



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/99/2487

Ioannis XAFIS

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 5 November 2004 with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned application introduced to the Human Rights Chamber for Bosnia and Herzegovina 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;

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement Pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Article VIII(2) of the Agreement, Articles 5 and 9 of the 2003 Agreement and Rules 50, 54, 56 and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicant is an entrepreneur from Greece who has a claim against "Poljoexport" d.o.o. (limited liability company) Sarajevo ("Poljoexport Sarajevo")¹ in the amount of KM 200,000.00 that was due on 7 April 1999 and which is not disputed. The applicant tried to collect his outstanding claims secured by a mortgage over real property during the executive proceedings. Because of the length of executive proceedings before the Court of First Instance in Banja Luka and his inability to collect his claims, the applicant initiated civil proceedings against the Republika Srpska for damage compensation in the amount of KM 200,000.00.

2. The application raises issues of violations of Article 6, paragraph 1 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The Chamber received the application on 28 December 1999, and it was registered on the same day.

4. Mr. Nedžad Bećirević represents the applicant in the proceedings before the Chamber and the Commission.

5. On 12 May 2004 the application was transmitted to the Republika Srpska under Article 6 of the Convention and Article 1 of the Protocol No. 1 to the Convention.

6. On 10 June 2004 the Commission received the Republika Srpska's observations on the admissibility and merits.

7. On 2 July 2004 the Commission received the applicant's reply to the respondent Party's on observations of 10 June 2004.

8. On 24 August 2004 the Commission received additional information from the respondent Party.

9. The Commission considered the admissibility and merits of the application on 4 May 2004, 8 September 2004, and 5 November 2004. On the latter date it adopted the present decision.

III. FACTS

A. As to the executive proceedings

10. On 17 September 1998 the Court of First Instance in Banja Luka issued a judgement establishing the validity of a contract concluded on 23 September 1998 between Poljoexport Sarajevo, as the plaintiff, and the Construction Institute Banja Luka, as the defendant, by which the plaintiff, as an investor, acquired the right to dispose of the business premises at ulica Veselina Masleše 11 in Banja Luka, of size 95.91 square metres.

11. On 14 December 1998 the applicant concluded an agreement on setting up the lien with debtor Poljoexport Sarajevo (a sole proprietorship), which secured the applicant's claim by a mortgage of its business premises at ulica Veselina Masleše 11 in Banja Luka. The applicant states that these business premises were a condominium owned by the debtor. The premises were not registered in the land books. Therefore, the applicant requested the debtor to prove his right over the business premises by a court judgement.

¹ Before the war, there was only one company named "Poljoexport" Sarajevo, which had its organization units in Banja Luka.

12. Following the applicant's proposal, the Court of First Instance in Banja Luka issued a procedural decision on 14 December 1998 ordering the registration of the mortgage of the real estate owned by Poljoexport Sarajevo at ulica Veselina Masleše 11 with the aim of securing the financial claim of the applicant, with 7 April 1999 as a maturity date.

13. Upon the applicant's proposal of 26 April 1999, the Court of First Instance in Banja Luka issued a procedural decision on 17 May 1999 ordering execution to be carried out on the real estate of Poljoexport Sarajevo at ulica Veselina Masleše 11/1 in Banja Luka by registration in the Land Books, determination of the value, and sale of the real property. This procedural decision became final and binding on 3 June 1999.

14. On 9 July 1999 "Poljoexport Banja Luka" d.o.o. ("Poljoexport Banja Luka", a limited liability company), as a third party, filed an objection against this procedural decision on execution of 17 May 1999, suggesting that it be annulled. It was stated as a reason that the real estate determined for execution was registered as a foundation deposit of Poljoexport Banja Luka. Poljoexport Banja Luka referred to the Decree of the Republika Srpska Government of 30 June 1992 (Official Gazette of Serb population in Bosnia and Herzegovina, no. 10/92) on the temporary ban of the transfer of real estate and status changes of economic subjects from other Republics and parts of the former Bosnia and Herzegovina within the territory of the Serb Republic of Bosnia and Herzegovina, and the Decree on the Ban on Disposal of real estate within the territory of Republika Srpska, which entered into force on 20 May 1999 (Official Gazette of RS number 13/99), according to which disposal and burdening of real estates within the territory of Republika Srpska owned by companies from the Federation of Bosnia and Herzegovina were prohibited. The objection also states that the Framework Law on Privatization of the Companies in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 14/98) emphasized the right of the Entities to privatize companies and property within their territories.

15. On 30 July 1999 the Court of First Instance in Banja Luka issued a conclusion instructing the third party Poljoexport Banja Luka to institute legal proceedings against the debtor Poljoexport Sarajevo and against the applicant within 30 days from the date of receipt of its conclusion, in order to establish that execution over the real estate in question is not allowed.

16. The applicant and the debtor Poljoexport Sarajevo filed appeals against the procedural decision of 30 July 1999, but they withdrew these appeals on 21 September 1999, considering that they were irrelevant because the third party had not instituted legal proceedings.

17. On 11 September 1999 the third party Poljoexport Banja Luka mailed a lawsuit to the Court of First Instance in Banja Luka in order to establish that the execution over the business premise in question was not allowed.

18. On 18 October 1999 the Court of First Instance in Banja Luka, in executive procedures, issued a procedural decision establishing the value of real estate in order to sell it and pay the creditor.

19. On 4 April 2000 the Court of First Instance in Banja Luka rejected the claim of Poljoexport Banja Luka to declare the execution over the disputed business premise unlawful. It is stated in the reasoning that the registration of Poljoexport Banja Luka in the Court Register was made on 1 June 1992 in accordance with provisions then in force, when the disputed business premise was registered as a foundation, but that the validity of registration may be the subject of deliberation in separate proceedings. Furthermore, the court held that the possession right of Poljoexport Sarajevo over the business premise in question was established by the final and binding judgment of 17 September 1998, because of which the plaintiff's request was rejected as ill-founded. Poljoexport Banja Luka filed an appeal against this judgment.

20. On 8 December 2000 the District Court in Banja Luka accepted the appeal of Poljoexport Banja Luka, quashed the first instance judgment, and returned the case for retrial. It is stated in the

reasoning that the existence of a final and binding decision establishing that Poljoexport Sarajevo was, during the relevant period, the investor in construction of the business premise but not solely entitled to dispose with that premise. The present company Poljoexport Banja Luka was a part of the mother company Poljoexport Sarajevo at the time, and in 1992 it was organized as an independent company from parts of the former mother company, in accordance with the law. Thereby, the mother company ceased to dispose of the disputed business premise and the legislature of the respondent Party has not still regulated mutual property relations between the mother company (with its head office outside the Republika Srpska) and the newly established companies, but only the procedure on the organization of the parts of companies.

21. On 22 May 2001 Poljoexport Banja Luka initiated proceedings against Poljoexport Sarajevo for establishment of the ownership over the business premise (case no. P-1215/01).

22. On 3 July 2002, in renewed proceedings, by its procedural decision, the Court of First Instance ordered suspension of the proceedings until a final and binding decision was reached in the proceedings in case no. P-1215/01, in which "Poljoexport" Banja Luka filed on 22 May 2001 a lawsuit against "Poljoexport" Sarajevo for establishment of ownership over the disputed business premise. The Court of First Instance assessed that this constituted a preliminary issue on which the decision on the admissibility of the execution over the business premise depends. The applicant filed an appeal against this procedural decision. According to the most recent information received by the Commission, these proceedings are still pending.

B. As to the civil proceedings

23. On 13 August 1999 the applicant initiated proceedings before the Court of First Instance in Banja Luka against the respondent Party for compensation of the damage he suffered from his inability his claims insured by the court mortgage to collect in the executive proceedings. This case file was assigned number P-7745/99. The Court has done nothing upon this law suite because the case file was given on 23 October 2000 for examination in case no. Ps-434/99 (for establishment of unlawfulness of the execution). In the meantime, the verdict in this case (Ps-434/99) was quashed in appeal proceedings and the case file received a new number in renewed proceedings (Ps-802/00). On 3 July 2002 the proceedings in case Ps-802/00 were suspended. An appeal was filed against this procedural decision and presently the case file is in the District Court in Banja Luka for a decision upon the appeal. Case no. P-7745/99 has been never returned to a judge because it stayed enclosed within case no. Ps-802/00.

IV. RELEVANT LEGAL FRAMEWORK

A. The Law on Executive Proceedings (OGSFRY 20/78-673, 6/82-149, 74/87-1742, 57/89-1440, 20/90-820, 35/91-589 and 53/91-1030, SGRS 17/93-670 and 14/94-534)

24. Article 10, in relevant part, provides:

"(1) The court is obliged to act in an expeditious way in the proceedings of enforcement and security."

25. Article 56, in relevant part, provides:

"(1) A person claiming that, with respect to the subject of enforcement, he has such right that prevents the execution, may file an objection against the execution requesting the execution over that subject be declared not allowed.

"(2) An objection may be filed before the executive proceedings have been completed.

26. Article 57, in relevant part, provides:

"(1) If a creditor does not give his statement on objection or of he opposes the objection

within a prescribed period, the court shall instruct the party that filed the objection to initiate civil proceedings within the prescribed time limit against the creditor in order to be declared that the execution over that subject is not allowed.

"(2) An applicant may also initiate proceedings after the expiration of time limit determined by the court before the executive proceedings have been completed, but in that case, he shall bare the expenses caused by exceeding this time limit.

27. Article 65 provides:

"(1) Upon a proposal of the person that requested the execution over a certain object be declared not allowed, the court shall postpone the execution with regard to that object if it finds that otherwise that person would suffer greater damage.

(2) The court may, depending on circumstances of the case, condition the postponement of the execution by depositing a guarantee."

B. The new Law on Executive Proceedings of the Republika Srpska (OGRS 59/03 entered into force on 18 July 2003)

28. Article 51, in relevant part, provides:

"(1) A person claiming that, with respect to the subject of enforcement, he has such right that prevents the execution, may file an objection against the execution requesting the execution over that subject be declared not allowed in the scope in which rights of that third party are affected by the enforcement.

"(2) An objection may be filed before the executive proceedings have been completed. Filing the objection does not prevent the execution of enforcement and realization of the claim of the person that requested the execution, if not otherwise prescribed by this law."

29. Article 52, in relevant part, provides:

"(1) The court shall decide on the objection of the third party in the executive proceedings or it shall instruct by its conclusion the party that filed the objection to exercise his rights in civil proceedings.

30. Article 53, in relevant part, provides:

"(1) Instruction for civil proceedings under paragraph 1 of Article 52 of this Law does not prevent enforcement of the execution, nor realization of the claim of the person that requested the execution, if not otherwise prescribed by this law.

"(2) In the civil proceedings under paragraph 1 Article 52 of this Law the person that filed the objection under Article 51 of this Law may request postponement of the execution in which the court for civil proceedings shall apply in an appropriate way the provisions of the civil proceedings on determination of court measures of guarantee."

...

"(4) The executive court shall, upon the receipt of decision under paragraph 3 of this Article, postpone the execution by its conclusion and it shall continue it, upon the proposal by the person that requested execution, after the decision of the civil proceedings court putting the decision on postponement of execution out of force or rejecting the lawsuit of the person that filed the objection that is rejecting his claim has been issued. The executive actions shall stay in force until the executive proceedings have been continued.

31. Article 229, in relevant part, provides:

“The execution proceedings started as of the date of application of this law shall be completed in accordance with provisions of this law.”

C. Decree on the temporary ban of transfer of real estate and status changes of economic subjects from other Republics and parts of the former Bosnia and Herzegovina within the territory of the Serb Republic of Bosnia and Herzegovina (“Official Gazette of the Serb population in Bosnia and Herzegovina”, no. 10/92)

32. Article 1 provides:

“A Decree is being issued on temporary ban of transfer of real estate and status changes of economic subjects from other Republics and parts of the former Bosnia and Herzegovina within the territory of the Serb Republic of Bosnia and Herzegovina.

D. Decree on the ban of disposal of real estate within the territory of Republika Srpska (“Official Gazette of the RS”, no. 59/03), which entered into force on 18 July 2003

33. Article 1 provides, in relevant part:

“(1) It is prohibited to dispose and encumber (sell, exchange, donate, transfer the rights to use and dispose, lease and give to temporary use, take out a mortgage etc.) over any real estate on the territory of the Republika Srpska owned, possessed, used or managed by the organs and institutions of the republics formed after the dissolution of SFRY as well as by the Federation of Bosnia and Herzegovina.

“(2) The ban under paragraph 1 of this Article also relates to enterprises and other legal entities with head office outside the Republika Srpska.”

34. Article 3 provides:

“(1) A legal deal concluded or an act issued contrary to provisions of this Decree is not valid.

“(2) Courts and other bodies in the Republika Srpska shall not recognize legal effects of concluded legal deals or legal acts issued contrary to provisions of this Decree.”

V. COMPLAINTS

35. The applicant complains that the respondent Party has been preventing him from collecting his claims, which were secured by a mortgage. He particularly complains of the length of executive proceedings and he requests that the executive proceedings be completed so that he will become able to collect his claims through the mortgaged business premises. The applicant further states that, because of the length of executive proceedings, he was compelled to file a lawsuit before the Court of First Instance in Banja Luka, requesting the respondent Party to compensate him for the damages it caused him by not enforcing his claims on the mortgaged real estate. He also complains about the length of these proceedings.

36. The application raises issues under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSION OF THE PARTIES

A. The Republika Srpska

1. As to the facts

37. The Republika Srpska asserts that the most disputed fact is the issue of “ownership”, i.e. the former right to use and right to dispose of the business premise in question, a preliminary issue in relation to the request for damage compensation, which the applicant filed against the respondent Party and which the respondent Party considers the main request. The respondent Party maintains that the company Poljoexport Sarajevo is not the owner of the disputed real estate.

2. As to the admissibility

38. The respondent Party holds that the application is premature since the proceedings upon the applicant’s lawsuit against the respondent Party for compensation of damages are still pending. The proceedings cannot be completed until the preliminary issue of the right over the real estate has been resolved.

39. The respondent Party also stresses that the contractual relationship between Poljoexport Sarajevo and the applicant is a mutual relationship that operates *inter partes*. It further stresses that the debtor could not have met his obligation at the burden of a third party because the debtor Poljoexport Sarajevo is neither the owner or the possessor of the facility in Banja Luka nor can it be, according to existing legislation.

40. The respondent Party refers to the Chamber’s decision in case no. CH/02/12474 *et al.*, *Fehim Bojić and 145 Other Shareholders of Borac Trgovina Travnik d.o.o.*, regarding the trade shop “Borac Travnik”, where the Chamber took a similar position toward privatization. The respondent party proposes that the application be declared inadmissible *ratione personae* and an abuse of the right to appeal.

3. As to the merits

41. The respondent Party asserts that the application is ill-founded, and it maintains that the District Court in Banja Luka has properly decided to suspend the executive proceedings by its decision of 8 December 2000. It supports the court’s reasoning.

42. The respondent Party maintains that the trial in the present case was conducted within a reasonable time. Having analyzed the criteria established in the court’s case law for determination of a “reasonable time” (complexity of the case, behaviour of the applicant, and behaviour of the authorities), it stresses that importance should be given to a certain number of factors such as the facts that should be established and its relation with other cases (judgment of 27 February 1999, *Dijana A.299*, p.10).

43. In relation to the alleged violation of the right to possession, the respondent Party maintains that has no obligation toward the applicant because it is an issue of a legal relation between the applicant and his debtor. The respondent Party stands behind the decision of the District Court on suspension of the executive proceedings. Apart from the reasons presented in the decision of the District Court, the respondent Party stresses that the mortgage creditor cannot exercise his right through a settlement from the value of the pledged property if, prior to it, he does not file a lawsuit by which he will demand payment from the same, and only a final and binding decision supports initiation of executive proceedings.

44. The respondent Party maintains the arguments set forth in the procedural decision of the District Court, i.e. that the applicant’s debtor, Poljoexport Sarajevo, is not the owner of the business premises in Banja Luka, which is why, in accordance with generally accepted legal principles, it could not transfer rights it doesn’t have to someone else. For the above-stated reasons, the respondent Party proposes that the application be rejected as ill-founded on the merits.

B. The applicant

45. In his application and submissions, the applicant stresses that he was denied the right to protection of his property by the actions of the Court of first Instance in Banja Luka. He alleges that the Court of first Instance in Banja Luka issued a procedural decision on execution that became final and binding, but which has not been executed, because of which the applicant requested through a lawsuit to have his debt paid by the respondent Party.

46. The applicant maintains that by establishing a new company and naming it "Poljoexport", the right to dispose with the property of the company Poljoexport Sarajevo cannot be acquired.

47. The applicant also alleges that the Decree of the Republika Srpska Government of 30 June 1992 on the temporary ban on the transfer of real estate and status changes of economic subjects from other Republics and parts of the former Republic of Bosnia and Herzegovina within the territory of the Serb Republic of Bosnia and Herzegovina, which the third party refers to in his objection, does not ban the establishment of a mortgage; the establishment of a mortgage was banned only by the decree of 15 May 1999, which came into force on 20 May 1999, after the mortgage had been established.

48. In his response to the observations of the respondent Party on the admissibility and merits, the applicant stresses that a newly founded company (Poljoexport Banja Luka) could have become the owner of the property of the pre-war company only if the pre-war company ceased to exist, i.e. if the status change was made in accordance with the law, and mutual relations between the companies was regulated by a contract. But the company Poljoexport Banja Luka usurped the business premises in question by a unilateral decision and therefore it cannot be the owner of the real estate. The applicant stresses that the Supreme Court of the Republika Srpska took this position. Furthermore, the applicant notes that the Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina does not regulate the issue of ownership, but only contains framework privatization rules.

49. The applicant argues that statements of the respondent Party that it has no relationship with the applicant are not correct. To the contrary, the applicant alleges that he had confidence in the decisions of the courts of the respondent Party and that he suffered damage because of that.

50. The applicant requests enforcement of the final and binding procedural decision on enforcement of 17 May 1999 and sale of the business premises for collection of his claim. The applicant also requests that the Commission order the respondent Party to compensate him for damages in the amount of 200,000.00 KM, which he requested from the respondent party in the lawsuit before the Court of First Instance in Banja Luka, as well as for non-pecuniary damage in the amount of 10,000.00 KM.

VII. OPINION OF THE COMMISSION

51. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided on the application by 31 December 2003, in accordance with Article 5 the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant to the applicant's case, from those of the Chamber, except for the composition of the Commission.

A. Admissibility

52. Before considering the merits of the application, the Commission must decide whether to accept the application, taking into consideration the admissibility criteria introduced under Article

VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, “the [Commission] shall decide which applications to accept.... In so doing, the [Commission] shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted.... (c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

1. Request for exhaustion of domestic remedies

53. The Commission notes that the applicant’s complaints are related to executive and civil proceedings that are pending before the Court of First Instance in Banja Luka. The Commission also notes that the respondent Party filed an objection stating that the application is inadmissible for non-exhaustion of domestic remedies because both cases are pending and there is no final decision that the applicant complains about.

54. According to Article VIII(2)(a) of the Agreement, the Commission must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

55. The Commission notes that the proceedings initiated by the applicant, provide for remedies that, in principle, can be considered effective within the meaning of Article VIII(2)(a) of the Agreement. In the case before it, however, the Commission must be convinced that these remedies can also be considered effective in practice.

56. The Commission recalls that on 26 April 1999, the applicant initiated executive proceedings before the Court of First Instance in Banja Luka, and on 13 August 1999 he initiated civil proceedings for damage compensation. The applicant’s complaints are related to these proceedings and their alleged unreasonable length. Although the Court of First Instance took certain steps in the executive proceedings, they have not been completed even after five and one-half years. In the civil proceedings, after five years, the court has not held any hearings.

57. In these circumstances, in accordance with Article VIII(2)(a) of the Agreement, the Commission considers that the applicant cannot be expected to wait any longer for a conclusion of proceedings before the respondent Party’s courts.

2. Conclusion on admissibility

58. Seeing no other reasons to declare the application inadmissible, the Commission declares the application admissible in its entirety.

B. Merits

59. Under Article XI of the Agreement, the Commission must next address the question of whether the facts established above disclose a breach by the Republika Srpska 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. In relation to Article 6 of the Convention

60. Article 6, paragraph 1 of the Convention 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”.

61. The European Court of Human Rights (“the European Court”) has explained that by requiring in Article 6, paragraph 1 of the Convention that cases should be heard “within a reasonable time”, “the Convention underlines the importance of rendering justice without delays which might jeopardize its effectiveness and credibility” (Eur. Court HR, *H. versus France*, judgment of 24 October 1989., Series A no. 162, paragraph 58).

(a) Executive proceedings

62. The applicant complains that the Court of First Instance in Banja Luka, by its failure to enforce the executive proceedings after more than five and one-half years since they have been initiated, violated his right to a fair hearing within a “reasonable time”.

63. The Commission must decide whether Article 6, paragraph 1 is applicable in the applicant’s case and, if applicable, whether the criterion of “reasonable time” has been respected in the proceedings before the Court of First Instance in Banja Luka.

64. The European Court of Human Rights has held that Article 6 applies to enforcement proceedings, regard being had to the purpose of initiating proceedings, namely to settle disputes. The Court has held that the enforcement proceedings constitute a second stage, that should be considered under Article 6, paragraph 1 (Eur. Court HR, *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143; *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286 A). The Chamber has also previously held that Article 6 applies to enforcement proceedings (see, e.g., case no. 98/603, *R.T.*, decision on admissibility and merits of 4 November 2002, Decisions July-December 2002).

(1) Length of proceedings

65. In order to establish the validity of complaints in relation to the length of proceedings, the Commission must first determine which time period should be taken into consideration. Within the meaning of Article 6, paragraph 1 of the Convention, the Commission finds that the time period that should be taken into consideration starts from the day the applicant submitted his proposal for enforcement to the Court of First Instance in Banja Luka, 26 April 1999. Accordingly, these proceedings have been pending for five years and eight months and they remain pending.

66. The reasonableness of the length of proceedings is determined in relation to the criteria established by the case-law of the European Court, the Chamber, and the Commission. In particular the Commission consider the complexity of the case, the conduct of the applicant, and the conduct of the relevant authorities, as well as 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). In the civil

cases, the conduct of the defendant, as well as what is at stake for the plaintiff in the relevant proceedings, are taken into consideration (European Court, *Buchholz v. Germany*, judgment of 6 May 1981, Series A no. 42, paragraph 49).

(2) Complexity of the case

67. As for the complexity of the case, the Commission notes that the applicant's case concerns the enforcement of the execution over the mortgaged business premises. The issue is ownership over the business premises, which is disputed between Poljoexport Sarajevo and Poljoexport Banja Luka, which were formerly one company. The Court of First Instance issued a procedural decision on execution and determined the value of the real estate for the purpose of sale and payment to the applicant. However, a third entity (Poljoexport Banja Luka) filed an objection against the procedural decision on execution, after which the court issued a procedural decision instructing the third entity to request that the execution be declared not allowed in civil proceedings. On 11 September 1999 the third entity initiated civil proceedings, but its request was rejected on 4 April 2000. However, during the proceedings upon the appeal, the District Court quashed this decision and returned the case for reconsideration. In renewed proceedings on 3 July 2002 the court suspended the proceedings because, in the meantime, the third entity initiated new proceedings in order to establish the ownership right over the business premises which, in the court's opinion, represents a preliminary issue in the proceedings related to execution. During the executive proceedings the court undertook no actions after establishing the value of real estate for sale on 18 October 1999. The Commission notes that the applicant's case has been complicated by the disputed issue of the ownership of the mortgaged business premises, and by the related proceedings initiated to declare that execution over the business premises was not allowed and to establish the ownership right. In the Commission's opinion, however, the complexity of the case does not justify the executive proceedings' duration of more than five and a one-half years.

(3) The applicant's conduct

68. As to the conduct of the applicant, the Commission cannot find any indication that the applicant contributed to the delay in the proceedings. Moreover, the respondent Party has not claimed that the applicant contributed to the delay in the proceedings.

(4) The relevant authorities' conduct

69. As to the conduct of the respondent Party's authorities, the Commission finds that they did not act in accordance with their responsibility to ensure that the proceedings were conducted within a reasonable time. Because of the ownership dispute over the business premises, in addition to the executive proceedings before the Court of First Instance in Banja Luka, the third entity also initiated proceedings to declare that execution was not allowed. On 4 April 2000 the Court of First Instance rejected the third entity's request. Because of incorrect assessment of the evidence, however, on 8 December 2000 this verdict was quashed by the District Court in Banja Luka and the case was returned for reconsideration. In renewed proceedings, on 3 July 2002 (18 months later), the Court of First Instance suspended the proceedings in order to wait for the decision of the Court of First Instance in separate proceedings initiated by the third entity about the ownership of the business premises. Those proceedings have not been completed to date and have been pending for more than three years and five months. The court did not take any actions after establishing the value of the real estate on 18 October 1999, after almost five years. The Commission has no knowledge as to whether any formal decision on the delay of execution has been issued.

70. In its decisions, the European Court emphasizes that it is the obligation of the contracting states to organize their judicial systems in a way that they can guarantee the issuance of a final decision in disputes concerning civil rights and duties within a reasonable time to everyone (e.g., *Horvat v. Croatia*, no. 51585/99, § 59, 26 July 2001).

71. The Commission notes that in July 2003 the respondent Party issued a new Law on Executive Proceedings aimed at improving the efficiency of executive proceedings. However, the Court of First Instance has not undertaken any actions since the entry into force of the new law. The Commission shall not examine the duration of the civil proceedings initiated by Poljoexport Banja Luka; however, the Commission notes their influence on the duration of the executive proceedings and recalls that the organization and conduct of the courts fall within the respondent Party's responsibility. In these circumstances, the Commission considers that the duration of executive proceedings of more than five and one-half years is the consequence of insufficient activities by the respondent Party's courts.

72. Thus, the Commission finds that the length of executive proceedings was unreasonably long.

(b) Civil proceedings

73. The applicant states that, because of his inability to collect outstanding claims secured by a court mortgage in executive proceedings, he initiated proceedings for damage compensation against the respondent Party. He complains that these proceedings have not been completed "within a reasonable time", which is how the respondent Party violated its obligations under Article 6, Paragraph 1 of the Convention.

74. The Commission recalls that the Chamber consistently held that disputes involving a request for damage compensation relate to "civil rights and obligations". The Commission also notes that the respondent Party has not put this conclusion in question. The Commission considers that the right the applicant claims before the domestic court represents a "civil right" within the meaning of Article 6, paragraph 1 of the Convention. For these reasons, the Commission concludes that Article 6, paragraph 1 of the Convention is applicable in this case.

75. It is indisputable that the applicant initiated proceedings by filing a lawsuit to the Court of First Instance in Banja Luka on 13 August 1999. Starting from that date, the Commission has to consider the reasonableness of the length of proceedings under Article 6, paragraph 1 of the Convention. Considering that these proceedings have not yet been completed, this time period amounts to five years and one month and the proceedings remain pending.

(1) Complexity of the case

76. In his lawsuit the applicant requests that the court oblige the defendant to compensate him for the damage in the amount of KM 200,000.00. He states that this is the amount of his claims against Poljoexport Sarajevo, which he was not able to collect during the executive proceedings, although they were secured by a court mortgage. In these proceedings the court had to decide whether the applicant was damaged and whether the defendant was responsible for it. The Commission considers that this lawsuit does not raise any complex legal or factual issues.

(2) The applicant's conduct

77. As to the applicant's conduct, the respondent Party did not establish that he was in any way responsible for the delay in the resolution of this case. Also, the Commission finds no evidence indicating that any of the applicant's actions led to extension of civil proceedings.

(3) The relevant authorities' conduct

78. The respondent Party admits that the Court of First Instance took no action in the applicant's lawsuit. The respondent Party justifies this by the fact that an examination of the case file was given in order to establish that the execution was not allowed. This case was first listed under number Ps-434/99, and after the annulment of the first-instance decision it was given a new number, Ps-802/00 (see paragraph 23 above).

79. The Commission recalls that “it is the obligation of the contracting states to organize their judicial systems in a way that they can guarantee the issuance of a final decisions in disputes concerning civil rights and duties within a reasonable time to everyone” (see, e.g., *Horvat v. Croatia*, no. 51585/99, § 59, 26 July 2001).

80. In these circumstances, where the Court of First Instance in Banja Luka, for more than five years after the lawsuit was filed, did not hold any hearings, the Commission concludes that this delay is caused exclusively by the courts' inactivity, which falls within the respondent Party's responsibility. The Commission therefore concludes that the respondent Party violated the applicant's right to a hearing “within reasonable time”.

2. In relation to Article 1 of the Protocol no. 1 to the Convention

81. The applicant also complains that his right to protection of property was violated as a result of the failure to enforce the 17 May 1999 procedural decision on execution of the Court of First Instance in Banja Luka, as well as his inability to receive compensation from the defendant in the proceedings he initiated by the lawsuit of 13 August 1999.

82. 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.”

(a) Executive proceedings

83. Article 1 of Protocol No. 1 to the Convention contains three rules. The first rule enunciates the general principle that one has the protected right to the peaceful enjoyment of one's property. The second rule covers deprivation of property and subjects it to the requirements of the public interest and conditions laid out in law. The third rule recognizes that States are entitled to control the use of property and subjects such control to the general interest and domestic law. It must then be determined in respect of these conditions whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's rights, bearing in mind that the last two rules should be construed in light of the general principle (see e.g., case no. CH/96/17 *Blentić*, decision on admissibility and merits of 5 November 1997, paragraphs 31-32, Decisions March 1996-December 1997). Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized.

(1) Existence of “property” under Article 1 of Protocol No. 1 to the Convention

84. The applicant has an outstanding claim in the amount of KM 200,000.00 against Poljoexport Sarajevo, which is not at dispute and over which he initiated the executive proceedings. On 17 May 1999 the Court of First Instance issued a procedural decision on execution ordering the enforcement over the mortgaged business premises. The applicant's claim is due, it is legally valid, it has a certain economic value, and as such it represents a property right protected under Article 1 of Protocol No. 1 to the Convention.

(2) Interference with the applicant's right

85. The Commission recalls that the applicant initiated executive proceedings on 26 April 1999 for collection of his outstanding claim. The Court of First Instance issued a procedural decision on execution on 17 May 1999 and determined the enforcement over the object of the applicant's

claim. These proceedings were never completed, however, nor did the applicant realize his claim, because of the actions undertaken by a third entity in order to declare that the execution was not allowed. The Commission finds that the failure by the Court of First Instance to complete the executive proceedings represents interference by the respondent Party's authorities with the applicant's rights under Article 1 of Protocol No. 1 to the Convention.

(3) Justification for the interference

86. In order to establish whether the established interference is compatible with the applicant's rights under Article 1 of Protocol No. 1, the Commission must examine whether the interference is in accordance with the law and whether it pursues a legitimate aim. If these two conditions are met, it must determine whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite balance will not be found if the applicant has borne an excessive individual burden (*see case no. CH/97/48 et al., Poropat and Others*, decision on admissibility and merits of 10 May 2000, Decisions January-June 2000, paragraph 163).

87. The respondent Party claims that it has no obligation toward the applicant because the case is about a legal relationship between the applicant and his debtor. However, as the Chamber previously held, Article 1 of Protocol No. 1 imposes positive obligations to the Parties to enable efficient protection of individual rights (*see case no. CH/96/28, M.J. against Republika Srpska*, Decision on Admissibility and Merits of 7 November 1997, paragraph 33). The Chamber also found that these obligations also include the enforcement of court decisions (*see, e.g., case no. CH/98/1859 Jeličić*, Decision on Admissibility and Merits of 12 January 2000, paragraph 31). The Commission recalls that in this case the Court of First Instance in Banja Luka issued a procedural decision on execution of 17 May 1999. The Court of First Instance adopted the applicant's proposal and determined that the object of execution should be the sale of the mortgaged real estate. However, this procedural decision has never been executed because Poljoexport Banja Luka as the third entity filed an objection, and initiated proceedings in order to declare that the execution was not allowed. It has never been declared, however, that the execution is not allowed, as these proceedings have not been completed yet, while in the meantime the court took no actions in the executive proceedings.

(4) Legality

88. According to the Law on Executive Proceedings in force at the time the executive proceedings were initiated (*see paragraphs 24-27 above*), the creditor specified the object of execution in his proposal for execution. In this case, the applicant proposed enforcement over the business premises upon which he had had a mortgage right. The Court of First Instance accepted this proposal and issued a procedural decision on execution on 17 May 1999. The respondent Party did not state that the Court of First Instance postponed the execution upon the proposal of the third entity, in accordance with Article 65 of the Law on Executive Proceedings (*see paragraph 27 above*). The new Law on Executive Proceedings, which entered into force on 18 July 2003 (*paragraphs 28-29*) provided that directing the third entity to initiate civil proceedings does not prevent the enforcement of execution, but the third entity is allowed to demand during the civil proceedings that a court order postponing the execution be issued (*paragraph 30*). In this case, a third entity initiated proceedings to declare that the execution was not allowed, but it did not request postponement of execution in accordance with Article 65 of the former Law on Executive Proceedings, nor did the court postpone the execution in civil proceedings in accordance with the new Law on Executive Proceedings. Regardless of the lack of any formal decision on postponement, the executive proceedings were never completed. In these circumstances, the Commission finds that the respondent Party's interference with the applicant's rights is not lawful.

(5) Test of "Fair Balance"

89. In addition to considering the legality of the interference, the Commission finds it appropriate to apply the test of fair balance to this application. The Commission considers that not allowing execution over an object upon which third party claims certain rights can be considered to be “in public interest”. In this case, this procedure did not lead to a decision preventing the execution, but the court failed to complete the executive proceedings. The Commission finds that this failure puts an excessive individual burden on the applicant and does not strike a fair balance.

90. For these reasons, the Commission concludes that the respondent Party violated the applicant’s rights under Article 1 of Protocol No. 1 to the Convention.

(b) Civil proceedings

91. Among other things, the applicant complains that the Court of First Instance did not decide on his request for damage compensation in civil proceedings he had initiated by the lawsuit of 13 August 1999. He considers that this way his right to property under Article 1 of the Protocol no. 1 to the Convention was violated.

i. Existence of “property” under Article 1 of Protocol No. 1

92. The Commission recalls that the applicant has an outstanding claim against the company Poljoexport Sarajevo in the amount of KM 200,000.00. This claim is not disputed and was ensured by a mortgage on business premises located in Banja Luka. On 17 May 1999 the applicant initiated executive proceedings for collection of his outstanding claim requesting the sale of the mortgaged business premises and collection of the price received. The Court of First Instance adopted the applicant’s proposal and issued a procedural decision on execution. However, because of the third party’s (Poljoexport Banja Luka) objection and the proceedings it initiated in order to declare the execution was not allowed, the executive proceedings were never completed. Because of his inability to collect his outstanding claim in the executive proceedings, the applicant filed a lawsuit in the Court of First Instance in Banja Luka requesting the Republika Srpska to pay him the amount of KM 200,000.00. He considers that he acted *bona fide* when he put his trust in the decisions of the respondent Party’s authorities to establish the mortgage on the business premises in order to secure the claim (see paragraph 12), as well as the legally valid procedural decision on execution (see paragraph 13). As the court failed to enforce its decision, he considers that it caused him damage and he holds the respondent Party responsible. That is the reason why he requests KM 200,000.00 from the respondent Party as compensation for the damage caused to him by its failure to complete the executive proceedings and sell the mortgaged real estate so he could collect his claim.

93. The Chamber recalls that, according to the jurisprudence of the European Court of Human Rights, a protected “possession” can only be an “existing possession” (Eur. Court H.R., *Van der Musselle v. Belgium*, judgment of 23 November 1983, Series A no. 70, paragraph 48) or, at least, an asset which the applicant has a “legitimate expectation” to obtain (see Eur. Court H.R., *Pine Valley Developments Ltd and Others v. Ireland* judgment of 29 November 1991, Series A no. 222, paragraph 51).

94. The Commission is of the opinion that the applicant’s prospect of success in the civil proceedings should be based on legislation in force so that it could constitute “justified expectations”, which represents protected property. On the contrary, keeping in mind the applicable regulations on damage compensation, the Commission does not find probable the existence of the respondent Party’s obligation for damage compensation. Without prejudging the decision in court proceedings, it appears to the Commission that some important elements are missing in order to constitute the obligation to compensate the damage, such as the unlawfulness of the action which caused the damage, as well as the existence of a causal relation between the action of the person causing the damage and the damage itself. For this reason, the Commission finds that the applicant’s expectation cannot constitute a “justified expectation” protected under Article 1 of Protocol No. 1 to the Convention.

95. Accordingly, the Commission concludes that the respondent Party has not violated the applicant's right protected under Article 1 of Protocol no. 1 to the Convention.

3. Conclusion as to the merits

96. In short, the Commission concludes that the Republika Srpska violated Article 6, Paragraph 1 of the Convention because it did not issue decisions within a reasonable time in the executive proceedings initiated by the applicant on 26 April 1999 for collection of outstanding claims and in the civil proceedings initiated by the applicant on 13 August 1999 for damage compensation. The Republika Srpska also committed a violation under Article 1 of Protocol No. 1 to the Convention by not completing the aforementioned executive proceedings initiated by the applicant for collection of outstanding claims.

97. The Commission further concludes that the Republika Srpska did not commit a violation of Article 1 of Protocol No. 1 to the Convention by not deciding on the applicant's lawsuit request for damage compensation initiated on 13 August 1999.

VII. REMEDIES

98. Under Article XI(1)(b) of the Agreement, the Commission must next 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 Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

99. The applicant requests that a violation of his rights be established and that compensation be paid to him in the amount of KM 200,000.00 as pecuniary damages, as well as KM 10,000.00 as non-pecuniary damages he suffered because of the conduct of the respondent Party. The request for compensation of pecuniary damages appears to be similar to the request for damage compensation lodged by the applicant in the pending civil proceedings.

100. The Commission notes that it established the violation of the applicant's rights protected under Article 6, paragraph 1 of the Convention in relation to the length of executive and civil proceedings. The Commission also established the violation under Article 1 of Protocol No. 1 to the Convention because of the court's failure to act in the executive proceedings. Because the applicant's rights have been violated due to of the fact that the executive proceedings have lasted longer than five years and eight months, the Commission finds it appropriate to order the respondent Party to undertake all the necessary steps to complete the executive proceedings in accordance with the law. As it was already mentioned (see paragraphs 69, 88 and 89 above), the court shall have to complete these proceedings in accordance with the provisions of the new Law on Executive Proceedings. Also, the Commission shall order the respondent Party to undertake all the necessary steps to complete without delay the civil proceedings pending before the Court of First Instance in Banja Luka since 13 August 1999.

101. The Commission shall also order the respondent Party to pay the applicant the amount of KM 2,000.00 KM for non-pecuniary damage as acknowledgment for his suffering due to the failure to complete the executive proceedings and the failure to resolve his request for damage compensation in the civil proceedings before the Court of First Instance within a reasonable time. This amount shall be paid within two months from the date of receipt of this decision.

102. Furthermore, the Commission shall order the Republika Srpska to pay the applicant simple interest in the amount of ten percent per year on the ordered payment or any unpaid portion thereof from the due date until the date of payment in full.

103. The Commission shall also order the Republika Srpska to report to the Commission, or its successor institution, within three months from its receipt of this decision on the measures taken by it to comply with these orders.

VIII. CONCLUSION

104. For these reasons, the Commission decides,

1. unanimously, to declare the application admissible in its entirety;
2. unanimously, that the Republika Srpska has violated the applicant's rights under Article 6, paragraph 1 of the Convention in relation to the length of executive proceedings initiated by the applicant on 26 April 1999 before the Court of First Instance in Banja Luka, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
3. unanimously, that the Republika Srpska has violated the applicant's rights under Article 6, paragraph 1 of the Convention in relation to the length of civil proceedings for damage compensation initiated by the applicant on 13 August 1999, the Republika Srpska thereby being in breach of Article I of the Human Rights' Agreement;
4. unanimously, that the Republika Srpska has violated the applicant's rights under Article 1 of Protocol No. 1 to the Convention because of the failure to complete the executive proceedings initiated by the applicant on 26 April 1999 before the Court of First Instance in Banja Luka, the Republika Srpska thereby being in breach of Article I of the Human Rights' Agreement;
5. unanimously, that the Republika Srpska has not violated applicant's rights under Article 1 of Protocol No. 1 to the Convention because of the court's failure to resolve the damage compensation claim in civil proceedings initiated by the applicant on 13 August 1999, the Republika Srpska thereby being in breach of Article I of the Human Rights' Agreement;
6. unanimously, to order the Republika Srpska, through its authorities, to take all necessary steps to complete the executive proceedings immediately and without delay in accordance with the Law on Executive Proceedings;
7. unanimously, to order the Republika Srpska, through its authorities, to undertake all necessary steps to complete the civil proceedings immediately and without delay;
8. unanimously, to order the Republika Srpska to pay the applicant, within two months from the date of receipt of this decision, the amount of KM 2,000.00 KM as compensation for non-pecuniary damages;
9. unanimously, to order the Republika Srpska to pay the applicant simple interest of ten percent (10%) per year on the payment ordered in conclusion no. 8 or any unpaid portion thereof starting from the due date until the date of payment in full; and
10. unanimously, to order the Republika Srpska to report to it, or its successor institution, within three months of its receipt of this decision, on the measures undertaken by it to comply with the above orders.

A handwritten signature in black ink, appearing to read 'Jakob Möller', written in a cursive style.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission