



DECISION ON ADMISSIBILITY

Cases nos. CH/99/2091, CH/99/2092 and CH/99/2093

M.A., S.B. and E.M.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 July 2002 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned applications introduced pursuant to Article VII(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 Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicants are citizens of Bosnia and Herzegovina, who live in the territory of the Federation of Bosnia and Herzegovina. Until 1992 they were the officers of the Yugoslav People's Army ("JNA"). All three applicants are pilots. It appears that in 1992 or later on the applicants joined the Army of Bosnia and Herzegovina and then the Army of the Federation of BiH. From the date when they joined the JNA until the out-break of the war in Bosnia and Herzegovina in 1992, they paid their contributions for pension and disability insurance to the Administration for Social Insurance of Military Insurees in Belgrade ("the JNA Pension Fund"). It is not known when the applicants started to pay their contributions to the Social Fund for Pension and Disability Insurance of Bosnia and Herzegovina and to the present Federal Administration for Pension and Disability Insurance. On 23 July 1998 the respondent Party adopted the Law on Pension and Disability Insurance. The Law entered into force on 31 July 1998. Article 82 paragraph 2 of this Law provides that the earlier realised years of service will be recognised to the former JNA members and that the amount of their pensions will be determined according to the years of service spent in the Federation of Bosnia and Herzegovina.

II. COMPLAINTS

2. The applicants complain that by the application of Article 82 paragraph 2 they will be deprived of their right to full pension when the conditions have matured. Their pensions will be determined in accordance with the rate of salaries earned in the Federation of Bosnia and Herzegovina, while the average salaries they earned before 1992, when they were JNA members, will not be recognised. On the other hand, the applicants think that other insurees have a more favourable pension basis as the average salaries earned before 1992 will be accounted for these insurees when calculating the rate of their pensions. The applicants claim that their right to peaceful enjoyment of possessions, guaranteed by Article 1 of the Protocol No. 1 to the European Convention on Human Rights ("Convention"), is violated and that this represents discrimination against them based on their status as the former JNA members under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced on 23 April 1999 and registered on 26 April 1999. On 22 April 2002 the Chamber sent the applicants letters by registered mail requesting that, within ten days, they clarify the allegations in their applications. None of the applicants answered the Chamber's letter.

4. The applications were not transmitted to the respondent Party.

5. On 5 July 2002 the Chamber deliberated the admissibility of applications and decided to join the applications and to adopt the following decision.

IV. FACTS IN INDIVIDUAL CASES

1. Case no. CH/99/2091 M.A.

6. The applicant is a citizen of Bosnia and Herzegovina, born in 1961. His residence is in Tuzla and he is a pilot. There is no information in the case file as to whether or where the applicant is employed now. According to a certificate of the Federal Ministry of Defence of 5 May 1998, the applicant was a member of the JNA from 28 July 1984 to 15 May 1995 and during this time period he acquired the seniority, as increased according to the accelerated retirement scheme, amounting to 11 years, 8 months and 8 days. The applicant claims that after the entry into force of the Law on Pension and Disability Insurance he was deprived of the rights he acquired as a former JNA officer and that he is placed in the position of a second-class citizen if compared to other citizens of the Federation of Bosnia and Herzegovina.

2. Case no. CH/99/2092 S.B.

7. The applicant is a citizen of Bosnia and Herzegovina, born in 1961. His residence is in Tinja near Tuzla and he is a pilot. There is no information in the case file whether or where the applicant is employed now. According to a certificate of the Federal Ministry of Defence of 10 December 1998, the applicant was a member of the JNA from 30 July 1980 to 8 April 1992 and during this time period he acquired the seniority amounting 17 years, 6 months and 12 days. Out of this 11 years, 8 months and 8 days are years of service and 5 years, 10 months and 4 days is seniority accrued under the accelerated retirement scheme. The applicant also claims that after the entry into force of the Law on Pension and Disability Insurance he was deprived of the rights he acquired as a former JNA officer and that he is placed in the position of the second-class citizen if compared to other citizens of the Federation of Bosnia and Herzegovina.

3. Case no. CH/99/2093 E.M.

8. The applicant is a citizen of Bosnia and Herzegovina, born in 1962. His residence is in Sarajevo and he is a pilot. There is no information in the case file as to whether or where the applicant is employed now. According to the certificate of the Federal Ministry of Defence of 27 November 1998, the applicant was a member of the JNA from 23 May 1985 to 10 April 1992 and during this time period he acquired the seniority amounting to 10 years and 19 days. Out of this 6 years, 8 months and 13 days are years of service, and 3 years, 4 months and 6 days is seniority accrued under the accelerated retirement scheme. The applicant makes identical complaints as the two previous applicants.

V. OPINION OF THE CHAMBER

9. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept. ... In so doing the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

10. The Chamber notes that the applicants state that the respondent Party has violated their right to pension because it stipulated in Article 82 paragraph 2 of the Law on Pension and Disability Insurance (*Official Gazette of the Federation of Bosnia and Herzegovina* nos. 29/98, 49/00 and 32/01) that seniority acquired in former republics of the Socialist Federal Republic of Yugoslavia and with the JNA Pension Fund before 6 March 1992 will be taken into account to citizens of Bosnia and Herzegovina in the territory of the Federation for the realisation of rights under pension and disability insurance. Article 82 further provides that the amount of pension will be determined according to the years of service in the Federation, if it is not otherwise regulated in other manner by an international agreement and on the basis of reciprocity. The applicants state that their right to pension will be radically reduced if this provision of the Law is to be applied.

11. Regarding the right to peaceful enjoyment of possessions, the Chamber notes that the European Court and the Commission for Human Rights have held that the right to pension may, under certain limited circumstances, represent possession guaranteed by Article 1 of Protocol No. 1 to the Convention (see cases nos. CH/98/706, 740 and 776, *Šećerbegović, Biočić and Oroz*, decision on admissibility and merits of 9 March 2000, paragraph 82, Decisions January-June 2000).

12. The Chamber notes that none of the applicants has claimed or proved that he is retired. The application refers to the alleged interference with their future right to realise the rights under pension and disability insurance. The Chamber finds that the mere expectation of the applicants that their future pension will not be proportionate to the amounts of their salaries and contributions for pension and disability insurance does not constitute an interference by the respondent Party with the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1, as this provision protects existing possessions but not the right to acquire possessions. In this case, the claimed possession is the right to acquire pension in a certain amount in the future. This is not a right included among the rights and freedoms guaranteed under the Agreement. Therefore, the application is incompatible

ratione materiae with provisions of the Agreement within the meaning of Article VIII(2)(c). For these reasons the Chamber decides to declare this part of the application inadmissible.

13. As for the applicants' allegations that they are discriminated against in enjoyment of their right to social security guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights, the Chamber notes that in its previous decision *Šećerbegović, Biočić and Oroz* the Chamber dealt with the issue of alleged discrimination against JNA pensioners. It compared the situation of the JNA pensioners and the one of the civil pensioners, and of pensioners who were JNA members and who later joined the Army of the Republic of Bosnia and Herzegovina or the Federation Army (*id.* in paragraphs 90-99). However, in the present case before the Chamber, the applicants have not yet realised the pensioner status. As a consequence, they are not in a situation that could be compared with other groups who have matured the right to social security on the grounds of pension. Therefore, the Chamber finds that the allegations do not reveal that there is a violation of rights and freedoms guaranteed by the Agreement. Accordingly, these complaints are manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. Therefore, the Chamber decides to declare this part of the application inadmissible as manifestly ill-founded.

VI. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel