democratic society (*id.* at paragraph 72).

121. Applying these principles to the present application, the Commission must consider all the relevant circumstances. The applicant is a citizen of Slovakia who resided in Bosnia and Herzegovina as a foreign national from 1977 until 1999, with the exception of six years during the armed conflict and its aftermath. Her two daughters are both citizens of Bosnia and Herzegovina (see paragraph 11 above). Upon her divorce from Velimir Trifunović in April 1999, after twenty-three years of marriage, she was thrown out of the family house and left with no financial support or regular access to her children (see paragraphs 13, 32, 45, and 59 above). Although she promptly filed lawsuits before the First Instance Court in Derventa in accordance with the Family Law of the Republika Srpska for financial support and the division of the marital property, more than four and one-half years later, these proceedings are still pending in the first instance (see paragraphs 16 and 30 above). Meanwhile, in August 1999, the applicant filed a request for a permanent residency permit after her temporary residence permit based upon her marriage expired. Not only did the Ministry of Interior of the Republika Srpska fail to deal with this request in a timely manner, issuing its decision only on 14 March 2000, it further applied the incorrect substantive law to her request. Upon the instructions of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, contained in its procedural decision of 26 July 2001, the Ministry of Interior conducted renewed proceedings in accordance with the Law on Immigration and Asylum of Bosnia and Herzegovina. Once again, however, it failed to issue a decision in the renewed proceedings in a timely manner. Moreover, in the procedural decision

of 25 January 2002, the Ministry of Interior failed to take into account the significance of the civil proceedings pending regarding the division of the marital property and financial support, and that the competent body failed to enforce the court decision authorising the applicant to live in the family home. The Ministry of Interior also failed to take into account the close family ties between the applicant and her daughters and the effect that not being provided with a legal status in Bosnia and Herzegovina will have on her relationship with her daughters.

122. The combined effect of the actions and omissions of the competent authorities of the respondent Party towards the applicant is that since 1999, she has been left in a vulnerable and desperate situation with no family house, no financial support, and irregular contact with her daughters. This situation has been exacerbated by the denial of her request for permanent residence, which would have at least allowed her the opportunity for more regular access to her daughters and to participate more easily in her pending civil proceedings. In this respect it should be highlighted that the applicant was a law-abiding resident of Bosnia and Herzegovina for more than fifteen years; she developed ties to the community, resided in the family house, and raised two children who are citizens of the Republika Srpska. The Commission further notes with particular concern that the Ministry of Interior refused her request for permanent residence even though it recognised that "due to the disrupted family situation, [the applicant] has no contact with her children…" Thus, taking these facts into account, the Commission considers that the interference with the applicant's private and family life is especially severe in this case.

123. The respondent Party has put forth no legitimate aim for its interference with the applicant's private and family life, and the Commission can envision no such legitimate aim on its own motion. Accordingly, the Commission concludes that the authorities of the respondent Party failed to strike a fair balance between the interests of the individual and any possible interest of the general community. Such disproportionate treatment of the applicant is not "necessary in a democratic society".

v. Conclusion as to right to respect for private and family life

124. For these reasons, the Commission concludes that the Republika Srpska has violated the applicant's right to respect for private and family life, protected by Article 8 of the Convention, because its denial of her request for permanent residence in the Republika Srpska was not necessary in a democratic society.

4. Conclusion as to merits

125. In summary, the Commission concludes that the Republika Srpska has violated Article 6 paragraph 1 of the Convention because it has failed to decide the applicant's lawsuits for the division of marital property and for financial support within a reasonable time. In addition, by failing to enforce the procedural decision in the applicant's favour allowing her to reside in the family house, the Republika Srpska has further violated its positive obligation to secure respect for the applicant's right to home, protected by Article 8 of the Convention. Lastly, by denying her request for permanent residence in a manner not necessary in a democratic society, the Republika Srpska has violated her right to respect for her private and family life, also protected by Article 8 of the Convention.

VIII. REMEDIES

126. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

127. The Commission recalls that the applicant requests to be granted the right of permanent residence in the Republika Srpska and to obtain a decision on the division of marital property so that she may enjoy her share of that marital property. In fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Commission with broad remedial powers and the Commission is not limited to the requests of the applicant.

128. The Commission has found a violation of the applicant's right protected by Article 6 paragraph 1 of the Convention to decide her lawsuits for the division of marital property and for financial support within a reasonable time. Therefore, the Commission considers it appropriate to order the respondent Party to take all necessary steps promptly to conclude these proceedings pending before the Basic Court in Derventa and the other competent courts until final and binding decisions are rendered.

129. The Commission has further found a violation of the applicant's right to respect for home protected by Article 8 of the Convention due to the respondent Party's failure to enforce the procedural decision in her favour allowing her to reside in the family house. Therefore, the Commission considers it appropriate to order the respondent Party, should the applicant still so desire, to take all necessary steps to reinstate the applicant into possession of the family house in Vinska and to allow her to reside there until the issue of ownership of this family house is finally decided in the proceedings to divide the marital property pending before the Basic Court in Derventa, as ordered by the Basic Court in Derventa in the proceedings concerning the disturbance of possessions.

130. Lastly, the Commission has found a violation of the applicant's right to respect for her private and family life protected by Article 8 of the Convention due to the denial of her request for permanent residence in the Republika Srpska in a manner not "necessary in a democratic society". Therefore, the Commission considers it appropriate to order the respondent Party to take all necessary steps to ensure that the Ministry of Interior of the Republika Srpska conducts renewed proceedings to determine the applicant's right to temporary or permanent residency permit in accordance with the Law on Movement and Stay of Aliens and Asylum, including both the procedural and substantive provisions therein, and taking into account this decision by the Commission and the international legal principles set forth herein. In these renewed proceedings, the Ministry of Interior of the Republika Srpska shall allow the applicant a reasonable opportunity to present additional evidence in support of her request should she so desire.

131. In the present case, the Commission further finds it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of the violations of her human rights by the respondent Party. Accordingly, the Commission will order the respondent Party to pay to the applicant the total sum of five thousand (5,000) Convertible Marks ("*Konvertibilnih Maraka*"), within one month from the date of receipt of the present decision, as compensation for non-pecuniary damages in recognition of her suffering.

132. Additionally, the Commission further awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The interest shall be paid as of one month from the date of receipt of the present decision on the sum awarded or any unpaid portion thereof until the date of settlement in full.

133. Lastly, the Commission orders the Republika Srpska to submit to the Commission a full report on the steps taken by it to comply with these orders by 26 July 2004.

IX. CONCLUSIONS

134. For the above reasons, the Commission decides,

1. unanimously, to declare the application admissible as against the Republika Srpska with respect to the length of the proceedings to divide the marital property and obtain financial support under Article 6 paragraph 1 of the European Convention on Human Rights; with respect to the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention; with respect to the applicant's right to home under Article 8 of the Convention; and with respect to the applicant's right to respect for her private and family life in relation to her request for permanent residence in the Republika Srpska under Article 8 of the Convention;

2. unanimously, to declare the remainder of the application inadmissible as against the Republika Srpksa;

3. unanimously, to declare the application inadmissible as against Bosnia and Herzegovina;

4. unanimously, that the Republika Srpska has violated the applicant's right to a hearing within a reasonable time in her lawsuits to divide the marital property and to obtain financial support, as guaranteed by Article 6 paragraph 1 of the Convention, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that it is not necessary separately to examine the application under Article 1 of Protocol No. 1 to the Convention;

6. unanimously, that the Republika Srpska has violated its positive obligation to secure respect for the applicant's right to home, protected by Article 8 of the Convention, in that it has failed to enforce the procedural decision in her favour and thereby allow her to exercise her right to reside in the family house, the Republika Srpska thereby being in breach of Article I of the Agreement;

7. unanimously, that the Republika Srpska has violated the applicant's right to respect for the applicant's private and family life, protected by Article 8 of the Convention, because its denial of her request for permanent residence in the Republika Srpska was issued in a manner not "necessary in a democratic society", the Republika Srpska thereby being in breach of Article I of the Agreement;

8. unanimously, to order the Republika Srpska to take all necessary steps promptly to conclude the proceedings upon the applicant's lawsuits to divide the marital property and to obtain financial support pending before the Basic Court in Derventa and the other competent courts until final and binding decisions are rendered;

9. unanimously, to order the Republika Srpska, should the applicant still so desire, to take all necessary steps to reinstate the applicant into possession of the family house and to allow her to reside there until the issue of ownership of this family house is finally decided in the proceedings to divide the marital property pending before the Basic Court in Derventa, as ordered by the Basic Court in Derventa in the proceedings concerning the disturbance of possessions;

10. unanimously, to order the Republika Srpska to take all necessary steps to ensure that the Ministry of Interior of the Republika Srpska conducts renewed proceedings upon the applicant's request for permanent residency, to establish whether she has a right to a temporary or permanent residency permit in accordance with the Law on Movement and Stay of Aliens and Asylum, including both the procedural and substantive provisions therein, and taking into account this decision by the Commission and the international legal principles set forth herein;

11. unanimously, to order the Republika Srpska to pay to the applicant the total sum of five thousand (5,000) Convertible Marks ("*Konvertibilnih Maraka*"), within one month from the date of receipt of the present decision, as compensation for non-pecuniary damages in recognition of her suffering as a result of the violations of her human rights;

12. unanimously, to order the Republika Srpska to pay simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding conclusion, such interest to be paid as of one month from the date of receipt of the present decision on the sum awarded or any unpaid portion thereof until the date of settlement in full; and

13. unanimously, to order the Republika Srpska to submit to the Commission a full report on the steps taken by it to comply with these orders by 26 July 2004.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission