



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 November 2002)

Case no. CH/98/603

R.T.

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 November 2002 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, 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 applicant's child was killed by shell fragments from a hand grenade accidentally activated by a soldier of the 3rd Corps of the Army of the Republic of Bosnia and Herzegovina in 1993. In 1996, the applicant initiated a civil proceeding before the First Instance Court of Zenica (now the Municipal Court in Zenica) for compensation for pecuniary and non-pecuniary damages. However, as of today no compensation has been paid and proceedings are still ongoing.

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

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 27 April 1998 and registered on 15 May 1998.

4. On 21 September 1998, the Chamber transmitted the application to the respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, for their observations under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. On 6 October 1998, Bosnia and Herzegovina submitted its written observations. On 29 September 1999 the Chamber sent a letter by registered mail to the applicant asking for new information in the case. The applicant replied to the respondent Party's observations on 16 October 2000.

6. On 27 February 2002, the applicant requested the Chamber to consider the case as a matter of urgency and to schedule a public hearing.

7. On 12 August 2002, the Federation of Bosnia and Herzegovina submitted its observations. It also made submissions to the Chamber on 22 October 2001 and 7 November 2001 concerning the stage of the proceedings before the domestic courts.

8. The Chamber deliberated on the admissibility and merits of the application on 5 July, 5 September, 7 October and 4 November 2002. On 4 November 2002, the Chamber adopted the present decision on admissibility and merits.

III. FACTS

9. On 19 August 1993, the applicant's child was killed by shell fragments from a hand grenade accidentally activated by a soldier of the 3rd Corps of the Army of the Republic of Bosnia and Herzegovina¹.

10. On 30 April 1996, the applicant and others (her husband and daughter) initiated a civil proceeding before the First Instance Court of Zenica against the State of Bosnia and Herzegovina—the 3rd Corps of the Army of Bosnia and Herzegovina for compensation for pecuniary and non-pecuniary damages.

11. On 18 February 1997, the First Instance Court issued its decision in which it ordered "the State of the Republic of Bosnia and Herzegovina – the 3rd Corps of the Army of Bosnia and

¹ During the armed conflict there was an Army of Bosnia and Herzegovina, however, since the entry into force of the Constitution of Bosnia and Herzegovina (Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina), defence is within the competence of the Entities; therefore there is no Army of Bosnia and Herzegovina but an Army of the Federation and of the Republika Srpska.

Herzegovina, represented by the military attorney of the Federation of Bosnia and Herzegovina” to pay the following compensation to the applicant²:

a) Compensation for non-pecuniary damages:

For suffering caused to the relatives of the victim by the death of their loved one. The applicant and her husband were awarded 1,300 *Deutsche Marks* (“DEM”) each, and the applicant’s daughter was awarded 1,100 DEM. The payments could be made in the equivalent amounts in Dinars, plus legal interest commencing from the day of the decision.

b) Compensation for pecuniary damages:

- 483 DEM for funeral expenses and 1,284 DEM for the tombstone. The payments could be made in the equivalent amounts in Dinars, plus legal interest commencing from 20 August 1994 until the day of payment.
- 1,000 DEM for usual expenses related to the death, including expenses realised within the first seven days after the death in the amount of 600 DEM, plus legal interest commencing from 28 August 1993 until the day of payment; within the first forty days after the death in the amount of 200 DEM, plus legal interest commencing from 1 October 1993 until the day of payment; and within the first 6 months after the death in the amount of 200 DEM, plus legal interest commencing from 1 March 1993 until the day of payment.

12. On 1 April 1997, the military attorney of the Federation of Bosnia and Herzegovina appealed against the decision of 18 February 1997 relating to the amount of compensation awarded for non-pecuniary damages.

13. On 19 May 1997, the applicant, in accordance with the Law on Execution Procedure, Article 1 paragraphs 1 and 2, submitted a request for execution of the parts of the decision of 18 February 1997 that were not subject to the appeal of 1 April 1997 and were therefore “valid” and effective (*i.e.*, the parts relating to compensation for pecuniary damages and court expenses). On 21 May 1997, the First Instance Court issued a decision on execution of these parts of the decision. On 12 June 1997, the decision on execution was transferred to the Payment Bureau in Zenica for enforcement.

14. On 17 June 1997, the military attorney of the Federation of Bosnia and Herzegovina filed an objection with the First Instance Court against the decision on execution, pointing out that the 3rd Corps, as an unit of the Army of the Republic of Bosnia and Herzegovina, is not a proper defendant in the court proceedings. However, the objection was submitted after the legal deadline. On 14 July 1997, the military attorney further submitted a proposal to restore the case to the previous status (*i.e.*, to return the case to the state it was in prior to missing the deadline for submitting the objection, see paragraph 31 below). On the same date, the military attorney supplemented its objection of 17 June 1997, adding that in the court’s decision the legal interest amounts were not well defined and as such could not be executed.

15. On 15 July 1997, the Municipal Court in Zenica issued a decision accepting both the Ministry of Defense’s proposal to restore the case to the previous status and the objection of 17 June 1997.

16. On 21 July 1997, the military attorney submitted a supplement to the appeal of 1 April 1997 concerning the legal interest on the compensation awarded for pecuniary damages.

17. On 23 July 1997, the Zenica Cantonal Court partially accepted the appeal of 1 April 1997. It accepted the appeal against the decision of 18 February 1997 and it cancelled the part relating to the compensation for non-pecuniary damages. However, it did not accept the appeal against the part of the decision relating to the compensation for pecuniary damages (as included in the supplement of 21 July 1997); the Court held that this part of the decision became “valid” and effective on 25 March 1997. The Court reasoned that the applicant’s request for non-pecuniary damages was inappropriate because it was expressed in a foreign currency in contravention to Article 1 of the Law on Currency, which provides that the only legal currency for such payments within the territory of

² Note that in February 1997, the currency in Bosnia and Herzegovina was the Dinar.

Bosnia and Herzegovina is the “Dinar”. The case was thus returned to the First Instance Court for a retrial of the relevant part of the decision.

18. On 24 September 1997, the Zenica Municipal Court refused the defendant's objection of 17 June 1997 because it was contrary to Article 50 of the Law on Execution Procedure, and it held that the decision on execution of 21 May 1997 was valid in its entirety. The defendant appealed this decision to the Cantonal Court.

19. On 14 January 1998, the Cantonal Court dismissed the appeal and confirmed the Municipal Court's decision of 24 September 1997. The Cantonal Court stated that although the 3rd Corps and the Army of Bosnia and Herzegovina have no legal capacity as debtors or to participate in court proceedings, the State of Bosnia and Herzegovina as a legal subject can be held responsible as a debtor and as a proper defendant in the case.

20. On 26 February 1998, the Municipal Court ordered the Payment Bureau, branch office in Sarajevo, to execute the decision on execution of 21 May 1997.

21. On 31 March 1998, the defendant submitted to the Municipal Court a request for renewal of the proceedings resulting in the decision of 18 February 1997, because new facts had appeared that were not taken into account and because there were irregularities in the proceedings. On the same day, it requested that the Court postpone execution of the payment of legal interest, pending the outcome of the renewed proceedings, because irreparable harm could occur by paying the extremely high amount requested (188,527 DEM). On 9 April 1998, the Municipal Court postponed the execution pending the outcome of the renewed proceedings, but it did not suspend the payment of the main debt amounting to 2,768.40 DEM. The applicant appealed this decision.

22. On 19 June 1998, the Cantonal Court, pursuant to Article 63 paragraph 1 point 1 of the Law on Execution Procedure, refused the applicant's appeal and confirmed the Municipal Court's decision of 9 April 1998.

23. On 26 October 1999, the Municipal Court allowed the renewal of the proceedings and annulled its decision of 18 February 1997 in relation to non-pecuniary damages. It reasoned that the defendant would suffer enormous damages if the execution procedure was realized because the amount due in legal interest was extremely high (188,527 DEM) as compared to the main debt of 2,768.00 DEM. It also stated that since the basis of the interest was not well defined in foreign or local currency, it was not possible clearly to estimate the amount due. The applicant appealed this decision.

24. On 10 May 2000, the Cantonal Court accepted the applicant's appeal, annulled the decision of 26 October 1999, and returned the case to the first instance court. The Court held that the conditions for the renewal of the proceedings were not met since the alleged new facts regarding the award of legal interest could not be considered as new facts for the purpose of renewal of the proceedings under Article 421 of the Code of Civil Procedure. On 3 November 2000, the Municipal Court decided not to allow the renewal of the proceedings.

25. On 11 December 2000, the defendant appealed, requesting the Cantonal Court to cancel the decision of 3 November 2000 and to return the case to the first instance court.

26. On 30 May 2001, the Cantonal Court accepted the appeal and annulled the decision of 3 November 2000. It returned the case to the First Instance Court with an instruction to reconsider whether the defendant – the State of Bosnia and Herzegovina, the Army of Bosnia and Herzegovina, or the 3rd Corps – had legal capacity to participate in the court proceedings as of 18 February 1997.

27. On 13 September 2001, the Municipal Court again decided not to allow the renewal of the proceedings, and it held that the defendant was indeed a proper party to the case. The Court quoted the submission of the military attorney saying that:

“the second instance court precisely instructed that it was necessary to establish whether the Republic of Bosnia and Herzegovina had the capacity of legal person on the date of issuance

of the first instance judgment. The Defendant's representative states that is not the case, as the Dayton Constitution in its Article I provides that the Republic of Bosnia and Herzegovina, whose official name now is Bosnia and Herzegovina, would continue with its legal existence under that name. It is generally known that the Dayton Agreement entered into force at the end of 1995. Besides, the Army of the Republic of Bosnia and Herzegovina, in the sense of armed formation, did not exist on that date under that name, as the Law on Armed Forces of the FBiH entered into force on the date of 29 August 1996. This Law provides in its Article 36 that the Armed Forces of the Federation consist *inter alia* of the Army of the Federation. Article 27 of this same Law provides that the Federal Ministry of Defence is only a body of the Federation. Further, the Defendant's representative emphasises that the Republic Military Attorney's Office has never existed under that name as it is stated in the aforementioned judgment because in the Law on the Federal Attorney's Office it is provided that the Federation is represented by the Federal Attorney's Office and only in the Amendments to the provisions of the Law on the Federal Attorney's Office amended in 1998 it is provided that the Federal Ministry of Defence and the Army of the Federation are represented by a relevant organisational unit. Taking into consideration the aforementioned it is evident that in this legal matter only the Federation of Bosnia and Herzegovina could be a Defendant as only it, as such, has the legal standing to be sued."

The Court added that:

"Firstly, based on the letters of the attorney for representation at hearings in this legal matter attached by the Defendant, the Court finds that the Defendant accepted completely its standing to be sued, which means that the Defendant is correctly determined. This also comes from the second instance decision number Gž-362/97 of the date of 14 January 1998, which undoubtedly confirms the existence of the Defendant. Besides, based on quotations of the Defendant's representative, who emphasised at the hearing some provisions of the Constitution and Law, it is evident that the Defendant is correctly determined and that the organs determined by the Defendant are *ex lege* legal successors."

The defendant appealed this decision.

28. On 6 May 2002, the Cantonal Court refused the appeal and confirmed the First Instance Court's decision.

IV. RELEVANT LEGAL PROVISIONS

A. Code of Civil Procedure of the Federation of Bosnia and Herzegovina

29. Article 10 of the Code of Civil Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 42/98) provides: "The Court shall conduct the procedure without any unnecessary delay, causing as few expenses as possible and preventing any abuse of the rights of the parties in the proceedings."

30. Provisions regarding renewal of proceedings or retrial are contained in Chapter XXVI – Extraordinary Legal Remedies. A trial that has been duly completed by a court decision may be repeated on the proposal of a party if, *inter alia*:

- a) a person ineligible to act as a party in civil proceedings has appeared in the role of the defendant to the trial (Article 391.3) and this fact was not stated in the previous trial or stated without achieving success (Article 392); or
- b) the party learns about new facts, or finds or obtains the possibility of using new evidence which might have caused a decision more favorable to that party if those facts or evidence had been presented in the previous proceedings (Article 391.10), but only if the party was, without its own fault, unable to present the circumstances in question before the previous trial was concluded by a final and binding judgment (Article 392).

The proposal for retrial must be submitted within 30 days after the day the decision was served on the plaintiff (Article 393.3). If it is not submitted within the deadline of 30 days, then it shall be dismissed (Article 395). The request for a retrial shall always be submitted to the court that issued the first instance judgment (Article 394).

31. As to restoration of the previous status, Article 106 provides that if a party misses the deadline set for making motions, and because of that, loses the right to make a motion, the court shall, on the proposal of that party, allow it to conduct such action at some later time (restoration of the previous status), provided it assesses that there are justifiable reasons for the omission. When the restoration of the previous status is allowed, the case is returned to the state it was in before the omission, and all decisions made by the court because of the omission shall be vacated. The proposal for restoration of the previous status normally does not affect the course of the proceedings. However, the court may decide to temporarily interrupt the proceedings until reaching a final decision on the proposal (Article 109).

B. Law on Obligations of the Republic of Bosnia and Herzegovina

32. The relevant provisions of the Law on Obligations of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina nos. 2/92 and 13/93) state as follows:

Article 193: “(1) A person who causes someone’s death is obliged to provide compensation for the regular expenses of his/her funeral.”

Article 201: “(1) In the event of the death of a person, the court may award to the members of his/her close family (spouse, children and parents) a just cash compensation for their mental suffering.”

V. COMPLAINTS

33. The applicant alleges that her right to a fair hearing as guaranteed by Article 6 of the Convention has been violated. Additionally, she alleges a violation of her right to peaceful enjoyment of possessions as protected by Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

34. In its observations, Bosnia and Herzegovina notes that the applicant directed her application against Bosnia and Herzegovina as the respondent Party. However, the applicant complains about the proceedings pending before the Municipal and Cantonal Courts in Zenica. As these Courts are courts of the Entity and not of the State, Bosnia and Herzegovina cannot be the appropriate respondent Party; therefore, the application should be declared inadmissible *ratione personae* as against Bosnia and Herzegovina.

B. The Federation of Bosnia and Herzegovina

35. In its observations of 12 August 2002, the Federation of Bosnia and Herzegovina suggests that the Chamber declare the application inadmissible in part in accordance with Article VIII(2)(a) of the Agreement because the applicant has not exhausted effective domestic remedies.

36. The Federation of Bosnia and Herzegovina argues that the proceedings before the Municipal Court in Zenica related to compensation for non-pecuniary damages are still pending. Therefore, it suggests that the Chamber follow its previous practice as stated in *M.G. v. the Republika Srpska*, “not to accept the application in accordance with Article VIII(2)(a) of the Agreement since court proceedings are still pending before the national authorities. The Chamber has no reason to doubt that these proceedings are anything other than “effective”, within the meaning of the Agreement and

the applicant has not demonstrated that she has exhausted the effective domestic remedies available to her” (case no. CH/98/709, decision on admissibility of 9 September 1999, paragraphs 18 and 19, Decisions August–December 1999).

37. The Federation of Bosnia and Herzegovina points out that the judgment of the First Instance Court in Zenica of 18 February 1997 is partly valid and effective in the present case and should be considered the final decision in the sense of Article VIII(2) of the Agreement. Article 16 of the Law on Execution Proceeding provides that the court shall decide about execution on the basis of the enforceable document, which in the present case is the partly valid judgment of the First Instance Court in Zenica of 18 February 1997. Therefore, the Federation of Bosnia and Herzegovina argues that the six-month rule should apply to this part of the judgment. As the application was submitted to the Chamber on 27 April 1998, one year and one month after the judgement of 18 February 1997 became valid and effective, the conditions have been met for the Chamber to declare the application inadmissible in accordance with Article VIII(2)(a) of the Agreement.

38. If the Chamber does not declare the application inadmissible, then the Federation of Bosnia and Herzegovina submits that the application should be considered manifestly ill-founded. With respect to Article 6 of the Convention, the Federation of Bosnia and Herzegovina argues that the domestic courts have complied with the requirement of a fair and public hearing before an independent and impartial tribunal established by law. Regarding the length of the proceedings, the respondent Party contends that the case is very complex because the dispute arose from several legal matters, with an aim to obtain compensation for pecuniary and non-pecuniary damages, requiring a large number of relevant facts to be gathered. Moreover, the length of the proceedings was not influenced by the conduct of the respondent Party, but rather, the conduct of the applicant contributed to the length of the proceedings. The Federation of Bosnia and Herzegovina argues that the applicant’s right to payment of the main debt has not been contested and could have been executed a long time ago but “the applicant by her insistence to receive the payment of “the interest” contributed to the fact that she has not been paid”. Taking these facts into consideration, the Federation of Bosnia and Herzegovina concludes that the requirement of reasonable time within the meaning of Article 6(1) of the Convention has not been violated.

39. As to the alleged violation of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina submits that the applicant’s right to property has not been violated by its organs since no court decision has denied the applicant’s right to compensation for either pecuniary or non-pecuniary damages. It is indisputable that the applicant is entitled to the payment for compensation in the amount of 2,768.40 DEM and 180 DEM under the partly valid judgment of the First Instance Court in Zenica of 18 February 1997. The issue of payment of the legal interest was decided by the procedural decision of the Municipal Court in Zenica of 13 September 2001, which became valid and effective on 6 May 2002. In addition, the respondent Party notes that the Municipal Court in Zenica has scheduled a hearing to determine the applicant’s compensation for non-pecuniary damages for 13 August 2002.

C. The applicant

40. The applicant maintains her complaints. She emphasises that this case involves obstruction of her rights as it was transferred back and forth between the Municipal and Cantonal Courts numerous times.

VII. OPINION OF THE CHAMBER

A. Admissibility

41. Before considering the merits of the case, the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. In accordance with Article VIII(2)(a) of the Agreement, “the Chamber shall take into account ... whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final

decision was taken.” Article VIII(2)(c) states that the Chamber shall dismiss any application, which it considers incompatible with the Agreement, manifestly ill-founded, or an abuse of the right of petition.

1. Compatibility *ratione personae* as against Bosnia and Herzegovina of the complaint under Article 6 of the Convention

42. The applicant directs her application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the proceedings complained of before the Zenica Municipal and Cantonal Courts, nor can the Chamber on its own motion find any such evidence. The fact that Bosnia and Herzegovina is one of the defendants in these proceedings cannot involve its responsibility under Article 6 of the Convention. The complaint of unreasonable length of proceedings is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina.

2. Exhaustion of domestic remedies

43. The respondent Party objects to the admissibility of the application also on the ground that the applicant has not exhausted the domestic remedies available to her on the basis that the proceedings before the Municipal Court in Zenica related to compensation for non-pecuniary damages are still pending. It accordingly suggests that the Chamber follow its previous practice as stated in *M.G. v. the Republika Srpska*, “not to accept the application in accordance with Article VIII(2)(c) of the Agreement since court proceedings are still pending before the national authorities. The Chamber has no reason to doubt that these proceedings are anything other than “effective”, within the meaning of the Agreement and the applicant has not demonstrated that she has exhausted the effective domestic remedies available to her” (case no. CH/98/709, decision on admissibility of 9 September 1999, paragraphs 18 and 19, Decisions August—December 1999).

44. The Chamber notes, however, that the applicant’s complaint in this case is exactly that the court proceedings pending before the national authorities have by now lasted for such a time as to violate the requirement of fair hearing within reasonable time. The applicant initiated these civil proceedings in 1996, and she has obtained judgments in her favour, which have remained unenforced. The Chamber notes that it is true that it is still open to the applicant to make further attempts to enforce the judgement in her favour. However, she has already made repeated attempts to remedy her situation and they have been unsuccessful. The applicant has thus had “normal recourse” to domestic remedies and it has proved to be ineffective in practice. The respondent Party has not sought to claim that there is any remedy available to the applicant against the failure of the domestic courts to issue a final decision upon her proceedings and to obtain its enforcement, and the Chamber for its part is not aware of any such remedy. Accordingly, the Chamber does not consider that there is any effective remedy available to the applicant which she should be required to exhaust. The fact that the proceedings are still pending does not preclude the Chamber from examining on the merits whether their duration to date has been unreasonably long in violation of Article 6 of the Convention (see case no. CH/00/4295, *Osmanagić*, decision on admissibility and merits of 5 March 2002, paragraphs 40-41). The Chamber therefore decides that the application is not inadmissible under Article VIII(2)(a) in respect of the requirement to exhaust domestic remedies.

3. Six-months rule

45. The respondent Party claims that the application is inadmissible in respect to the six-months rule, as it was filed on 24 April 1998, more than one year after the decision of the First Instance Court of 18 February 1997 had become partly valid and effective.

46. The Chamber notes that the purpose of the six-months rule is not to create an empty formal requirement. On the contrary, the rule is designed to ensure a certain degree of legal certainty and to ensure that cases raising issues under the Convention are examined within a reasonable time. It further points out that where the alleged violation consists of a continuing situation, the six-month limit has no application unless and until that situation comes to an end. This is the case of the

present applicant, who is complaining of the fact that she is unable to obtain from the Federation judiciary a “final decision” and its enforcement. The Chamber therefore decides that the application is not inadmissible under the six months rule in Article VIII(2)(a) of the Agreement.

4. Conclusion as to admissibility

47. The Chamber finds that no other ground for declaring the case inadmissible has been established. Accordingly, the Chamber declares the application admissible in relation to Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention insofar as it is directed against the Federation of Bosnia and Herzegovina. The Chamber declares the remainder of the application inadmissible.

B. Merits

48. Under Article XI of the Agreement the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for in the Convention.

49. The applicant complains about the length of her civil proceedings before the Municipal Court and the Cantonal Court.

50. Paragraph 1 of Article 6 of the Convention, insofar as is relevant, reads 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....”

51. The first step in establishing the length of the proceedings is to determine the period of time to be considered. On 30 April 1996 the applicant initiated civil proceedings before the First Instance Court in Zenica requesting compensation for the death of her child. Approximately one year later, on 18 February 1997, the Court issued a decision awarding compensation to the applicant. However, since then the applicant has not been able to obtain the awarded compensation because the proceedings were still ongoing until May 2002. The defendant submitted appeals and objections, as well as requests for retrial and for restoring the case to the previous status. The Chamber recalls that the European Court of Human Rights (“European Court”) has held that Article 6 applies also to enforcement proceedings. The European Court has held that the enforcement proceedings constitute a second stage, which should be considered in assessing the duration of proceedings under Article 6 paragraph 1. (see Eur. Court HR, *Martins Moreira v. Portugal*, judgment of 26 October 1988 Series A no. 143; Eur. Court HR, *Silva Pontes v. Portugal*, judgment of 23 April 1994 Series A No. 286 A). Therefore, in the present case the proceedings have already lasted more than 6 years and are still pending.

52. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and 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 references to corresponding case-law of the European Court of Human Rights).

53. The Chamber notes that the ongoing issues in the underlying case are related, *inter alia*, to the defendant as indicated by the applicant as a proper party to the case; and to the proper currency of the compensation awards and the applicable legal interest on those awards. The Chamber notes that the alleged mistake made by the First Instance Court in defining the interest to be paid on the main compensation award has been subject to several procedural objections and was the main issue at stake for the past four years. Further, the Chamber also notes that for more than five years after the first judgment in the applicant’s favor the courts were apparently unable to correctly decide on the issue of the eligibility of the defendant as a party to the case. This matter appears to have been

finally settled by the Cantonal Court on 6 May 2002. To sum up, the factual and legal questions raised by the case do not appear to the Chamber to be so complex as to require over six years of proceedings. Moreover, the excessive procedural delays have not been justified by the Federation of Bosnia and Herzegovina.

54. The Federation suggests in its observations that the applicant's conduct contributed to or even caused the length of the proceedings because she insisted on payment of the full amount adjudged to her, instead of accepting the principal and renouncing to pursue enforcement for the interest accrued in her favor (see paragraph 38 above). The Chamber finds that the applicant's justified insistence on payment of all the sums awarded to her can in no way shift the responsibility for the excessive length of the judicial proceedings from the Federation authorities to the applicant.

55. The Chamber further notes that the decision of the First instance Court of 18 February 1997 was "final, binding and enforceable" in relation to the compensation for pecuniary damages. Nevertheless the applicant has not been able to receive compensation on that part since then mainly because of the dispute as to who was the defendant or enforcee, issue that was only decided on 13 September 2001.

56. The European Court of Human Rights has held, where a decision of a tribunal is within its scope, Article 6 applies also to the enforcement proceedings (Eur. Court HR, *Scollo v. Italy*, judgment of 29 September 1995, Series A no. 315C; Eur. Court HR, *Hornsby v. Greece*, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, pp.510-511). In the *Hornsby* case the European Court found that Article 6 embodies the right to a court and stated that:

“..that right would be rendered illusory if a Contracting States domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should prescribe in detail procedural guarantees afforded to litigants without protecting the implementation of judicial decisions, to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgement given by any court must therefore be regarded as an integral part of the trial for the purposes of Article 6; moreover the Court has already accepted this principle in cases concerning the length of proceedings.” (*id.* paragraph 40 of the Judgement).

57. In the *Scollo* case the Court found that prolonged delay in the enforcement of a judgment entitling the applicant to possession of an apartment had involved a breach of Article 6 of the Convention, because the inertia of the competent administrative authorities engaged the responsibility of the State (*Scollo* at paragraphs 44 -45). In the *Hornsby* case it found that, by failing over a period of five years to take the necessary measures to comply with a judicial decision, the relevant authorities had deprived the provisions of Article 6(1) of the Convention of all useful effect and that there was therefore a breach of Article 6 (paragraph 45 of the *Hornsby* Judgement). In the Chamber's opinion the situation is similar in the present case. The inertia of the competent authorities in not taking the necessary steps to enforce the court decision and compensate the applicant involves the responsibility of the respondent Party.

58. The Chamber therefore finds that the Federation of Bosnia and Herzegovina violated the right of the applicant protected by Article 6 paragraph 1 of the Convention to a fair hearing within a reasonable time in the determination of a civil right.

59. The applicant also complains that her rights under Article 1 of Protocol No. 1 have been violated. However, taking into consideration its conclusion in relation to Article 6 of the Convention, the Chamber decides it is not necessary separately to examine the application under Article 1 of Protocol No. 1 to the Convention.

VIII. REMEDIES

60. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the respondent Party to remedy established breaches of the Agreement. In this regard the Chamber shall consider issuing orders to cease and desist, monetary relief, as well as provisional measures.

61. The Chamber recalls that in her application, the applicant only requested compensation for pecuniary damages, as established by the First Instance Court in Zenica. The Chamber further notes that it has found a violation of the applicant's rights as guaranteed by Article 6 paragraph 1 of the Convention. Therefore, it considers it appropriate to order the respondent Party to pay to the applicant compensation for pecuniary damages and interest, as awarded by the First Instance Court in its decision of 18 February 1997 (as described in paragraph 11 above), 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.

IX. CONCLUSIONS

62. For the above reasons, the Chamber decides:

1. unanimously, that the application is admissible against the Federation of Bosnia and Herzegovina with respect to the complaint under Article 6 of the Convention;

2. unanimously, that the application is admissible against the Federation of Bosnia and Herzegovina with respect to the complaint under Article 1 of Protocol No. 1 to the Convention;

3. unanimously, that the application is inadmissible against Bosnia and Herzegovina;

4. unanimously, that the Federation of Bosnia and Herzegovina has violated the right of the applicant to a fair hearing within a reasonable time and the right to have decisions of courts enforced as guaranteed by paragraph 1 of Article 6 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that, taking into consideration its conclusion in relation to Article 6 of the Convention, it is not necessary separately to examine the application under Article 1 of Protocol No. 1 to the Convention;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant compensation for pecuniary damages and interest as awarded by the First Instance Court in Zenica, judgment no. P-593/96 of 18 February 1997, within 1 month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure; and

7. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber on the steps taken by it to comply with these orders within 3 months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel