



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 January 2003)

Case no. CH/01/6930

KOMPAS MEĐUGORJE

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 January 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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 mobilisation, use, and rental to UN forces of the tourist facility “Kamp Međugorje” by Čitluk Municipality following the armed conflict in Bosnia and Herzegovina. Kamp Međugorje is owned by the company “Kompas Međugorje”, of which Zoran Buntić is 76.74% owner, director, and authorised representative.
2. The applicant alleges that the Municipality of Čitluk, SFOR, and the FBiH Ministry of Defence did not comply with government decisions ending the state of war. The property was not returned to the applicant. SFOR and the Čitluk Municipality continued to use the Kamp Međugorje facilities, Čitluk Municipality continued to receive rent and other income from that use, and neither the Federation Ministry of Defence nor the Federation Government issued a procedural decision demobilising the facilities.
3. The case raises issues under Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. Mr. Buntić submitted the application on 28 February 2001, and it was registered the same day. He requested, as provisional measures, that the Chamber order the immediate demobilisation and return of Kamp Međugorje to Kompas Međugorje’s possession, including an official record of such transfer. The Chamber considered the application during its March 2001 session and rejected the request for provisional measures.
5. On 19 March 2001, the Chamber transmitted the case to the respondent Party under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. On 21 May 2001, the respondent Party submitted its observations. These observations were communicated to the applicant on 6 June 2001, and Mr. Buntić submitted a reply on 4 July 2001.
6. The Chamber received additional submissions from the applicant on 8 April 2002 and 22 August 2002.
7. On 6 July 2002, the Chamber decided to put certain questions to the applicant and respondent Party. The Chamber transmitted these questions by letters dated 16 July 2002. The Chamber received responsive information from the Federation of Bosnia and Herzegovina on 6 August 2002 and from Zoran Buntić on 12 August 2002.
8. The Chamber deliberated on the admissibility and merits of the case on 6 July 2002, 6 September 2002, 5 December 2002, and 7 and 8 January 2003. On the latter date, it adopted the present decision.

III. FACTS

A. Facts relating to Kompas Međugorje and Kamp Međugorje

9. Kompas Međugorje is a registered joint stock company with 140,004 shares. Zoran Buntić holds 76.74% of the shares of the “Kompas Međugorje” Company and is the major shareholder, director, and authorised representative of the company. He purchased his shares for 1,100,000 DEM¹ from “Kompas International” d.d. Ljubljana on 30 December 1998 through a sales contract between the parties. The contract was verified by the First Instance Court in Čitluk on 9 February 1999 and registered with the Higher Court in Mostar on 11 February 1999. An additional 5.62% of

¹ The total face value of the 107,445 shares was 3,223,350 DEM, or 30 DEM per share.

the Kompas Međugorje shares are held by employees of Kompas International d.d. Ljubljana. The remaining 17.64% of the shares of Kompas Međugorje are owned by the state, i.e. the Federation.²

10. Kompas Međugorje owns numerous buildings at its tourist facility, "Kamp Međugorje". These include 50 bungalows with a total capacity of 250 beds, a restaurant of 480 square meters, administrative buildings of 150 square meters, warehouses and laundries of 170 square meters, a reception area of 56 square meters, shops of 30 square meters, and a chapel of 30 square meters.

11. On 10 December 1992, during the armed conflict in Bosnia and Herzegovina, the HVO Defence Department of the so-called Croat Republic of Herzeg-Bosna issued a decision to mobilise the Kompas Međugorje facilities, placing them at the disposal of its military forces. Shortly thereafter, by contract dated 1 February 1993, the HVO Čitluk rented the facilities to the Spanish Battalion of UNPROFOR in exchange for monthly compensation of 171,000 DEM. The contract for the accommodation of UNPROFOR was signed by Stjepan Krasić, on behalf of HVO Čitluk, and Colonel F.J.F., on behalf of the UNPROFOR Spanish Battalion.

12. On 22 December 1995, Bosnia and Herzegovina issued a decision terminating the state of war (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" - no. 50/95). On 23 December 1996, the Parliament of the Federation of Bosnia and Herzegovina issued its Decision on the Cessation of the Application of the Decision Declaring the State of War in the Territory of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH", no. 25/96). Pursuant to this decision, the ministries, other Federation institutions, cantons, municipalities, companies, and other legal persons in the Federation were ordered to resume their work in accordance with peacetime regulations.

13. An invoice dated 31 August 1999 indicates amounts owed to the Čitluk Municipal Assembly by "SPABRI" in the amount of 171,000 DEM for food and accommodation in the Kamp Međugorje for the month of August 1999. The invoice was verified by the Čitluk Main Municipal Office and stamped by the head of Čitluk Municipality.

14. As of 1 September 1999, the SFOR Spanish Battalion was still using the Kamp Međugorje property on the basis of the 1 February 1993 contract, which was extended through 31 December 1999. It appears that the SFOR Spanish Battalion left Kamp Međugorje on 31 January 2000 because a statement concerning the return of the facility and a receipt for payment of funds to restore the facility to its original condition exist for that date.³

15. According to the respondent Party, Čitluk Municipality received rent payments under the contract for the facility from 23 October 1996 until the SFOR Spanish Battalion's departure date.

16. On 9 May 2001, Federal Minister of Defence Mijo Anić wrote to the Mayor of Čitluk, advising him that the legal basis for mobilisation of Kamp Međugorje ceased to exist on 22 December 1995 or, at the latest, on 23 December 1996, and that Čitluk Municipality was using the camp illegally. In his letter, the Minister cites written information from SFOR indicating that the Spanish Battalion had not used the camp for two years. The letter orders Čitluk Municipality to vacate the camp by 25 May 2001.

17. From the time of his appointment as director and authorised representative of Kompas Međugorje, Zoran Buntić has been denied access to Kamp Međugorje, and on several attempts to enter he has been stopped at the entrance by guards. He has never received any income or other compensation from the Kamp Međugorje property.

18. The Kamp Međugorje property has not been returned to Kompas Međugorje or Mr. Buntić.

² These shares were previously held by the national investor, "Basic Organisation of Associated Labour Catering and Tourism", and, after the effective date of the Law on Transformation of Socially Owned Property (Official Gazette of the Republic of Bosnia and Herzegovina no. 33/94) they were transferred to state ownership.

³ The respondent Party, in its submissions, states that the SFOR Spanish Battalion left the facility on 31 January 2001, but this statement appears to be in error.

B. Facts relating to legal proceedings

19. Mr. Buntić initiated numerous legal actions in his capacity as director and authorised representative of Kompas Međugorje to regain possession of the property and to challenge the actions of Čitluk Municipality. On 25 March 1999, Mr. Buntić, as representative of Kompas Međugorje, filed an action in the Municipal Court in Čitluk against Čitluk Municipality, requesting establishment of his rights, the return of the facilities, and provisional measures. On 26 March 1999, Mr. Buntić, also on behalf of the company, filed an action in the same Court against the Municipality of Čitluk for unjust enrichment. The Municipal Court of Čitluk has taken no action on this complaint.

20. On 29 April 1999, according to the Federation, the Municipal Court in Čitluk held a hearing in the action filed 25 March 1999 concerning the return of the facilities. On 23 June 1999, the court issued a procedural decision disqualifying one of the defendant's representatives. On 11 October 2000, the Municipal Court issued another procedural decision, which the defendant appealed. On 8 March 2001, the Cantonal Court in Mostar issued a procedural decision rejecting the defendant's appeal against the 11 October 2000 decision of the Municipal Court in Čitluk as ill-founded. On 20 October 2000, Mr. Buntić repeated the request for provisional measures and to secure evidence in the action filed 25 March 1999.

21. Mr. Buntić, on behalf of Kompas Međugorje, subsequently requested disqualification of the President of the Čitluk Municipal Court. The case file was again sent to the Cantonal Court in Mostar to decide this issue. There have been no further developments in the case.

22. Mr. Buntić, again acting on behalf of Kompas Međugorje, also filed criminal charges against various individuals with the Municipal Public Attorneys Offices in Čitluk and Mostar. The defendants in these cases include individuals within the Ministry of Internal Affairs of Herzegovina-Neretva Canton, the Ministry of Justice of Herzegovina-Neretva Canton, the Federation Ministry of Justice, the Federation Ministry of Defence, the Federation Government, the Federation Supreme Court, SFOR, the International Police Task Force, OHR, and UNMIBH. There have been no developments in these cases.

23. In separate legal proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina, Čitluk Municipality contested the registration of Zoran Buntić as the major shareholder of Kompas Međugorje by the Higher Court in Mostar, arguing that its legal interests were violated by that court's procedural decision. On 18 May 1999, the Supreme Court rejected the Municipality's appeal. The Supreme Court stated that the Municipality based its legal interest on the Law of the Republic of Bosnia and Herzegovina, specifically the Law on the Prohibition to Dispose of Property, Transfer Funds and Change the Status of Legal Persons from other Countries in the Territory of the Republic of Bosnia and Herzegovina (OG RBiH nos. 4/95 and 37/95). The Court ruled that this law could not be applied to the separate legal system of the Croat Republic of Herzeg-Bosna until the Federation of Bosnia and Herzegovina regulates these issues. Even if the law were applicable, no appeal would be allowed because the law forbids burdening real estate or funds (including shares and part ownership in companies in the territory of the Republic of Bosnia and Herzegovina), except for transfers to persons whose residence is outside the Republic of Bosnia and Herzegovina. Transfers to persons whose residence is in the Republic are not forbidden, and the Court held that the Municipality's reliance on such a prohibition was manifestly incorrect. On 19 December 2000, the Municipal Court in Čitluk issued a procedural decision rejecting the Čitluk Municipality's action against the applicant and Kompas International. Čitluk Municipality filed another lawsuit against Kompas Međugorje and Zoran Buntić on 8 February 2001, raising identical issues to those previously rejected by the courts.

24. On 22 July 2002, the Chief of the Municipal Department of Construction, Physical Planning, and Protection of the Environment for Čitluk Municipality, Ms. Vesna Vasilj, was judged guilty of a criminal offence for intentionally preventing another person from filing an appeal from a procedural decision. According to the sentencing decision of the Municipal Court in Čitluk, Ms. Vasilj intentionally delivered procedural decisions concerning Kompas Međugorje to the wrong address rather than to Zoran Buntić, the Director and authorised representative of the company, to whom they

should have been delivered.⁴ She also refused to submit these procedural decisions for consideration when she was requested to do so in writing on 30 June 1999.

25. To date, all of the litigation initiated by Mr. Buntić on behalf of Kompas Međugorje remains pending.

IV. RELEVANT LEGAL PROVISIONS

26. The Law on Transformation of Socially Owned Property, cited by the Federation of Bosnia and Herzegovina (see paragraph 35 below), provides in part as follows:

“Article 1

“On the date this law went into force, the Republic of Bosnia and Herzegovina (hereinafter: the Republic) became the holder of the right to ownership over socially-owned property over which the Federation of Bosnia and Herzegovina has no right to disposal, and that is:

- “1. Natural resources and goods in general use;
- “2. Social capital expressed in balance sheets of legal persons on 31 December 1991;
- “3. Resources over which the right to use and the right to disposal have: local communities, social organisation, associations of citizens and political organisations, except such resources which those communities and organisations obtained from other sources but the budget, resources for financing of common needs, donations of social legal persons and voluntary taxes of citizens;
- “4. Real estates which were built or gained on other basis from the budgetary resources, resources for financing of common needs and resources of voluntary taxes of citizens and donations notwithstanding whether business books of social legal person, as user, are kept or not, i.e. whether they were registered in the Land Books.”

V. COMPLAINTS

27. The applicant primarily complains that the unlawful use of the Kamp Međugorje facilities by SFOR and Čitluk Municipality following the cessation of hostilities, and Čitluk Municipality’s receipt of compensation for such use, violate its property rights. Kompas Međugorje does not challenge the mobilisation of the facilities during the period of armed conflict, but claims that the interference with the property after 22 December 1995, when the Presidency of Bosnia and Herzegovina declared the termination of the state of war, violates its rights guaranteed under Article 1 of Protocol No. 1 to the Convention.

28. The applicant further complains of violations of the right to a fair trial within a reasonable time under Article 6, the right to an efficient remedy under Article 13, and the prohibition on abuse of rights under Article 17. The applicant requests that the Chamber order compensation for that damage. The applicant further requests that the Chamber order the respondent Party to demobilise the camp and return it to the owner.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to admissibility

⁴This behaviour constitutes the criminal offence of violation of the right to submission of remedy pursuant to Article 198, paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina.

29. With respect to the time period from 1992 through 14 December 1995 the respondent Party challenges the Chamber's competence *ratione temporis* to consider the application. With respect to the time period from 14 December 1995 to 11 February 1999, the respondent Party asserts that the application is inadmissible *ratione personae*, arguing that Zoran Buntić's allegations are ill-founded because he was neither a shareholder nor representative of the Company at that time. In this regard, the respondent Party generally questions whether Mr. Buntić has acted in his individual capacity or on behalf of the corporation. The respondent Party further asserts that the application is inadmissible for non-exhaustion of domestic remedies because the applicant has not proved exhaustion of domestic remedies and has not received a final decision from the courts.

2. As to the merits

30. The respondent Party first points out that the change in authorised representative of Kompas Međugorje was carried out by the procedural decision of the Higher Court in Mostar on 11 February 1999. According to the respondent Party, on that day Mr. Buntić obtained the rights of the major shareholder of the Company pursuant to Article 141 paragraph 2 of the Law on Business Companies. The respondent Party points out that, at that time, Kamp Međugorje was already burdened by the lease contract concluded between Miroslav Grbavac, as the person representing "Kompas-Međugorje", and the UNPROFOR Spanish Battalion. The respondent Party submits that this contract lasted until May 1999. Thus, the Federation asserts, if the applicant was not informed about that contract or did not agree to buy the facility burdened by the lease, he could have solved that problem with the seller in accordance with the Law on Contractual Obligations. The respondent party believes the case involves a private transaction, and that it therefore cannot be held responsible.

31. The respondent Party asserts that the mobilisation of the camp began on 10 December 1992 and ended on 1 February 1993, when the contract with UNPROFOR took effect. According to the respondent party, UNPROFOR and SFOR paid rent during the contract period to Kompas Međugorje, and the camp was not mobilised for the army of Bosnia and Herzegovina or the respondent Party.

32. The Federation further states that, on 1 September 1999, Kamp Međugorje was still used by the SFOR Spanish Battalion units on the basis of the 1 February 1993 contract, which was extended through 31 December 1999. The Federation states that the contract, as well as SFOR's right to use the property, expired on 31 December 1999 and that the Spanish Battalion left the property of Kamp Međugorje on or before 31 January 2001.

33. The Federation states that it does not have correct information, but it has knowledge that Čitluk Municipality did not receive payments for rent in a period between 1992 and 1996, but did receive payments for rent between 23 October 1996 and 31 January 2001.

34. The Federation further responds that, under Article 13 of the rental contract, SFOR was to return all the facilities in the condition in which they took them over, and that a record was to be made upon the return of the facilities. The Federation stated that it had not obtained such a record but would endeavour to obtain it and provide it to the Chamber. The Federation nonetheless concludes that the facilities and equipment were returned in a condition in which they could be used for their intended purposes, in accordance with the contractual obligation.

35. The Federation claims that the legal basis for Čitluk Municipality's receipt of rent payments is found in the Law on Transformation of Social Property, which was published in the Official Gazette of the Republic of Bosnia and Herzegovina on 25 November 1994 (OG RBiH no. 33/94). The Federation asserts that, according to the finding of the Financial Police, the capital structure of Kompas Međugorje contains state capital. An "audit of ownership transformation" was not done by the company for 1991, and, on that basis, Čitluk Municipality, as the subject for disposal of state-owned property, was authorised to receive money for the use of the property.

36. With respect to the criminal charges filed by Mr. Buntić, the respondent Party states that the Municipal Attorney Offices in Čitluk and Mostar have undertaken certain actions in those cases. The respondent Party disputes whether Mr. Buntić filed complaints against the Federation of Bosnia and Herzegovina or the Federation Ministry of Defence. The respondent Party asserts that the courts

have acted within a reasonable time, and that any delays should be attributed to the complexity of the cases.

B. The applicant

1. As to admissibility

37. The applicant alleges that the illegal use of the camp facilities by the Čitluk Municipality continues to date and that the application therefore falls within the Chamber's competence *ratione temporis*. Regarding the respondent Party's allegations that Mr. Buntić's ownership of Kompas Međugorje is disputable, the applicant explains that the Čitluk Municipality appealed to the Supreme Court following the procedural decision of the Higher Court in Mostar dated 11 February 1999, when that court registered the sales contract. The Supreme Court rejected that appeal on 18 May 1999 for lack of standing by Čitluk Municipality and thereby established that the contract was not contrary to law. On 19 December 2000, the Municipal Court in Čitluk issued a procedural decision rejecting the Municipality's action against Zoran Buntić and Kompas Međugorje for the nullification of the sales contract. This procedural decision, according to the applicant, was a logical consequence of the earlier procedural decision of the Supreme Court of the Federation of Bosnia and Herzegovina that the Čitluk Municipality had no legal interest in a dispute regarding the sale of shares by a foreign investor to a domestic legal person.

38. The applicant asserts that the proceedings he initiated in his individual capacity (not acting on behalf of Kompas Međugorje) have been completed and that he has exhausted all domestic remedies regarding the legality of the stock purchase and the court registration of the contract.

39. The applicant further states that all other judicial and extra-judicial proceedings listed in his application have been conducted on behalf of Kompas Međugorje.

2. As to the merits

40. The applicant states that the respondent Party's allegation that the lease contract was concluded between the authorised representative of Kompas Međugorje and the UNPROFOR Spanish Battalion is incorrect. According to the applicant, the contract for the accommodation of UNPROFOR was concluded by Stjepan Krasić, on behalf of the HVO Čitluk, and Colonel F.J.F., on behalf of the UNPROFOR Spanish Battalion.

41. The applicant further states that the camp was not demobilised on 1 February 1993 and in fact has never been demobilised. The applicant cites a letter from the Federation of Bosnia and Herzegovina Ministry of Defence dated 9 May 2001 by which the Čitluk Municipality is asked to leave Kamp Međugorje and return it to the owner of Kompas Međugorje. The applicant also relies on the statement of the Head of the Čitluk Municipality on taking over the possession of the camp after SFOR's departure.

42. The applicant alleges that SFOR paid rental fees to Čitluk Municipality or its agent, Mr. J.S. In this regard, the applicant cites invoices verified by the Čitluk Main Municipal Office and stamped by the Head of the Čitluk Municipality.

43. The applicant states that the SFOR Spanish Battalion left Kamp Međugorje on 31 December 1999. The statement of the return of the facilities between SFOR and the Mayor of Čitluk Municipality Jure Džido was completed on 31 January 2000. By receipt dated 31 January 2000, the Mayor of Čitluk Municipality confirmed receiving 352,651 DEM for the purpose of restoring the facilities to their original condition.

44. Although it does not seek compensation for the period prior to 22 December 1995, the applicant alleges that Čitluk Municipality received payments from SFOR beginning in 1992. The applicant alleges that SFOR paid 14,716,651 DEM to Čitluk Municipality between 1 February 1993 and 31 December 1999.

45. Mr. Buntić stresses that, despite receiving favourable procedural decisions from the Supreme Court of the Federation of Bosnia and Herzegovina (18 May 1999) and the Municipal Court in Čitluk (19 December 2000), his situation has not improved. Because the camp has not been returned, he is unable to work as Director of Kompas Međugorje and therefore he has suffered significant damages.

46. The applicant asserts that numerous illegal acts by Čitluk Municipality followed attempts to regain the property. Specifically, Čitluk Municipality annulled a decision on allocation of the land to Kompas Međugorje, as well as a procedural decision annulling all building permits granted to the company. It failed to notify Mr. Buntić of these acts and prohibited him from examining any act before the Municipality. After a fire destroyed some of the Kompas Međugorje out-buildings, Mr. Buntić allegedly received several threatening phone calls. Out of fear for his personal security and the security of his family, he requested protection from the authorities, but received no assistance. Mr. Buntić claims that the company has not received legal protection due to the failures of the financial police, the prosecutors' offices, and the courts.

47. Mr. Buntić further states that, between 1 February 1993 and 31 December 1999, during UNPROFOR/SFOR's use of the Kamp Međugorje, he had no access to the facility. His requests to be heard by SFOR were refused. After SFOR left, neither he nor Kompas Međugorje had access to Kamp Međugorje and could not use the facility. He tried to enter Kamp Međugorje on several occasions, but was stopped at the entrance by guards, who told him that the Mayor of Čitluk Municipality, Jure Džido, had ordered them to prevent him from entering the facility. Mr. Buntić states that, in spite of these prohibitions, he entered the tourist settlement of Kamp Međugorje to speak with company employees.

48. The applicant states that the judicial authorities are conspiring with executive authorities in the Čitluk Municipality and that it is therefore impossible to receive fair and impartial proceedings in the Čitluk courts. Specifically, the applicant alleges that the judge who is to issue the decision in the civil proceeding against the Head of the Čitluk Municipality has been waiting for eighteen months for the Municipality Head's approval of his appointment to the position of judge.

49. Mr. Buntić states that, from the time of his appointment as Director of Kompas Međugorje on 9 February 1999, he has not received any salary from Kompas Međugorje. Kompas Međugorje does not run the business at Kamp Međugorje, and none of the 53 employees receive a salary from Kompas Međugorje. Mr. Buntić further states that he has never received any income from the property. To the contrary, he states that he has had significant expenses from the numerous judicial and extra-judicial proceedings, in addition to expenses of paying off the loan he took to purchase his Kompas Međugorje shares.

50. The applicant disputes the respondent Party's claim that an audit of ownership transformation was not conducted for Kompas Međugorje. According to the applicant, such an audit was properly conducted on 15 December 2000 and submitted to the Agency for Privatisation of Herzegovina-Neretva Canton on 7 August 2001.

51. The applicant states that, in the period before the armed conflict in Bosnia and Herzegovina, Kompas Međugorje realised income of between 4 and 4.5 million DEM per year, depending on the volume of business.

52. The applicant states that the facilities have not been restored into the condition in which they were taken over by UNPROFOR.

53. The applicant believes the respondent Party has violated its rights in contravention of Articles 6, 13, and 17 of the European Convention and Article 1 of Protocol No. 1 to the Convention. The applicant claims pecuniary damage in amount of 6,319,539.00 KM from the commandeering of the tourist complex from 22 December 1995 to the date of the application. The application contains detailed damage calculations, including damages for lost rents from the tourist complex.

54. The applicant alleges systematic abuse by numerous bodies of the respondent Party and states that the situation in this case has worsened with the passage of time.

VII. OPINION OF THE CHAMBER

A. Admissibility

55. Before examining the merits of the application, the Chamber shall decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether the applicant has demonstrated that they have been exhausted. Under Article VIII(2)(c), the Chamber shall dismiss any application that it considers incompatible with the Agreement.

1. Competence *ratione temporis*

56. The respondent Party argues that the Chamber lacks competence to consider events occurring before 14 December 1995, the date of the Agreement's entry into force. The Chamber recalls that, in accordance with generally accepted principles of international law, the Agreement cannot be applied retroactively (see, e.g., *Matanović v. The Republika Srpska*, case no. CH/96/1, decision of 13 September 1996, Decisions 1996-1997).

57. Having regard to the above, the Chamber will only consider events alleged to have occurred after 14 December 1995. The applicant's complaints concern actions and omissions of the respondent Party occurring after 14 December 1995 and therefore fall within the Chamber's competence *ratione temporis*. The application is thus compatible with the Agreement for the purposes of Article VIII(2)(c).

2. Competence *ratione personae*

58. With respect to the time period from 14 December 1995 to 11 February 1999, the respondent Party argues that the application is inadmissible *ratione personae*. The Federation argues that the applicant's allegations regarding that time period are ill-founded because Zoran Buntić was neither a shareholder nor representative of Kompas Međugorje at that time. The respondent Party further argues that it cannot be responsible for the applicant's situation because Mr. Buntić contracted with Kompas International d.d. Ljubljana and not with the respondent Party.

59. Without deciding the question of whether Mr. Buntić meets the requirements for personal standing before the Chamber, the Chamber considers the application as brought on behalf of the corporation Kompas Međugorje. As such, there can be no dispute regarding the Chamber's competence *ratione personae* to consider the application. Kompas Međugorje existed from the time the Agreement entered into force and enjoys rights guaranteed by the Agreement. Mr. Buntić, as the company's authorised representative, is competent to bring these claims.

60. With regard to the respondent Party's claim that it cannot be held responsible for any violations in this case, the Chamber recalls that the applicant complains of the holding of Kamp Međugorje by Čitluk Municipality following government decisions declaring an end to the state of war. The Chamber further notes that the basis for this withholding was a contract executed and extended between UNPROFOR and HVO Čitluk. Further, Čitluk Municipality retained possession of the property after the rental contract terminated. The actions of Čitluk Municipality during and after the contractual period directly invoke the responsibility of the respondent Party.

61. Having regard to the above, the Chamber concludes that it is competent *ratione personae* to consider the present application against the Federation of Bosnia and Herzegovina.

3. Requirement to exhaust effective domestic remedies

62. The respondent Party asserts that the application is inadmissible for non-exhaustion of effective domestic remedies.

63. In actions directly related to the issues in this case, Mr. Buntić filed lawsuits for return of the property and unjust enrichment on 25 and 26 March 1999 as representative of the corporation. With the exception of a few minor procedural rulings, the courts have taken no action in these cases. Mr. Buntić also initiated criminal cases against various individuals and institutions, on behalf of the corporation, between December 1999 and February 2001. The courts have taken no action in these cases.⁵

64. Without examining the alleged improprieties in the Čitluk court system (see paragraph 48 above), the Chamber considers that there is no explanation for the excessive delays in these cases and there is no indication that the applicant could hold any reasonable expectation of obtaining relief in the Čitluk court system. Having regard to the fruitless attempts by the applicant to achieve redress through the court system, the Chamber considers that there are no effective domestic remedies available. The Chamber therefore declines to declare the application inadmissible for non-exhaustion of domestic remedies.

4. Conclusion

65. As no other ground for declaring the case inadmissible has been established, the Chamber considers the application as submitted on behalf of Kompas Međugorje (“the applicant”) and declares it admissible in all respects against the Federation of Bosnia and Herzegovina.

B. Merits

66. Under Article XI of the Agreement, the Chamber will next address the question of whether the facts established disclose any breaches 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 and its Protocols.

1. Article 1 of Protocol No. 1 to the Convention

67. The applicant complains that its property rights under Article 1 of Protocol No. 1 to the Convention have been violated. This provision 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.”

68. The applicant asserts that its rights have been violated by the respondent Party’s failure to comply with government decisions declaring an end to the state of war. Specifically, the applicant complains that its property was not returned following the armed conflict and that Čitluk Municipality has continued to hold the property and receive rent and other income from its use.

69. The Federation asserts that this is a private dispute involving a lease between Kompas Međugorje and SFOR, and that it cannot be held responsible for the applicant’s situation. The Federation further claims that a legal basis for Čitluk Municipality’s receipt of rent from the property exists in the Law on Transformation of Social Property (OG RBiH No. 33/94).

⁵ Zoran Buntić has also defended related court cases in his individual capacity. He successfully defended litigation brought by Čitluk Municipality to contest his registration as major shareholder of Kompas Međugorje. The validity of his stock purchase has been upheld by various trial and appellate level courts (see paragraph 23 above).

(a) The existence of “possessions” under Article 1 of Protocol No. 1 to the Convention

70. The Chamber recalls that Kompas Međugorje owns Kamp Međugorje. The Chamber finds, without question, that the property at issue, Kamp Međugorje, constitutes a “possession” of the applicant within the meaning of Article 1 of Protocol No. 1 to the Convention.

(b) General considerations

71. The Chamber recalls that Article 1 of Protocol No. 1 to the Convention comprises three distinct rules:

“the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.”

James and Others v. the United Kingdom (judgement of 21 February 1986, Series A no. 98, paragraph 37).

(c) Whether the Federation has interfered with the applicant’s rights

72. Beginning on 10 December 1992 and continuing through the end of the state of war to the present, HVO Čitluk and Čitluk Municipality have either directly controlled the Kamp Međugorje property or rented it to UNPROFOR and SFOR. Zoran Buntić has been denied access to the camp and has been stopped at the entrance by guards specifically instructed by the Mayor of Čitluk Municipality to deny him entrance. The Kamp Međugorje property has never been returned to Kompas Međugorje or Mr. Buntić, and Kompas Međugorje does not currently run any aspect of the business at Kamp Međugorje.

73. Having regard to the above facts, the Chamber concludes that the Federation of Bosnia and Herzegovina has interfered with and continues to interfere with the applicant’s property rights.

(d) Whether the interference has been justified

74. The applicant apparently concedes that the interference during the period of armed conflict in Bosnia and Herzegovina was justified. The applicant contests, however, the respondent Party’s actions following the official declarations ending the state of war.

(i) Purpose

75. Beginning with the mobilisation of Kamp Međugorje on 10 December 1992, the government effectively took over the property for purposes related to the armed conflict in Bosnia and Herzegovina. The Chamber concludes that the government’s actions during and shortly following the armed conflict were taken in the general interest.

76. On 23 December 1996, however, the Federation Parliament issued its Decision on the Cessation of the Application of the Decision Declaring the Immediate Threat of War in the Territory of the Federation of Bosnia and Herzegovina (OG FBiH no. 25/96). Pursuant to this decision, the ministries, other Federation institutions, cantons, municipalities, companies, and other legal persons in the Federation were ordered to resume their work in accordance with peacetime regulations.

77. The Chamber concludes that any legitimate public purpose for Čitluk Municipality’s control over Kamp Međugorje ceased to exist on 23 December 1996, when the Federation Parliament declared an end to the immediate threat of war in the Federation of Bosnia and Herzegovina.

Further, there has been no legitimate public purpose for Čitluk Municipality's continued holding of the Kamp Međugorje property since that time.

(ii) Lawfulness

78. The Federation asserts that Čitluk Municipality's control over Kamp Međugorje and its receipt of income from the property are legal based on the Law on Transformation of Socially Owned Property (see paragraphs 26 and 35 above).

79. The Chamber does not find the Federation's reliance on this law particularly convincing. The law, on its face, does not appear to create rights in the Federation or Čitluk Municipality. Even if 17.64% of Kompas Međugorje is owned by the state, the Law on Transformation of Socially Owned Property provides no legal basis for Čitluk Municipality's action of taking over Kamp Međugorje in its entirety. Further, the Federation provides no explanation of how Čitluk Municipality's actions in this case could be considered lawful.

80. Having regard to the above, the Chamber concludes that there is no legal basis for Čitluk Municipality's continued holding of the Kamp Međugorje property, and the interference with the applicant's property rights is unlawful.

(e) Conclusion

81. In conclusion, there has been a violation by the Federation of Bosnia and Herzegovina of the applicant's rights to peaceful enjoyment of its possessions under Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

82. The applicant complains that it has not received a fair hearing under Article 6 of the Convention. Paragraph 1 of that Article reads, in relevant part:

"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."

(a) Length of proceedings

83. The Chamber notes that there have been significant delays in the domestic proceedings filed by Mr. Buntić on behalf of Kompas Međugorje. The relevant court proceedings have been pending for more than three and one-half years, with no action taken with the exception of a few minor procedural rulings in one case.

84. On 25 March 1999, Mr. Buntić, acting as representative of Kompas Međugorje, filed an action in the Čitluk Municipal Court against Čitluk Municipality, requesting establishment of his rights, the return of the facilities, and provisional measures. On 23 June 1999, the Court issued a procedural decision disqualifying one of the defendant's representatives. On 11 October 1999, the Municipal Court issued another procedural decision, which the defendant appealed. On 8 March 2001, the Cantonal Court in Mostar issued a procedural decision rejecting the defendant's appeal as ill-founded. No further court actions have been taken in the case.

85. On March 26, 1999, Zoran Buntić, acting as representative of Kompas Međugorje, filed an action in the Čitluk Municipal Court against the Municipality of Čitluk for unjust enrichment. The Čitluk Municipal Court has taken no action on this complaint.

86. On 10 December 1999, Zoran Buntić, acting as representative of Kompas Međugorje, filed criminal charges against numerous public officials (see paragraph 22 above). There have been no developments in these cases.

87. The Chamber finds no justification for this judicial procrastination in such a large property rights case. Because of such delays, the Chamber has already concluded above that domestic

remedies cannot be considered effective. The Chamber further finds that the extended lags in the applicant's judicial proceedings effect a continuing deprivation of the applicant's right to a fair hearing within a reasonable time.

88. In conclusion, the Chamber finds that there has been a violation of the applicant's rights as guaranteed by Article 6(1) of the Convention.

(b) Independent and impartial tribunal

89. The applicant alleges that the judicial authorities are conspiring with executive authorities in the Čitluk Municipality and that it is therefore impossible to receive fair and impartial proceedings in the Čitluk courts. Specifically, the applicant alleges that the judge who is to issue the decision in the civil proceeding against the Head of the Čitluk Municipality has been waiting for eighteen months for the Municipality Head's approval of his appointment to the position of judge.

90. Having regard to the Article 6 violation found above, the Chamber finds that it is not necessary to separately examine this issue.

(c) Conclusion

91. For the foregoing reasons, the Chamber concludes that there has been a violation of the applicant's rights under Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

3. Article 13 of the Convention

92. Having regard to the violations found above, the Chamber finds that it is not necessary to separately examine the application under Article 13.

4. Article 17 of the Convention

93. Having regard to the violations found above, the Chamber finds that it is not necessary to separately examine the application under Article 17.

VIII. REMEDIES

94. Under Article XI(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy the breaches of its obligations under the Agreement. In this respect, the Chamber may consider issuing orders to cease and desist, awarding monetary relief (for pecuniary and non-pecuniary damages), and prescribing provisional measures.

A. Article 1 of Protocol No. 1 to the Convention

95. The applicant asserts that its property rights have been violated by the respondent Party's failure to comply with government decisions declaring an end to the state of war. Specifically, the applicant complains that its property was not returned following the armed conflict and that Čitluk Municipality has continued to hold the property and receive rent and other income from its use.

96. The Federation asserts that this is a private dispute involving a lease between Kompas Međugorje and SFOR, and that it cannot be held responsible for the applicant's situation. The Federation further claims that a legal basis for Čitluk Municipality's receipt of rent from the property exists in the Law on Transformation of Social Property (OG RBiH No. 33/94).

1. Return of the property

97. The Chamber has concluded above that the respondent Party's continuing control over the Kamp Međugorje property following the official declarations ending the state of war constitutes an unlawful interference with the applicant's property rights.

98. The Chamber therefore will order the Federation of Bosnia and Herzegovina to secure the immediate return of the Kamp Međugorje property to Kompas Međugorje.

2. Compensation

99. The Chamber will further order the Federation of Bosnia and Herzegovina to ensure that the level of compensation for the violation of Article 1 of Protocol No. 1 to the Convention is established fairly and expeditiously by the domestic courts, within six months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

B. Court Proceedings and Investigations

100. The Chamber will order the Federation of Bosnia and Herzegovina to take all necessary steps to carry out all appropriate investigations and ensure expeditious decisions in all pending court cases initiated on behalf of Kompas Međugorje.

101. The Chamber will further order the Federation of Bosnia and Herzegovina to take all necessary steps to carry out all appropriate criminal investigations in relation to this matter, with a view to bringing the perpetrators to justice.

102. The Chamber will further order the Federation of Bosnia and Herzegovina to pay Kompas Međugorje, within 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, the amount of 10,000 KM as moral damages for the delay in the domestic court proceedings.

103. The Chamber will further order the Federation of Bosnia and Herzegovina to pay Kompas Međugorje, within 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, the amount of 2,500 KM as compensation for legal costs and expenses incurred in pursuing domestic court proceedings.

IX. CONCLUSIONS

104. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible, with Kompas Međugorje as the applicant;
2. unanimously, that the Federation of Bosnia and Herzegovina has violated the applicant's right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights by unlawfully interfering with the applicant's property rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
3. unanimously, that the Federation of Bosnia and Herzegovina has violated the applicant's right to a fair trial within a reasonable time under Article 6(1) of the European Convention on Human Rights by allowing significant unjustified delays in the domestic court proceedings, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
4. unanimously, that it is not necessary to separately examine the application under Article 13;
5. unanimously, that it is not necessary to separately examine the application under Article 17;

6. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to secure the immediate return of the Kamp Međugorje property to Kompas Međugorje;
7. unanimously, to order the Federation of Bosnia and Herzegovina to ensure that the level of compensation for the violation of Article 1 of Protocol No. 1 to the Convention is established fairly and expeditiously by the domestic courts, within six months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;
8. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to carry out all appropriate investigations and ensure expeditious decisions in all pending court cases initiated on behalf of Kompas Međugorje;
9. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to carry out all appropriate criminal investigations in relation to this matter, with a view to bringing the perpetrators to justice;
10. unanimously, to order the Federation of Bosnia and Herzegovina to pay Kompas Međugorje, within 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, the amount of 10,000 KM as moral damages for the delay in the domestic court proceedings;
11. unanimously, to order the Federation of Bosnia and Herzegovina to pay Kompas Međugorje, within 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, the amount of 2,500 KM as compensation for legal costs and expenses incurred in prosecuting domestic court proceedings;
12. unanimously, to order the Federation of Bosnia and Herzegovina to pay Kompas Međugorje simple interest at a rate of 10 (ten) per cent per annum on the amounts due from them on the sums awarded in conclusions nos. 10 and 11 or any unpaid portion thereof from the expiry of the periods set for such payments until the date of final settlement of all sums due under those conclusions;
13. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber, not later than six months 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 steps taken to comply with the above orders;
14. by 6 votes to 1, to reserve the right to order additional remedies in this case as it deems warranted.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel