DECISION ON ADMISSIBILITY AND MERITS

(delivered on 5 September 2003)

Case no. CH/99/1972

M.T.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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 52, 57, and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to obtain compensation for the fact that on 8 May 1992 police officers temporarily confiscated and took away technical equipment belonging to him. On 10 August 1992 the local police returned some of the confiscated property to the applicant. Other property, however, had disappeared and could not be returned. On 2 April 1993, the applicant initiated civil proceedings before the First Instance Court in Bjeljina against the Ministry for Internal Affairs, Department Bjeljina, for monetary compensation. To date these proceedings have not been concluded.

2. The case raises issues under Article 6 paragraph 1 (right to a fair hearing) of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received and registered on 12 July 1999.

4. On 12 October 1999, the case was transmitted to the respondent Party for its observations on admissibility and merits with respect to Article 6 paragraph 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. On 12 January 2000, the Chamber received written observations from the respondent Party on the admissibility and merits of the application. These observations were then transmitted to the applicant for his comments.

6. On 6 February 2000, the applicant submitted his reply. He also made a compensation claim. This reply was then transmitted to the respondent Party.

7. On 27 March 2000, the respondent Party submitted further observations regarding the applicant's compensation claim.

8. On 3 April 2003 and on 29 May 2003, the Chamber received additional information from the applicant regarding the court proceedings and, on 21 May 2003, the Chamber received additional information from the respondent Party.

9. The Chamber deliberated on the admissibility and merits of the application on 9 September 1999, 5 July and 6 September 2000, 3 June and 3 July 2003. On the latter date the Chamber adopted the present decision on admissibility and merits.

III. STATEMENT OF THE FACTS

10. On 8 May 1992, police officers employed in the Police station in Bijeljina temporarily confiscated a number of technical goods owned by the applicant, including cameras, video-cameras and a tape recorder, seemingly because there was a suspicion that they had been stolen. On 10 August 1992 the applicant was returned most of the goods. Some of the applicant's technical equipment, however, including a video camera, a tape recorder, and a "Polaroid" camera, had disappeared and could not be returned.

11. On 2 April 1993, the applicant initiated proceedings before the First Instance Court in Bjeljina in the Republika Srpska against the Ministry for Internal Affairs, Department Bijeljina ("the Ministry") requesting compensation for temporarily confiscated technical equipment that was not returned to him.

12. On 11 October 1999, the Court issued a judgment ordering the Ministry to pay the applicant monetary compensation. The Ministry appealed against the judgment. The applicant did not appeal, although he was entitled to do so.

13. On 9 February 2000, the Second Instance Court in Bijeljina rejected the Ministry's appeal and thereby upheld the decision of 11 October 1999.

14. On 29 September and 28 November 2000, the Ministry disbursed to the applicant the amount awarded in the judgment of 11 October 1999, as well as the corresponding interest. The applicant claims that he accepted this as a "symbolic" sum, although, he maintains that the damage caused to him by the deprivation, which had occurred on 8 May 1992, was approximately five times larger.

15. On 9 April 2001, the Supreme Court of the Republika Srpska accepted a request for review lodged by the Ministry. The Supreme Court was of the opinion that the relevant facts were not correctly established in the previous proceedings. The decisions of 11 October 1999 and 9 February 2000 were revoked, and the case was returned to the First Instance Court for a new trial.

16. On 18 March 2003, the First Instance Court in Bijeljina issued a judgment in the renewed proceedings again ordering the Ministry to pay the applicant monetary compensation. The applicant was awarded only a smaller amount this time. The Ministry was also ordered to pay corresponding interest, counting from the date of the decision until the date of actual payment. The applicant's request to be compensated for lost profit was rejected.

17. On 20 May 2003, the respondent Party informed the Chamber that on 3 April 2003 the applicant appealed to the Second Instance Court in Bijeljina and that therefore the judgment of 18 March 2003 is not final and binding.

IV. COMPLAINTS

18. The applicant alleges that his right to property has been violated. He claims that the compensation granted to him by the domestic courts was too low and that the interest was calculated wrongly. The applicant further complains that his civil claims for compensation were not determined by the court within reasonable time.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

19. With regard to the admissibility the respondent Party claims that the applicant has failed to exhaust domestic remedies because he applied to the Chamber while his case was still pending before the domestic courts. In addition, the respondent Party claims that he received a first instance court judgement in his favour which grants him compensation and against which he did not appeal.

20. With regard to the merits of the case the respondent Party argues that there is no violation of Article 6 with regard to the length of the proceedings because the First Instance Court in Bjeljina on 11 October 1999 ordered the Ministry to compensate the applicant. The respondent Party concludes that the applicant was satisfied with the compensation awarded as he did not file an appeal. The respondent Party notes that the compensation was in fact paid out to the applicant on 29 September and 28 November 2000.

21. The respondent Party further alleges that there was no violation of Article 1 of Protocol No. 1 to the Convention. It considers that any breach of the right of peaceful enjoyment of possessions was remedied by the judgments of the respondent Party's courts in favour of the applicant.

B. The applicant

22. The applicant maintains his complaints.

VI. OPINION OF THE CHAMBER

A. Admissibility

23. Before considering the merits of this application, the Chamber must decide whether to accept it, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement.

24. In accordance with Article VIII(2) of the Agreement, "The Chamber shall decide which applications to accept… In doing so, the Chamber shall take into account the following criteria: … (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted…" and (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."

1. Admissibility *ratione temporis*

25. The Chamber finds that, insofar as the applicant complains about the fact that his property was confiscated in May 1992, his complaint relates to an event which took place before 14 December 1995, when the Agreement came into force. However the Agreement has no retroactive effect and only governs facts subsequent to its entry into force. It follows that this part of the application is incompatible with the Agreement *ratione temporis.* The same ground of inadmissibility applies to the applicant's complaint that he has not been awarded adequate compensation for the taking of his property. In this respect the Chamber recalls the case-law of the European Commission of Human Rights to the effect that deprivation of ownership is in principle an instantaneous act and that it has no jurisdiction to decide on claims for compensation for expropriations which occurred before the Convention came into force (see European Commission HR, decision of 4 July 1978, *A.,B. & Company A.S. vs. The Federal Republic of Germany,* Decisions and Reports No. 14, p. 146).

26. In so far as the applicant complains of the duration of the proceedings before the domestic courts, the facts complained of relate partly to a period before 14 December 1995. To that extent the complaint is inadmissible as being incompatible with the Agreement *ratione temporis.*

2. Exhaustion of domestic remedies

27. The Chamber observes that the applicant's primary complaint concerns a violation of his rights to have his civil claims settled by the courts within a reasonable time as protected under Article 6, paragraph 1 of the Convention. Such a complaint about length of proceedings cannot be remedied by awaiting the final decision in the civil court case, initiated in 1993 by the applicant, to receive compensation. As the Chamber has repeatedly held, the fact that proceedings are still pending will not prevent the Chamber from examining the applicant's complaint in relation to length of the proceedings (see e.g. case nos. CH/02/11108 and CH/02/11326, *Bašić and Cosić,* decision on admissibility and merits of 9 May 2003, paragraph 113). The Chamber therefore decides not to declare the applicant's complaint under Article 6, paragraph 1 concerning the length of proceedings inadmissible on the ground that the applicant has not exhausted the effective domestic remedies.

3. Conclusion as to admissibility

28. The Chamber declares admissible the complaint under Article 6, paragraph 1 of the Convention with regard to length of the proceedings since 14 December 1995 and declares the remainder of the application inadmissible.

B. Merits

29. Under Article XI of the Agreement, the Chamber must next address the question of 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.

Article 6 of the Convention

30. The applicant complains about the length of the civil proceedings initiated by him in April 1993 against the Ministry in order to obtain compensation for the confiscation of his technical equipment since 14 December 1995. It declares inadmissible the remainder of the application.

31. 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...."

32. Noting that the pending proceedings concern the applicant's rights to compensation under the Law on Obligation, the Chamber finds that these proceedings relate to the determination of his "civil rights and obligations", within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, Article 6 paragraph 1 of the Convention is applicable to the proceedings in the present case.

33. The first step in establishing the reasonableness of the length of the proceedings is to determine the period of time to be considered. The Chamber finds that, considering its competence *ratione temporis,* it can assess the reasonableness of the length of the proceedings only with regard to the period after 14 December 1995. It may, however, take into account what stage the proceedings had reached and how long they had lasted before that date.

34. In the present case, the proceedings had already lasted since April 1993, over two years and eight months, when the Agreement entered into force on 14 December 1995. On 11 October 1999, almost four years later, the proceedings before the First Instance Court were finally concluded by the issuance of a judgment accepting the applicant's claim and ordering the Ministry to compensate the applicant. On 9 February 2000 the Regional Court in Bjeljina rejected the Ministry's appeal against this judgment thereby ending the first set of proceedings. However, on 9 April 2001 the Supreme Court accepted the Ministry's request for review, an extra-ordinary remedy. It held that the relevant facts had not been correctly established and sent the case back to the First Instance Court for renewed proceedings. On 18 March 2003, the First Instance Court in Bjeljina then again issued a judgment on compensation. On 3 April 2003, the applicant appealed to the Second instance Court in Bjeljina where the case is currently pending in order to obtain a higher compensation. In summary, after 14 December 1995, the proceedings have lasted over seven years and seven months as of the date of the present decision, partly due to the fact that it took the First Instance Court over six years to issue its first decision in the applicant's case and partly due to the fact that the Supreme Court accepted the request for review lodged by the Ministry in April 2001 thereby returning the proceedings to the first instance.

35. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and the other circumstances of the case (*see, e.g.,* case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with reference to the corresponding case-law of the European Court of Human Rights).

36. The Chamber notes that the issues in the underlying case are the establishment of the amount of compensation to which the applicant is entitled due to the confiscation of technical his equipment by the local police in 1992. The case does not seem to the Chamber to be so complex as to require more than ten years of proceedings in total and alternatively more than seven and a half years of proceedings since the coming into force of the Agreement. The Chamber especially notes

that it is undisputed between the parties to the civil proceedings that the applicant's technical equipment was confiscated and taken away from him on 8 May 1992 by the local police. Accordingly, the Chamber finds no reason why, after this period of time, the civil proceedings for compensation are still not concluded.

37. As to the conduct of the applicant, the Chamber cannot find any evidence that any conduct of the applicant has served to prolong the civil proceedings. On the contrary, from the case file it can be concluded that the applicant made all possible attempts to speed up the proceedings. He even accepted the decision of 11 October 1999 of the First Instance Court in Bjeljina in the first set of proceedings although it appears that he was dissatisfied with the compensation awarded in this decision.

38. Having in mind the armed conflict, the Chamber notes that it is not reasonable to expect that the domestic courts were able to issue decisions at a normal speed immediately after the cessation of the armed conflict. The Chamber is therefore of the opinion that some delay by the domestic courts in issuing decisions must be accepted. However, the Chamber notes that the present case has been pending for more than seven years after the cessation of the armed conflict and more than ten years in total.

39. The Chamber considers that the conduct of the First Instance Court, delaying a decision in what appears to be an uncomplicated dispute about a compensation claim, was primarily responsible for the more than a six-and–a-half-years delay between the complaint and the first decision. In addition, the Chamber notes that the Supreme Court accepted the request for review because the relevant facts had not been correctly established, sending the case back to the First Instance Court for renewed proceedings. The Chamber finds that the incorrect establishment of facts is due to the failure of the domestic courts in the first set of proceedings to establish the facts properly. Finally the Chamber emphasises that the respondent Party does not provide any explanation to justify the delay in the proceedings. The Chamber concludes that the respondent Party and its courts are responsible for the unreasonable length of the proceedings.

40. In view of the above, the Chamber finds a violation of Article 6 paragraph 1 of the Convention in that the civil claims of the applicant have not been determined within a reasonable time.

VII. REMEDIES

41. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the Republika Srpska to remedy the established breaches of the Agreement. In this regard, the Chamber shall consider issuing orders to cease and desist and for monetary relief.

42. The Chamber notes that it has found a violation of the applicant's right protected by Article 6 paragraph 1 of the Convention with regard to the length of proceedings. The Chamber will therefore order the Republika Srpska, through its authorities, to take all necessary steps promptly to conclude the pending proceedings in the applicant's case.

43. In so far as the applicant has requested compensation for the confiscation of property the Chamber notes that the underlying complaint has been declared inadmissible.

44. The Chamber considers it appropriate, however, to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time. Although the applicant in November 2000 has been paid 5,500 Convertible Marks ("KM", *Konvertibilnih Maraka*) compensation by the Ministry, the judgement awarding this sum has been annulled and the applicant is left with the uncertainty of what he will finally be awarded.

45. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 500 Convertible Marks in non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

46. Additionally, the Chamber will further award simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded or any unpaid portion thereof until the date of settlement in full.

47. In addition, the Chamber will order the Republika Srpska to report to it no later than one month after 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 the above orders.

VIII. CONCLUSIONS

48. For these reasons, the Chamber decides,

1. unanimously, to declare the complaint under Article 6 of the European Convention on Human Rights regarding the length of civil proceedings before the domestic courts since 14 December 1995 admissible;

2. unanimously, to declare inadmissible the remainder of the application;

3. unanimously, that there has been a violation of the applicant's rights under Article 6 paragraph 1 of the European Convention on Human Rights with regard to the length of proceedings, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, to order the Republika Srpska, through its authorities, to take all necessary steps promptly to conclude the pending proceedings in the applicant's case;

5. unanimously, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, five hundred (500) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

6. unanimously, to dismiss the remainder of the applicant's claim for compensation;

7. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum on the sum awarded in conclusion 4 or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

8. unanimously, to order the Republika Srpska to report to it no later than one month after 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 the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel