



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 6 April 2001)

Case no. CH/98/1019

Sp.L., J.L., Sv.L. and A.L.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 April 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice-President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Peter KEMPEES, 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 applicants are citizens of Bosnia and Herzegovina. Sp.L. ("the first applicant"), his wife ("J.L.") and his two sons ("Sv.L." and "A.L.") are the holders of savings accounts with Kristal Banka AD, a limited company. J.L., Sv.L. and A.L. are represented by the first applicant in the proceedings before the Chamber and have been represented by him in all domestic proceedings. On 23 July 1993 the Court of First Instance in Doboj ordered the Bank to pay to the applicants the sums they have on deposit with it. This decision entered into force. The applicants have sought execution of the decision, without success.

2. The case raises issues principally under Article 6 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was registered on 12 October 1998.

4. On 14 May 1999 the Chamber decided to transmit the case to the respondent Party for its observations on admissibility and merits. The respondent Party submitted its observations on 23 July 1999.

5. The applicants' further observations, including a compensation claim, were received on 6 August 1999 and transmitted to the respondent Party. On 14 September 1999 the respondent Party submitted its further observations.

6. On 7 June 2000 the Chamber requested that the applicants submit further information. On 22 July 2000 the Chamber received the information.

7. By a submission dated 26 October 2000 the applicants informed the Chamber about procedural changes in their favour. On 7 November 2000 the Chamber received further observations from the respondent Party in relation to the above-mentioned changes.

8. The Chamber deliberated upon the admissibility and merits of the application on 5 September 2000 and on 2 April 2001. On the latter date it adopted the present decision.

III. THE FACTS

9. The facts of the case as they appear from the applicants' submissions and the documents in the case-file may be summarised as follows.

10. The first applicant represents his wife, Mrs. J.L. and his two sons, Mr. Sv.L. and Mr. A.L. in the different proceedings. The applicants are the holders of savings accounts at Kristal Banka AD, Banja Luka, Branch Office Doboj. On 18 December 1992 the applicants initiated proceedings before the Municipal Court in Doboj seeking disbursement of their savings and compensation for loss of profit due to their inability to withdraw their savings from the Bank.

11. On 23 July 1993 the court in Doboj issued a partial decision, deciding only upon the request for disbursement of savings. It ordered the Bank to pay to J.L. 7554,21 German marks ("DEM"), to A.L. 187,78 DEM from one savings account and 3050,97 Swiss francs ("CHF") from another, to Sv.L. 36,60 CHF and to the first applicant 22,04 American dollars ("US \$"). In addition the Bank was ordered to pay them interest, which would be calculated according to the policy of the Bank, taking into account the default interest on the sum awarded as and from 18 December 1992 until the date of payment. This sum was not quantified in the decision.

12. On 17 November 1993 the Court of First Instance, pursuant to a request of the applicants, ordered the enforcement of the decision of 23 July 1993. The enforcement was stopped by a court procedural decision dated 26 July 1994 at the applicants' request, in which they expressed their

willingness to give up their claims to receive assets in foreign currency if they could be compensated in Yugoslav dinars ("YUD") within the time-limit of 30 days. This payment has never taken place.

13. On 12 April 1994 the Court of First Instance in Doboj rejected the compensation claims of the applicants. While deciding upon the applicants' appeal dated 23 May 1994, the Regional Court in Doboj overturned the decision of 12 April 1994, finding a procedural mistake in the first instance proceedings, and returned it for reconsideration to the Court of First Instance.

14. On 24 August 1995 the Court of First Instance decided in renewed proceedings to reject the above-mentioned request. On 8 March 1996 the Regional Court rejected the applicants' appeal filed against the decision of 24 August 1995. On 29 March 1996 the applicants initiated proceedings before the Supreme Court of the Republika Srpska requesting review of the Regional Court's decision. The Supreme Court decided upon this request on 27 December 1999 and rejected the request for review.

15. On 31 May 1996, while deciding upon the applicants' appeal against the decision of 26 July 1994, the Regional Court in Doboj overturned it and returned the case for deliberation to the Municipal Court. This court issued a conclusion dated 16 July 1996 requiring the applicants to specify the suggestion for enforcement by specifying the amount of foreign currency debt stated in YUD.

16. On 26 November 1996, while deciding upon the Bank's appeal against the above mentioned conclusion, the Regional Court overturned it due to the failure of the First Instance Court to observe a formality and returned the case to it for reconsideration. On 24 December 1996 this court decided in the same manner but in proper form.

17. On 25 January 1997 the Bank informed J.L. that banks were forbidden to carry out any disbursement due to the Decision on Suspension of Payments from "Frozen" Bank Accounts. According to the applicants' allegations, the reason for this is the decision of the Government of the Republika Srpska dated 3 May 1996, which purports to prevent the payment of so-called "old" foreign currency savings.

18. On 6 June 1997 the Regional Court in Doboj accepted the appeal of the Bank and returned the case once again to the Court of First Instance, finding it doubtful whether the conditions as provided by law to declare the enforcement impermissible were fulfilled. This was to be considered in separate proceedings. On 11 May 1998 the Court of First Instance decided to delay the enforcement of the decision of 17 November 1993 until the proceedings initiated by the Bank were concluded.

19. On 3 October 2000 the Court of the First Instance, while deciding upon the Bank's appeal, held that there was no reason for the non-enforcement of the decision of 23 July 1993. The Bank appealed against the decision dated 3 October 2000. These proceedings are still pending.

IV. RELEVANT DOMESTIC LAW

20. The Law on Enforcement Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 20/78), as amended, is still in force in the Republika Srpska and sets out a detailed regime for the enforcement of court decisions. Article 2 states that such enforcement is initiated at the request of the person in whose favour the decision was given. Article 3 states that enforcement is carried out by the regular courts. Article 7 provides for the issuing of a decision on enforcement by the competent court. Enforcement proceedings are, according to Article 10, to be carried out as a matter of urgency.

21. The Decision on Suspension of Payment of "Frozen" Bank Accounts, issued by the Government of the Republika Srpska on 3 May 1996, provides that all payments of "frozen" bank accounts are temporarily suspended (both the capital amount and the interest). However, the Constitutional Court of Republika Srpska, by a decision dated 30 March 1999, has declared this governmental decision incompatible with the Constitution of the Republika Srpska.

V. COMPLAINTS

22. The applicants allege violations of the right to a fair trial and complain of the length of the court proceedings.

VI. SUBMISSIONS OF THE PARTIES

23. The respondent Party in its submission dated 22 July 1999 is of the opinion that the application should be declared inadmissible because the applicants have not exhausted the domestic remedies. The above was stated again in further observations of the respondent Party of 7 October 2000.

24. The applicants maintain their complaint.

VII. OPINION OF THE CHAMBER

A. Admissibility

25. 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.

26. 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. The Chamber notes that the respondent Party has not identified any "effective remedy" available to the applicants for the purposes of Article VIII(2)(a) of the Agreement.

27. The applicants initiated proceedings before the Court of First Instance on 18 December 1992, which issued its decision on 23 July 1993. This decision became final. The applicants sought execution of the decision, which the court ordered on 17 November 1993. However, this order was withdrawn at a request of the applicants, which was made under a particular condition and for a limited period of time, as mentioned in paragraph 12. Since that time the applicants have been seeking the execution of the decision dated 23 July 1993. In these circumstances, the Chamber finds that the remedies available have not proved effective in practice. Accordingly, the applicants have exhausted the remedies available to them.

28. The Chamber considers that no other ground for declaring the application inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

29. 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.

1. Article 6 of the Convention

30. The applicants did not specifically allege a violation of their rights as protected by Article 6 of the Convention. The Chamber raised it on its own motion when transmitting the application to the respondent Party. Article 6 paragraph 1, insofar as relevant, reads 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”

2. Reasonable time

31. The Chamber has already noted that the applicant initiated proceedings before the competent authorities on 18 December 1992. The period to be taken into consideration starts on 14 December 1995 when the Agreement entered into force.

32. When assessing the reasonableness of the length of proceedings, for the purposes of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case and the conduct of the applicant and the authorities. The Chamber has held that one of the guarantees provided by Article 6 of the Convention is the right to a fair trial within a reasonable time (see case no. CH/97/54 *MITROVIĆ*, decision on admissibility, adopted on 10 June 1997, paragraph 10, Decisions and Reports 1998).

33. The proceedings in question are still pending because the question of the enforceability of the decision of 23 July 1993 has not been finally determined (see paragraph 19 above). The relevant period therefore exceeded five years.

34. The main question in the present case is whether the particular difficulties associated with the present case can be attributed to the applicants' conduct or rather to that of the State authorities, which have the duty to organise their judicial system in such a way as to meet each of the requirements in Article 6 paragraph 1 (European Court for Human Rights, *Garyfallou AEBE v. Greece*, judgment of 24 September 1997, Rep.1997-V, fasc.49, p.1821). Due to the conduct of relevant national authorities, although the courts issued a certain number of decisions in order to resolve the case, the proceedings were unnecessarily prolonged. Having in mind that the decision of the Government dated 3 May 1996 was declared unconstitutional, it cannot be seen that there was any reason for this delay. The length of the proceedings must be imputed to the authorities of the Republika Srpska. It follows that there has been a violation of Article 6 of the Convention on this point.

3. Article 1 of Protocol No. 1 to the Convention

35. The applicants did not specifically complain that their right to peaceful enjoyment of their possessions has been violated as a result of the non-enforcement of the decision of the Court of First Instance of 23 July 1993. Article 1 of Protocol No. 1 reads 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.”

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

37. The Chamber finds that the applicants' deposits with the Bank constitute “possessions” within the meaning of Article 1 of Protocol No. 1. The expression a “possession” within the meaning of Article 1 Protocol No. 1. also includes an enforceable claim (European Court for Human Rights, *Pressos Compania Naviera S.A. and others v. Belgium* judgment of 20 November 1995, Series A no.332, p.50, paragraph 59).

38. The Chamber has held that positive obligations on the Parties to provide effective protection for the rights of an individual includes the enforcement of court decisions such as that concerned in the present case. In the present case the failure of the courts of the respondent Party to determine finally and within a reasonable time whether the decision of 23 July 1993 is enforceable has

prevented the applicants from benefiting from a *prima facie* valid court decision in their favour. In the proceedings before the Chamber no convincing reason has been put forward as to why the decision should not be enforced. In particular, although the Bank maintained that the decision of the Government of 3 May 1996 prevented it from paying to applicants, that decision has been declared unconstitutional. In these circumstances, the Chamber finds that the respondent Party has failed effectively to secure the applicants' rights to peaceful enjoyment of their possessions. Thus, there has been a breach of their rights as guaranteed by Article 1 of Protocol No. 1.

VIII. REMEDIES

39. 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.

40. The Chamber notes that the applicants' aim is that the decision of the Court of First Instance of 23 July 1993 be enforced. The Chamber has found that the failure to do so involves a breach by the respondent Party of the applicants' rights as protected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. It is accordingly appropriate that the respondent Party ensure the enforcement of the decision in full as soon as possible. The applicants also claimed compensation for loss of profit. This claim was rejected because it is to be paid through the interest rate as provided by the court verdict of 23 July 1993.

IX. CONCLUSION

41. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the failure to take adequate steps to enforce the decision of the Court of First Instance of 23 July 1993, number P.451/92, in the applicants' favour constitutes a violation of their rights to a fair hearing within a reasonable time in the determination of their civil rights as protected by Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of its obligations under Article I of the Human Rights Agreement;
3. unanimously, that this failure also constitutes a violation of the applicants' rights to peaceful enjoyment of their possessions as protected by Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of its obligations under Article I of the Agreement;
4. unanimously, to order the Republika Srpska to ensure the full enforcement of the decision of the Court of First Instance in Doboj of 23 July 1993, number P.451/92, in the applicants' proceedings against Kristal Banka AD without further delay and in any case not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure; and
5. unanimously, to order the Republika Srpska to report to it, within one month of the date of the present decision becoming final 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)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel