



DECISION ON ADMISSIBILITY

Cases no. CH/01/7714, CH/01/7941 and CH/02/12041

Izet ZUNDA

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 May 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 34, 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The above mentioned applications concern different complaints of Mr. Izet Zunda. Considering that these applications were brought by the same applicant, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

2. Before applying to the Chamber, the applicant addressed his complaints to the Constitutional Court of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina has not found any violations of human rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms (hereinafter "the Convention").

3. In his applications to the Chamber, the applicant alleges violations of the same rights as in his appeals to the Constitutional Court of Bosnia and Herzegovina.

II. FACTS

A. Facts of the application no. CH/01/7714

4. The application was introduced to the Chamber on 12 July 2001 and registered on 19 July 2001. The applicant requested that the Chamber order a provisional measure in terms of connecting electrical power in his apartment and to inform the public about the date of connection of electric power. On 6 September 2001 the First Panel decided not to order the provisional measure requested.

5. The application concerns the applicant's complaints in relation to the proceedings before the domestic courts in a dispute between the applicant as plaintiff and a public company "Elektroprivreda BiH" as defendant, for compensation of damage he suffered due to disconnection of electric power.

6. On 7 January 1999 the Municipal Court II in Sarajevo rejected the applicant's request for compensation. The applicant appealed. The Cantonal Court in Sarajevo rejected the appeal and confirmed the first instance judgement. The applicant filed a request for revision to the Supreme Court of the Federation of Bosnia and Herzegovina against the judgement of the Cantonal Court. On 18 January 2000 the Supreme Court rejected the request for revision as ill founded. The applicant filed an appeal to the Constitutional Court of Bosnia and Herzegovina against the judgement of the Supreme Court.

7. The Constitutional Court, at its session held on 4 and 5 May 2001, issued a decision rejecting the applicant's appeal. As to the alleged violation of Article 6 of the Convention concerning the length of the proceedings and wrongfully established factual background, the Constitutional Court concluded that Article 6 has not been violated in the proceedings before the domestic courts. Also, the Constitutional Court concluded that the applicant's rights guaranteed under Articles 13 and 14 of the Convention have not been violated and that there have been no indications of violation of any other provisions of the Convention.

B. Facts of the application no. CH/01/7941

8. The application was introduced to the Chamber on 28 September 2001 and registered on the same date. On 3 October 2001 the Chamber received a supplement of the application. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to block financial means and any further work of the organs competent for war veterans and fighters and to form a new, unique organ with a completely new structure of personnel, which would reconsider and remove accumulated problems of fighters. On 7 February 2003 the First Panel decided not to order the provisional measure requested.

9. The case concerns the applicant's complaints of actions of organs competent for the protection of war veterans and demobilized fighters. He complains of the unresolved status of

demobilized fighters, his unresolved personal status as a demobilised fighter, the non-existence of legal regulations for social protection of demobilized fighters, conduct of competent organs regarding the protection of demobilized fighters and disabled persons etc.

10. On 11 May 1996 the applicant was discharged from the Army of Bosnia and Herzegovina. The applicant filed an appeal. On 6 April 2000 the Command of the Military Unit 6030 rejected the applicant's appeal and upheld the contested procedural decision. The applicant initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina. On 3 August 2000 the Supreme Court rejected the lawsuit and upheld the second instance procedural decision. The applicant filed an appeal to the Constitutional Court of Bosnia and Herzegovina against the judgement of the Supreme Court of 3 August 2000.

11. At the session held on 22 and 23 June 2001, the Constitutional Court issued a decision rejecting the applicant's appeal filed against the judgement of the Supreme Court of 3 August 2000. Following the European Court case-law, the Court decided that Article 6 paragraph 1 can be applied in most employment cases but exceptions must be made in relation to specific kinds of employment which involve public interests. Accordingly, the Constitutional Court has held that the applicant's rights as a soldier in the Army are considered to be a typical example of matters being outside the scope of Article 6 paragraph 1 of the Convention. As to other alleged violations of rights, the Constitutional Court did not find any violation of the applicant's rights guaranteed under the Convention.

C. Facts of the application no. CH/02/12041

12. The application was introduced to the Chamber on 16 August 2002 and registered on the same date.

13. The case concerns the applicant's complaints of conduct of the following organs: the Constitutional Court of Bosnia and Herzegovina, Supreme Court of the Federation of Bosnia and Herzegovina, Cantonal Court Sarajevo, Municipal Court II Sarajevo, Municipal Prosecution Sarajevo, Federal Ministry for Issues of Fighters, Ministry for Issues of Fighters of Sarajevo Canton, Municipal Secretariat for Fighters and Disability Protection of Municipality Novi Grad Sarajevo. The applicant states that the mentioned organs deprived him of his right to be allocated a percentage of military disability, disability pension, personal means, personal income and "*to be very well materially situated*".

14. On 9 February 1998 the applicant filed an action against the Federation of Bosnia and Herzegovina, Sarajevo Canton, Ministry for Affairs of Fighters and Municipal Secretariat for Protection of Fighters and War Veterans. The Municipal Court declared itself incompetent to rule upon the action. The applicant filed an appeal. On 26 April 2000 the Cantonal Court rejected that appeal. The applicant states that he filed a request for revision and request for protection of legality to the Supreme Court. On 3 April 2001 the Supreme Court rejected the request for review as unallowed.

15. On 11 June 2001 the applicant filed an appeal to the Constitutional Court against the procedural decision of the Supreme Court.

16. At the session held on 10 and 11 May 2001 the Constitutional Court decided not to put the applicant's appeal on the list of cases for consideration for the reason that the appeal was not filed within 60 days from the date on which the applicant received a decision on the last remedy he had used. The Constitutional Court of Bosnia and Herzegovina sent a letter to the applicant on 26 June 2001, informing the applicant of this decision.

III. COMPLAINTS

17. The applicant alleges violation of his rights guaranteed under the following provisions: Article II paragraphs 2 and 3 paragraphs a, b, c, d, e and f, and paragraphs 4 and 6 of the Constitution of BiH; Article 2 paragraph 1, Article 3, Article 4 paragraph 1, Article 5 paragraph 1, Article 8 paragraph

1, Articles 13 and 14 of European Convention; Article 22, Article 25 paragraph 1 etc. of the Universal Human Rights Declaration and Article 2 paragraph b and c, Article 3 paragraph e, Article 5 paragraphs f, h, i, Article 7 paragraphs 1, 2, 3 etc. of the Statute of the International Tribunal in the Hague.

IV. OPINION OF THE CHAMBER

A. Regarding the applications nos. CH/01/7714 and CH/01/7941

18. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. The question arises in this regard whether it should accept an application concerning a matter which had been brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber.

19. The Chamber recalls that pursuant to Article II(2) of the Constitution of Bosnia and Herzegovina, set forth in Annex 4 to the General Framework Agreement, the rights and freedoms enumerated in the Convention and its Protocols apply directly in Bosnia and Herzegovina.

20. Pursuant to Article VI(3)(b) of the Constitution, the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgement of any other court in Bosnia and Herzegovina. The “issues under this Constitution” in Article VI(3)(b) include alleged violations of human rights, as guaranteed by Article II of the Constitution, and the Constitutional Court has jurisdiction under Article VI(3)(b) to determine such issues upon appeal against the decisions of other courts.

21. The Chamber notes that in the specific circumstances of the present applications its jurisdiction overlaps with that of the Constitutional Court. The application to the Chamber concerns the same matter and involves the same parties as the case already decided by the Constitutional Court. Neither the Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement nor the Agreement in Annex 6 thereto establish a hierarchy between the two judicial bodies or otherwise regulate the relationship between their respective jurisdictions. The Chamber recalls that the Constitutional Court has held that Article VI(3)(b) of the Constitution does not give it jurisdiction to review decisions of the Human Rights Chamber (see case no. U 11/98, Decision of the Constitutional Court of 26 February 1999, Decisions 1997-1999).

22. Under Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept and in what priority to address them. As the Chamber noted in the case of *Sijarić v. Federation of Bosnia and Herzegovina* (case no. CH/00/4441, decision on admissibility of 6 June 2000, paragraph 13, Decisions January – June 2000), the wording of this provision does not exclude that the Chamber, in so doing, may rely on grounds other than those set forth in the criteria listed in subparagraphs (a) through (d) of Article VIII(2).

23. In the light of these considerations and recalling that the applicant brought the matter before the Constitutional Court before he lodged his application with the Chamber, the Chamber finds it appropriate in the present case to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept the applications.

B. Regarding the application no. CH/02/12041

24. 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) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken.”

25. The Chamber notes that the applicant appealed to the Constitutional court of Bosnia and Herzegovina on 11 June 2001. The Constitutional Court did not issue any decision on the merits of the applicant’s case, but on 26 June 2002 it informed the applicant that his appeal will not be put on the list of cases for consideration since it was filed out of time. The final decision for the purposes of

Article VIII(2) of the Agreement must normally be taken to be the final decision in relation to the exhaustion of effective remedies. Since the applicant did not apply to the Constitutional Court within the applicable time limit he could not reasonably expect to obtain any remedy from the Court. The letter of the Constitutional Court cannot therefore be considered as the final decision within the meaning of Article VIII(2) of the Agreement. Under the circumstances the final decision from which the six month time period ran must be taken to be the Supreme Court decision of 3 April 2001. The applicant was aware of that decision by 11 June 2001, the date when he applied to the Constitutional Court, at the latest. This date is more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

26. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel