DECISION ON ADMISSIBILITY AND MERITS

(delivered on 6 December 2002)

Case no. CH/99/1951

Dušan and Petar SPREMO

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 November 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 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 Article VIII(2) and XI of the Agreement and Rules and 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns the applicants' illegal eviction from their business premises in Zvornik in 1996 and their subsequent attempts to regain possession through court proceedings. After almost four years, the applicants received a final decision reinstating them into their business premises. The applicants allege violations of their right to property, their right to a fair trial within a reasonable time before an impartial tribunal, and discrimination in the enjoyment of these rights.

2. The applicants are father and son. The first applicant entered into the contract for lease of the business premises, while the second applicant is also named as he ran the business concerned together with his father.

II. PROCEEDINGS BEFORE THE CHAMBER

3 The application was received on 31 May 1999 and registered on 14 June 1999. The applicants are represented by Ilija and Marija Radulović.

4. The applicants requested that the Chamber order the respondent Party, as a provisional measure, to reinstate them into the business premises from which they had been evicted. On 9 July 1999 the Chamber rejected the request.

5. On 22 July 2000 the Chamber transmitted the application to the respondent Party under Article 6 of the European Convention on Human Rights (the "Convention"), Article 1 of Protocol No. 1 to the Convention, and both in conjunction with Article II(2)(b) of the Agreement.

6. The Chamber received observations from the respondent Party on 24 September 1999, 22 November 1999, 12 January 2001, 9 March 2001. The Chamber received observations and additional documentation from the applicants throughout the proceedings before the Chamber, in particular, the Chamber received a claim for compensation on 4 October 1999.

7. The Chamber deliberated on the admissibility and merits on 9 July 1999, 9 March 2000, 5 December 2001, and on 5 November 2002, and it adopted the present decision on the latter date.

8. By a letter received 19 February 2001 the applicants informed the Chamber that despite their reinstatement, they wished the Chamber to consider their case based on the violations which occurred between October 1996 and February 2001.

III. ESTABLISHMENT OF THE FACTS

9. The facts of the case as they appear from the applicants' submissions, the documents in the case file, and the judgement from the First Instance Court delivered in February 2000, are not in dispute and may be summarised as follows.

10. On 6 June 1991 the applicant Dušan Spremo entered into a contract on lease of business premises located at the stadium of the Football Club "Drina" in Zvornik. The contract was concluded between the applicant Dušan Spremo and the then director of the Football Club, Vahid Junuzović. Under the contract the applicant was to carry out some investments which were to be made in place of rental payments. The applicant was therefore not obliged to pay any rent for over 15 years. The contract could only be terminated if the applicant did not pay the rent on time, which he was not obliged to do in any event until 2006. If there was any dispute between the parties the Municipal Court in Zvornik was to resolve it.

11. On 10 August 1996 the Steering Board of the Football Club terminated the contract, ostensibly because the applicant had not complied with his contractual obligations. No details of any alleged breaches were contained in the decision.

12. The applicants were ordered to vacate the premises within 30 days.

13. On 1 October 1996 the Municipal Department for General Municipal Administration Affairs wrote a letter requesting that the Zvornik Municipal Assembly Council for Sports and Culture deliver a decision requesting the termination of the lease contract.

14. Based on the contract termination, the Executive Board of the Municipal Assembly of Zvornik issued a conclusion on 2 October 1996 requesting the Steering Board of the Football Club Drina to request the assistance of the local police to assist in the termination of the lease agreement between the Football Club and the applicants.

15. On 30 October 1996 representatives of the Football Club entered the applicants' premises accompanied by the local police. At this time the applicants were banned from further operating their business, an inventory list was made, and the facility was sealed with an order to the applicants to vacate the property by 1 November 1996. The Zvornik police had neither a warrant nor legal grounds for conducting the forcible eviction. On 1 November 1996 the premises were finally vacated with police assistance.

16. On 31 October 1996 the applicants filed a lawsuit in the First Instance Court in Zvornik against the Football Club Drina and the Republika Srpska with respect to the termination of the contract and their eviction. On 1 October 1997 the court decided against the applicants. In a lengthy decision Judge Radovan Nikolić upheld the actions of the Municipal Assembly and the local police as in accordance with the law.

17. On 20 November 1997 the applicants appealed to the Second Instance Court in Bijeljina. In a decision issued in November 1999, the Second Instance Court annulled the determination of the First Instance Court and returned the case for further consideration.

18. On 11 February 2000, upon reconsideration, the First Instance Court, in a decision signed by Judge Olga Malešević, issued a decision in favour of the applicants, ordering that they be reinstated into the business premises. The court found that the defendants in the case, the Football Club and the Republika Srpska, had interrupted the applicants' peaceful and actual possession of their business premises. The court also found that the eviction and sealing of the premises had been conducted without any legal basis. On 25 August 2000 the Second Instance Court upheld this decision.

IV. RELEVANT DOMESTIC LAW

19. Article 17(2) of the Law on Contractual Obligations provides as follows,

> "An obligation can cease to exist only through the mutual agreement of the parties to a contractual relation or by law."

V. COMPLAINTS

20. The applicants allege violations of Article 6 of the Convention, Article 1 of Protocol No. 1 to the Convention, as well as discrimination in the enjoyment of both of these rights on the grounds of political opinion.

VI. OPINION OF THE CHAMBER

A. Matters resolved while the case was pending before the Chamber

21. In accordance with Article VIII(3), the Chamber may decide to strike out an application, or part of the application, on the ground that…"(b) the matter has been resolved … provided that such result is consistent with the objective of respect for human rights."

22. The applicants complain that they were discriminated against by the ruling Serb Democratic Party (SDS) supporters in Zvornik, as the applicant Dušan Spremo is a member of the Socialist Party of the Republika Sprska. For this reason, they were illegally evicted from their business premises by the new directors of the Football Club Steering Board, and further were the victims of an unfair trial at the hands of Judge Radovan Nikolić, who allegedly was given their case as he would issue a decision in line with the ruling SDS party.

23. While the judgment issued by Judge Nikolić in November 1997 was issued squarely in favour of the Football Club and the Republika Srpska, upon reconsideration, in February 2000, the First Instance Court reversed its previous position and held in favour of the applicants. Judge Olga Malešević found that the applicants right to the peaceful enjoyment of their possessions had been violated by the Football Club and the Republika Sprska. The applicants were then reinstated into their property.

24. The Chamber finds that the domestic court system effectively set aside the previous judgment and remedied the applicants' primary complaint, the deprivation of their business premises. In this sense, the Chamber considers that the alleged violations of their right to property and lack of an impartial tribunal, in connection with discrimination, have been remedied by the local court. Therefore, the Chamber considers that it is not necessary for it to continue to examine these parts of the application, and this result is consistent with the objective of respect for human rights.

25. The Chamber therefore decides to strike out the parts of the application related to the violations of Article 6(1) of the Convention, lack of impartial tribunal, Article 1 of Protocol No. 1, and discrimination, in accordance with Article VIII(3)(b) of the Agreement.

B. Admissibility of matters not resolved

26. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted …."

27. The Chamber must now consider the admissibility as to the remaining parts of the application, namely the claim for the damages arising from the loss of the use of their business premises, and the violation of Article 6(1) of the Convention concerning the length of proceedings. The Chamber notes that the applicants have stated that, while they are aware of the availability of domestic proceedings in which they should pursue their claim for compensation, they choose not to. The applicants have not shown that this remedy would be ineffective. Accordingly, with regard to the claim for compensation, the Chamber finds that the applicants have not, as required by Article VIII(2)(a) of the Agreement, exhausted the domestic remedies.

28. The Chamber notes that the applicants filed the application while proceedings were still pending before the domestic courts. While the case was pending before the Chamber, the courts have issued a final decision in the applicants' favour. Although the applicants have been reinstated, they understandably ask the Chamber to find a violation of their rights protected by the Agreement due to the time that elapsed between the eviction from their business premises, and the actual repossession in February 2000. The Chamber notes that the proceedings before the domestic courts lasted over three years, which may be considered lengthy for a simple contractual matter. Additionally, the alleged bias of the court in 1997 would appear to further contribute to the length of proceedings. The Chamber considers that the application is admissible with regard to Article 6(1) of the Convention due to the length of proceedings.

29. As there are no other grounds for declaring the application inadmissible, the Chamber declares the remainder of the application admissible.

C. Merits

30. Under Article XI of the Agreement the Chamber must in the present decision address the question whether the facts found 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 recognized human rights and fundamental freedoms", including the rights and freedoms provided for in the treaties listed in the Appendix to the Agreement.

31. The Chamber has considered the present case under Article 6(1) of the Convention, as with regards the length of proceedings.

1. Article 6(1)

32. Article 6(1) of the Convention, so far as relevant, provides 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. . . "

33. Article 6(1) of the Convention therefore requires there to be a dispute over a right and for this right to be of a civil nature. In the present case, the Chamber finds that the unlawful interference with a lease for business premises concerns such a civil right (see, e.g., *Kevešević v. the Federation of Bosnia and Herzegovina*, CH/97/46, decision on the merits of 10 September 1998, Decisions and Reports 1998, paragraph 63).

34. The Chamber has already noted that the applicants initiated proceedings before the competent authorities in October 1996. It is from this date that the Chamber must consider the reasonableness of the length of proceedings under Article 6 of the Convention. The proceedings thereafter lasted for just under four years, terminating in August 2001, not including the requirement that the applicants then commence a separate proceeding for compensation damages arising from the unlawful deprivation of their possessions.

35. The reasonableness of the length of proceedings is to be assessed based on criteria laid down by the European Court of Human Rights, namely the complexity of the case, the conduct of the applicant, the conduct of the authorities and the matter at stake for the applicant (see, e.g., *Mitrović v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/54, decision on admissibility of 10 June 1998, Decisions and Reports 1998, paragraph 10).

i. The complexity of the case

36. The issue in the applicants' case is whether the applicants' rights under their contract had been breached. The Chamber cannot find that this is a particularly complicated issue, particularly in light of the fact that the applicant Dušan Spremo has documentation showing that he is the lessee and the fact that the courts and administrative bodies themselves have concluded that he is entitled to possession under the lease contract. Nor can it be argued that the law is particularly complicated on this point.

ii. The conduct of the applicant

37. There is no information available to the Chamber which would tend to indicate that the applicants are responsible for the delay, nor has the respondent Party made any argument to this effect.

iii. The conduct of the national authorities

38. The Chamber notes that the proceedings lasted approximately three and a half years. The applicants first filed their complaint on 31 October 1996, and received a negative decision a year later, on 1 October 1997, by the Zvornik Court of First Instance. The applicants appealed this decision on 20 November 1997. Two years later, the Court of Second Instance, in November 1999 sent the case back to the First Instance Court for reconsideration. In February 2000 the Court of First Instance issued a decision. The Second Instance Court upheld the decision in August 2000. Accordingly during these three and a half years, there has been four court decisions.

39. The applicants allege that were it not for the biased judgment issued in November 1997, they would have been able to use their business premises two and half years earlier. While this may be true, the applicants are obligated to use the available domestic remedies. Upon appeal, they were successful in regaining the use of their property. The nature of the appeal system requires that there be some delay in obtaining a final judgment, and the Chamber does not find that this delay was excessive.

iv. Conclusion

40. The applicants rightfully made use of the appeals process, such that they finally received a decision in their favour in February 2000, at which time they repossessed their business premises. Given the above facts, the Chamber can not find that the proceedings were excessively long so as to call into question a violation of Article 6(1) of the Convention.

VII. CONCLUSION

41. For the reasons given above, the Chamber, decides as follows:

1. unanimously, to strike out the part of the application having regard to Article 1 of Protocol No. 1 to the Convention, Article 6(1) of the Convention, right to impartial trial, and discrimination, as the matter has been resolved, in accordance with Article VIII(3)(b) of the Agreement;

2. unanimously, to declare the application inadmissible for what concerns the applicants' economic losses, as they have not exhausted domestic remedies, in accordance with Article VIII(2)(a) of the Agreement;

3. unanimously, to declare the remainder of the application admissible under Article VIII of the Agreement;

4. unanimously, that there is no violation of Article 6(1) of the Convention as with regards to the length of proceedings.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel