



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/00/3862

Teofik JUSUFAGIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 1 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)(a) and Article VIII(2)(c) 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 application concerns the applicant's complaint about his inability to realize his right to compensation for damages caused due to the loss of his business premises before the First Instance Court (*Osnovni Sud*) in Banja Luka and in separate proceedings concerning his damaged vehicle before the District Court (*Okružni Sud*) in Banja Luka. The applicant, who is of Bosniak origin, also complains that he was discriminated against on the basis of his national origin.

2. The application raises issues regarding the applicant's right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

3. The application related to the business premises was introduced on 9 June 2000.

4. The applicant is represented by Mr. Igor Sjerkov, a lawyer practicing in Banja Luka.

5. On 27 April 2004 the Commission received a letter from the applicant relating to the proceedings pending before the District Court in Banja Luka in relation to his damaged vehicle.

6. On 11 May 2004 and on 26 May 2004 the Commission received letters from the applicant relating to the proceedings pending before the First Instance Court in Banja Luka.

7. On 9 July 2004 the application was transmitted to the Republika Srpska under Article 6 of the Convention.

8. On 10 August 2004 the Commission received the Republika Srpska's observations on the admissibility and merits of the application. On 26 August 2004 the Commission received the applicant's response to the respondent Party's written observations of 10 August 2004. On the same day, the Commission forwarded the applicant's reply to the respondent Party for its information and comments.

9. The Commission deliberated on the admissibility and merits of the application on 8 September 2004 and 1 November 2004. On the latter date it adopted the present decision.

III. STATEMENT OF FACTS

A. Civil proceedings in relation to business premises

10. On 1 June 1992 the applicant, D.F., and PP "Energoinženjering" concluded a contract regarding business premises in Banja Luka. By this contract, D.F. ceded the sublease of the business premises to the applicant with the consent of PP "Elektroinženjering" as the sublessor.

11. The applicant made an advance payment to PP "Elektroinženjering" in the amount of 21,000 DEM, as agreed in the contract. The applicant further invested 30,000 DEM in the business premises in order to open a grocery store.

12. At the end of 1992, due to the outbreak of hostilities on the territory of Bosnia and Herzegovina, PP "Elektroinženjering" stopped working and the entire complex in which the applicant's business premises were located, was illegally taken over by "Elektroškola" Banja Luka. The applicant felt that he was forced to stop working on his business premises due to the fact that he was of a different nationality. The applicant thereby lost his ability to use the business premises.

13. On 17 November 1998 the applicant initiated civil proceedings against “Elektroškola” Banja Luka, seeking compensation of 51,000 KM plus interest from the date the applicant initiated the proceedings until the date of payment.

14. On 20 May 2000 the applicant requested the First Instance Court in Banja Luka to schedule a date for a hearing.

15. On 18 December 2001 and 11 November 2002 hearings were held in the applicant’s civil proceedings before the First Instance Court. These civil proceedings are still pending before the First Instance Court in Banja Luka.

B. Civil proceedings in relation to a damaged vehicle

16. On 31 July 1992 the Republika Srpska Army (“VRS”) mobilized the applicant’s vehicle.

17. On 12 November 1992 the VRS gave the vehicle back to the applicant.

18. On 9 November 1998 the applicant initiated civil proceedings with the First Instance Court in Banja Luka against the Republika Srpska Army with a view to obtaining compensation for the damages the VRS caused to his car in 1992.

19. On 25 February 2002 the First Instance Court in Banja Luka issued a judgement ordering the VRS to pay the applicant 8,580.18 KM as compensation for the damaged vehicle.

20. On 15 May 2002 the VRS Military Attorney Office filed an appeal against the 25 February 2002 judgement, complaining of an incorrect and incomplete assessment of the facts and misapplication of material law. These proceedings are still pending before the District Court in Banja Luka.

IV. RELEVANT LEGAL FRAMEWORK

21. A new Law on Civil Proceedings of the Republika Srpska entered into force on 1 August 2003 (Official Gazette of the Republika Srpska (“OG RS”) no. 58/03). At the time the applicant initiated the civil proceedings, however, the Law on Civil Proceedings of the Socialist Federal Republic of Yugoslavia (OGSFRY nos. 4/77-212, 36/77-1478, 36/80-1182, 69/82-1956, 58/84, 74/87, 27/90 and 35/91; OGRS nos. 17/93, 14/94 and 32/94) was in force.

22. At the time the applicant raised his claim for compensation in relation to the business premises, Article 10 of the Law on Civil Proceedings was applicable. This article provided as follows:

“The court shall be obliged to endeavour to conduct the procedures without any unnecessary delay, causing as little as possible expenses and preventing any abuse of the rights that belong to the parties in the proceedings.”

V. COMPLAINTS

23. The applicant complains that his right to a prompt and fair resolution of his case in the civil proceedings pending before the First Instance Court in Banja Luka has been violated. The applicant further complains about his inability to realize his right to compensation for his damaged vehicle in the proceedings pending before the District Court in Banja Luka, because the 25 February 2002 judgement has still not been enforced. In this regard, the applicant alleges that such judgements are only executed when they concern certain people. The applicant also

complains that he has been discriminated against and therefore lost possession of his business premises located in Banja Luka.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the facts

24. The Republika Srpska contests the facts as stated in the application. The respondent Party indicates two claims in the application, relating to two different proceedings. The first claim is related to the civil proceedings as initiated on 17 November 1998. The respondent Party recalls that in these proceedings two hearings have been held to date.

25. The respondent Party further points out that the second claim concerns the civil proceedings initiated to obtain compensation for the destroyed vehicle, first raised in the applicant's letter of 27 April 2004. The respondent Party disagrees that the applicant's letter is a "detailed supplement to the application". The respondent Party considers this claim to be a completely new claim, because it concerns different civil proceedings from those referred to in the application.

26. The respondent Party considers the applicant's allegation that such judgements are only executed when they concern certain people, as stated in his letter of 27 April 2004, to be ill-founded. The respondent Party has enacted the Law on Determination and Manner of Settlement of the Internal Debt of the Republika Srpska ("Law on Internal Debt") (OG RS no. 63/04), which, in Chapter IV, Article 18, defines so-called war damages. The respondent Party further points out that, as stated in Article 18, the respondent Party will enact a separate law regulating compensation for these damages. The respondent Party also points out that the First instance Court in Banja Luka has already issued a judgement in these proceedings.

2. As to the admissibility

27. The respondent Party regards the part of the application relating to the civil proceedings pending before the First Instance Court for compensation for unlawful deprivation of business premises to be inadmissible because the applicant failed to exhaust available domestic remedies. The respondent Party mentions that the responsible state must first have an opportunity, by using available remedies within its domestic legal system, to alter damages suffered by an individual. Therefore, a state does not have to be responsible before an international body for its acts before having an opportunity to provide a remedy within its own legal system.

28. The respondent Party further proposes that the second part of the applicant's claim, relating to the claim for compensation for the destroyed vehicle, should be declared inadmissible as manifestly ill-founded.

3. As to the merits

29. The respondent Party recalls that the application raises issues under Article 6 of the Convention, with particular regard to the right to a fair hearing within a reasonable time. This term "the right to a fair hearing within a reasonable time" cannot be considered abstractly and should be assessed in light of the circumstances of each individual case. Three criteria are to be taken in account: the complexity of the case, the applicant's conduct, and the conduct of the relevant authority.

30. The respondent Party asserts that that the European Court of Human Rights ("European Court") has created a precedent by stating that a temporary backlog in resolving cases before

domestic courts is not within the state's responsibility, as long as action is undertaken to remedy such situation. The respondent Party further argues in this regard that the situation of the judiciary in Bosnia and Herzegovina and the Republika Srpska immediately after hostilities came to an end was one that created a backlog of cases pending before the domestic courts. The respondent Party also considers the issue of judicial reform to be within the responsibility of the international community and not within the responsibility of the respondent Party. Moreover, judicial reform is still underway. For these reasons, the respondent Party argues that the hearing was conducted within a reasonable time, and it proposes that the application, including the new claim, be rejected as ill-founded on the merits.

4. As to the compensation claim

31. The respondent Party notes that the compensation claim raised in the applicant's 27 April 2004 letter is equal to the amount awarded by the 25 February 2002 judgement. The respondent Party considers the applicant's claim for fair compensation to be ill-founded.

B. The applicant

32. The applicant points out that he was a refugee who returned to Banja Luka with his family after living a stable life in Germany for several years.

33. The applicant explains that, before the outbreak of hostilities, he worked in his store in Banja Luka, which is the subject of the civil proceedings initiated on 17 November 1998. The applicant used the vehicle, which is the subject of the civil proceedings initiated on 9 October 1998, for transportation. The applicant has not succeeded in obtaining compensation for his vehicle or the business premises, which were taken away from him in a unlawful manner, although the proceedings have been pending for six years.

34. The applicant further points out that in the civil proceedings regarding the business premises two hearings were held and there still has been no decision issued by the First Instance Court in Banja Luka. The applicant rejects the respondent Party's argument that the courts are under pressure because Article 6 of the Convention would not have any meaning if every state would use that argument.

35. As to the civil proceedings in relation to the destroyed vehicle, the applicant states that the problem is of a different nature. The applicant explains that, although he received a judgement in his favour from the First Instance Court, this judgement is useless and will not have any effect. The applicant further views the Law on Internal Debt as entirely useless. The applicant sees no value in having the damages paid in 50 years without any interest. The applicant in this regard shows his discontent, because the Law on Internal Debt allows the respondent Party to delay payment and inflation is not taken into account. The applicant does not regard 50 years to be "within a reasonable time".

VII. OPINION OF THE COMMISSION

A. Admissibility

36. The Commission recalls that the application, insofar as it relates to the proceedings concerning the business premises, was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the application by 31 December 2003, in accordance with Article 5 of 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.

37. 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” and “(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. As to the compensation claim for the damaged vehicle

38. In accordance with Article 5 of the 2003 Agreement, the Commission shall, “have jurisdiction to decide on cases received by the Chamber until 31st December 2003” Rule 43 of the Commission's Rules of Procedure provides that, “Any application made under Article VIII paragraph I of the Agreement, that is to be decided on by the Commission under Article 5 of the 2003 Agreement, must have been introduced with the former Chamber on or before 31 December 2003.”

39. In the letter received from the applicant on 27 April 2004, he raises a new complaint related to his inability to realize his right to compensation for his vehicle damaged by the VRS in 1992. The Commission notes that this complaint was submitted for the first time to the Commission after 31 December 2003, whereas according to Article 5 of the 2003 Agreement and Rule 43 of the Commission's Rules of Procedure, the Commission can only decide on “cases” or “applications” introduced with the Chamber by 31 December 2003. The Commission considers that these terms cover not only completely new applications but also new complaints submitted by an applicant that are unrelated to the subject matter of an existing application. The new complaint submitted by the applicant falls into this category. It follows that this complaint is incompatible with the provisions of the Commission's mandate as set forth in the 2003 Agreement. The Commission therefore decides to declare this complaint inadmissible.

2. As to the alleged discrimination

40. The Commission notes that the applicant complains that he was discriminated against and therefore lost possession of his business premises in Banja Luka. The Commission, however, observes that the applicant failed to substantiate this complaint. The Commission finds, therefore, that the application does not disclose any appearance of discrimination in the enjoyment of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement.

3. As to the length of the civil proceedings relating to the business premises

41. The applicant complains about the length of the civil proceedings to obtain financial compensation, which have been pending before the First Instance Court in Banja Luka since 17 November 1998. The applicant further complains that, although two hearings were held on 18 December 2001 and 11 November 2002, he has not received any decision to date. The respondent Party submits that the applicant has failed to exhaust domestic remedies because the proceedings are still pending. As the Chamber has repeatedly held, however, the fact that proceedings are still pending does not prevent it from examining an applicant's complaint in relation to the length of the proceedings (see, e.g., case no. CH/02/8770, *Dobojuptevi d.d.*, decision on admissibility and merits of 5 December 2003). Further, as no other ground for inadmissibility appears applicable, this part of the application must be declared admissible.

4. Conclusion as to admissibility

42. In sum, the Commission finds that the application is admissible insofar as it concerns the length of the civil proceedings pending before the First Instance Court in Banja Luka since 17 November 1998, and it decides to declare the remainder of the application inadmissible.

B. Merits

43. 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 recognised human rights and fundamental freedoms,” including the rights and freedoms provided for in the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 6, paragraph 1 of the Convention

44. The Commission has declared the application admissible under Article 6, paragraph 1 of the Convention in relation to the length of the civil proceedings to obtain compensation for the loss of money invested in business premises located in Banja Luka. These proceedings have been pending since 17 November 1998 before the First Instance Court in Banja Luka. The proceedings are still pending, and no decision has been issued to date.

45. 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.”

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

a. Applicability of Article 6 of the Convention

47. The proceedings at issue, insofar as relevant, concern the applicant’s right to compensation as an injured party damaged in some personal or property right or civil wrong. As such, the Commission finds this claim to constitute a civil right within the meaning of Article 6, paragraph 1 of the Convention. Accordingly, that provision is applicable to the proceedings in the present case, be they criminal or civil proceedings, by which the applicant is entitled to have his civil claim resolved (see Eur. Court HR, *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241, paragraphs 121-122).

b. Length of proceedings

48. In establishing the validity of a claim related to the length of court proceedings, the Commission must first determine what period of time is to be considered. For the purposes of Article 6, paragraph 1 of the Convention, the Commission finds that the period of time to be considered starts on the date on which the applicant initiated the civil proceedings, 17 November 1998 (see *Tomasi v. France*, paragraph 124). The First Instance Court in Banja Luka held two hearings on 18 December 2001 and 11 November 2002. The Commission notes that the applicant has not received a decision to date, and the civil proceedings have been pending for six years.

49. The reasonableness of the length of proceedings is to be assessed having regard to the criteria set forth by the European Court and established in the Chamber’s jurisprudence: the complexity of the case, the conduct of the applicant, the conduct 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). In civil cases, the defendant's behaviour and what is at stake in the litigation for the plaintiff are also taken into account (Eur. Court HR, *Buchholz v. Germany*, judgment of 6 May 1981, Series A no. 42, paragraph 49).

(1) The complexity of the case

50. With regard to the complexity of the case, the Commission considers that the civil proceedings pending since 17 November 1998 are relatively simple and straightforward. The Commission recalls that the civil proceedings concern the applicant's compensation claim for the loss of money invested in the business premises, which he was subleasing before 1992. The Commission is of the opinion that the issues raised in the determination of the applicant's civil proceedings are not so complex as to require the First Instance Court in Banja Luka six years to decide on the case.

(2) The conduct of the applicant

51. With respect to the applicant's conduct, the Commission sees nothing in the case file to indicate that the applicant has been in any way responsible for the delay in the proceedings. Nor has the respondent Party argued that he has contributed to the prolonged delay.

(3) The conduct of the relevant authorities

52. With respect to the conduct of the courts involved, the Commission notes that the First Instance Court in Banja Luka held the first hearing in the applicant's civil proceedings on 18 December 2001. Thus, it took the First Instance Court more than three years to organize the first hearing in the civil proceedings. The Commission notes that article 10 of the Law on Civil Proceedings (see paragraphs 21 and 22 above) requires the court to conduct the proceedings without any unnecessary delay. The Commission is of the opinion that the First Instance Court in Banja Luka, by waiting for more than three years to organize the first hearing, has not acted in accordance with the Law on Civil Proceedings. Moreover, it took the First Instance Court another year to organize the second hearing in the applicant's civil proceedings, which took place on 11 November 2002. The Commission further observes that the First Instance Court has not undertaken any further steps in the applicant's civil proceedings since the 11 November 2002 hearing and thereby caused another unnecessary delay of two years. The Commission is of the opinion that the First Instance Court had no reason for not holding hearings more speedily and deciding on the civil proceedings within a reasonable time. The Commission therefore finds that the First Instance Court's inactions were unnecessary and its failure to act promptly caused an unnecessary delay of six years in the applicant's civil proceedings.

53. The Commission finds that the protracted delays and ineffective and inefficient conduct of the applicant's civil proceedings have thwarted the applicant's efforts to seek justice and to have his claim for compensation adjudicated.

2. Conclusion as to the merits

54. Having regard to the above, the Commission considers that the delay in the civil proceedings can be regarded as entirely due to the conduct of the First Instance Court in Banja Luka, for which the respondent Party is to be held responsible. Moreover, the Commission finds, in examining the manner in which the civil proceedings were conducted, that the First Instance Court in Banja Luka should have dealt far more expediently with the proceedings, and there was no apparent justification for the prolonged delays that caused the civil proceedings to be pending for six years.

55. The Commission therefore finds that the length of time that the proceedings to determine the applicant's claim for compensation for lost investments in his business premises in Banja Luka

have been pending before the court of the respondent Party is unreasonable and that the Republika Srpska has therefore violated the applicant's right to a fair trial within a reasonable time in the determination of his civil rights, as guaranteed by Article 6, paragraph 1 of the Convention.

VIII. REMEDIES

56. 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.

57. The applicant requested a fair trial and a "fair judgement". In fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Commission with broad remedial powers, and the Commission is not limited to the applicant's requests.

58. The Commission 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. Since the applicant's rights have been violated by the fact that the civil proceedings were pending for six years, the Commission considers it appropriate to order the respondent Party to take all necessary steps to conclude the pending civil proceedings promptly and without any further delay.

59. The Commission also considers it appropriate to award monetary compensation 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. Accordingly, the Commission will order the respondent Party to pay the applicant the sum of 2,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") for these non-pecuniary damages within one month of the date of receipt of this decision.

60. The Commission will further order the Republika Srpska to pay the applicant simple interest at a rate of 10% (ten per cent) per annum over the sum stated above or any unpaid portion thereof from the due date until the date of settlement in full.

61. The Commission will further order the Republika Srpska to report to it, or to its successor institution, within two months of the date of its receipt of this decision, on the steps taken by it to comply with the above orders.

IX. CONCLUSIONS

62. For the above reasons, the Commission decides,

1. unanimously, to declare admissible the part of the application relating to the length of the civil proceedings in relation to the applicant's business premises;

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

3. unanimously, that there has been a violation of the applicants' rights under Article 6, paragraph 1 of the European Convention on Human Rights with regard to the length of proceedings related to the applicant's compensation claim relating to the business premises, 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 to promptly conclude the civil proceedings pending since 17 November 1998;

5. unanimously, to order the Republika Srpska to pay the applicant, within one month of the date of receipt of this decision, 2,000 KM by way of compensation for non-pecuniary damages;
6. unanimously, to order the Republika Srpska to pay the applicant simple interest at a rate of 10% (ten per cent) per annum over the sum stated in conclusion no. 5 or any unpaid portion thereof from the due date until the date of settlement in full; and
7. unanimously, to order the Republika Srpska to report to the Commission or its successor institution, within two months of the date of its receipt of this decision, on the steps taken by it to comply with the above orders.

(signed)
J. David YEAGER
Registrar of the Commission



(signed)
Jakob MÖLLER
President of the Commission