



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 12 May 2000)

Case no. CH/98/367

Ilija JANKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 April 2000 with the following members present:

Mr. Andrew GROTRIAN, Acting President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced 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;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina. His application concerns his attempts to purchase an apartment from the former Yugoslav National Army ("JNA"). He has been unable to enter into a contract with the appropriate authorities as there is a dispute as to the purchase price of the apartment. On 24 June 1997 the applicant initiated court proceedings before the Court of First Instance in Banja Luka seeking that he be enabled to enter into a contract for the purchase of the apartment. These proceedings are still pending.

2. The case raises issues primarily under Article 6 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 26 January 1998 and registered on 10 April 1998 under the above case number.

4. At its session in October 1999 the Chamber decided to transmit the application to the Republika Srpska for observations on its admissibility and merits. Under the Order concerning the organisation of the proceedings in the case, such observations were due by 12 December 1999.

5. The applicant submitted further observations, including a claim for compensation, on 20 October and 6 December 1999, which were transmitted to the Republika Srpska for its further observations on 12 November and 27 December 1999 respectively.

6. No observations at all have been received from the Republika Srpska. The First Panel considered the admissibility and merits of the application on 8 February 2000 and on 4 April 2000 adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

7. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

8. The applicant has been the holder of the occupancy right over an apartment located at Bana Milosavljevića 36 in Banja Luka since 1973. The holder of the allocation right over the apartment was the JNA. On 6 January 1991, the Law on Securing Housing for the Yugoslav Army (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 84/90) came into force. This law established a regime for the purchase of apartments over which the JNA held the allocation right.

9. The applicant wished to purchase the apartment he occupied, and to this end on 5 February 1992 he paid to the JNA Housing Fund 1,000 Yugoslav Dinars. This was the sum the applicant considers to be the difference between his previous contributions to the JNA Housing Fund and the value of the apartment.

10. The applicant then requested that the military housing authorities issue a contract for the purchase of the apartment, to be entered into by himself and those authorities. They refused to do so as they dispute the amount he was required to pay in order to purchase the apartment. The applicant has been requested to pay a further amount but has refused to do so. He has addressed various institutions of the Republika Srpska, including the Army of the Republika Srpska ("VRS", the successor to the JNA in the Republika Srpska).

11. On 24 June 1997 the applicant initiated proceedings before the Court of First Instance in Banja Luka against the Republika Srpska and the VRS, requesting that he be enabled to enter into a contract for the purchase of the apartment. A number of hearings have been held in the proceedings to date, none of which have decided the matter. The defendants have failed to appear on a number

of occasions. In addition, the judge initially assigned to the case has been replaced by another judge. The applicant's proceedings are still pending.

IV. COMPLAINTS

12. The applicant does not make any specific allegations of violations of his rights as protected by the Agreement. He complains of his inability to enter into a contract for the purchase of the apartment and also of the conduct of the proceedings before the court.

V. SUBMISSIONS OF THE PARTIES

13. The respondent Party has not made any submissions regarding the application.

14. The applicant maintains his complaint. He states that the VRS has acted in an obstructive manner in order to prevent him from being recognised as the owner of the apartment.

VI. OPINION OF THE CHAMBER

A. Admissibility

15. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

16. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

17. The applicant initiated proceedings before the court on 24 June 1997. These proceedings are still pending. There is no ordinary remedy available to the applicant in the legal system of the Republika Srpska against the failure of the court to decide on his proceedings. Accordingly, the Chamber does not consider that there is any effective remedy available to the applicant which he should be required to exhaust. In addition, the Chamber notes that the respondent Party has not sought to claim that there is any effective remedy available to the applicant.

18. The Chamber does not consider that any other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

19. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party 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 treaties listed in the Appendix to the Agreement.

20. Although the applicant did not specifically allege a violation of his rights as guaranteed by Article 6 of the Convention, he complained in a general manner of the length of the proceedings he initiated before the court. Accordingly, the Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case.

21. Article 6 of the Convention, insofar as relevant to the present case, reads as follows:

"1. 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...."

22. The respondent Party did not submit any observations under this provision.

23. The Chamber must examine whether the applicant's dispute with the VRS over whether he is entitled to enter into a contract for the purchase of the apartment concerns a "civil right" within the meaning of Article 6 of the Convention. The Chamber notes that it has already held on numerous occasions that disputes relating to the acquisition of property relate to "civil rights" (see, e.g., cases nos. CH/96/3, 8 and 9, *Medan, Bastijanović and Marković*, decision on the merits delivered on 7 November 1997, paragraph 33, Decisions on Admissibility and Merits 1996-1997). Article 6 is therefore applicable to the proceedings in question.

24. The Chamber has already noted that the applicant initiated his proceedings before the court on 24 June 1997. Accordingly, the period of time that may be taken into account by the Chamber is two years and ten months (as of April 2000).

25. The Chamber has held that the factors to be taken into account in determining whether the length of civil proceedings has been reasonable are as follows: the complexity of the case, the conduct of the applicant and the conduct of the national authorities (case no. CH/98/1171, *Čuturić*, decision on admissibility and merits delivered on 8 October 1999, paragraph 32, Decisions August-December 1999).

1. The complexity of the case

26. According to the information contained in the Chamber's file, the case does not appear to be a complex one, having regard to the nature of the dispute between the parties (see paragraphs 9-11 above).

2. The conduct of the applicant

27. On the basis of the information provided to the Chamber, there does not appear to be any conduct on the part of the applicant which could be considered to be responsible for the delay in the proceedings.

3. The conduct of the national authorities

28. The Chamber notes that there have been a number of hearings held in the case to date. The main apparent reason (see paragraph 11 above) for the failure to decide on the case is the failure of the defendants to appear at the hearings. The Chamber cannot accept that this is a valid reason for the proceedings in the case to have lasted as long as they have. The court could have taken measures to ensure the attendance of the defendants before it, or decided the case in default of appearance by them.

29. In addition, the Republika Srpska is itself a defendant in the proceedings, as well as the VRS, for whose actions the Republika Srpska is responsible. The conduct of these bodies, in failing to cooperate with the courts of the Republika Srpska in proceedings before it, cannot be considered to have been reasonable.

30. The Chamber therefore considers that the length of time that the applicant's proceedings have been pending before the court is unreasonable, that this is as a result of the conduct of the Republika Srpska and its organs, and that the applicant's right to a fair trial within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention has been violated as a result.

VII. REMEDIES

31. Under Article XI(1)(b) of the Agreement the Chamber must 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 Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

32. The applicant was afforded the opportunity of claiming monetary compensation or other relief. He did not do so, but stated that he would leave it to the Chamber to decide what compensation or other orders are appropriate.

33. The Chamber notes that it has found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention. It considers it appropriate to order the Republika Srpska to take all necessary steps to ensure that the applicant's proceedings are decided upon in a reasonable time by the court. The Republika Srpska must report to the Chamber, within three months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with this order.

VIII. CONCLUSION

34. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the failure of the Court of First Instance to decide upon the applicant's court proceedings which he initiated on 24 June 1997 constitutes a violation of his right to a fair trial within a reasonable time in the determination of his civil rights and obligations within the meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
3. unanimously, to order the Republika Srpska to take all necessary steps to ensure that the applicant's proceedings before the Court of First Instance are decided upon in a reasonable time;
4. unanimously, to order the Republika Srpska to report to it, within three months of the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Andrew GROTRIAN
Acting President of the First Panel