



DECISION ON ADMISSIBILITY

Cases nos. CH/98/702 and CH/98/940

Zahid KARAHMET and Salem SOFRADŽIJA

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 September 2000 with the following members present:

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

Mr. Anders MÅNSSON, 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 Article VIII(2) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicants are citizens of Bosnia and Herzegovina living in the territory of the Federation of Bosnia and Herzegovina. They are former members of the Yugoslav National Army ("JNA") who retired before 1992. Until the outbreak of the war in Bosnia and Herzegovina they received their pensions from the Institute for Social Insurance of Army Insurees in Belgrade (the "JNA Pension Fund"), to which they had paid contributions during their life as active soldiers. Between February and April 1992 the applicants ceased to receive payments from the JNA Pension Fund. In September 1992 the Republic of Bosnia and Herzegovina issued a decree to the effect that pensioners of the JNA would be paid a pension amounting to 50 percent of their previous pension. This decision was confirmed by a law of the Republic of Bosnia and Herzegovina passed in June 1994 and by Article 139 of the Law on Pensions and Disability Insurance of the Federation of Bosnia and Herzegovina, which entered into force on 31 July 1998.

II. COMPLAINTS

2. The applicants raise a number of complaints against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. They consider that the payment of 50 percent of their original JNA pension violates their right to a full pension and, thereby, their right to peacefully enjoy their possessions and constitutes a measure of discrimination against them on the ground of their status as JNA pensioners.

III. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced between June and September 1998 and registered on the date of their submission or soon afterwards.

4. On 9 September 2000 the Chamber decided to join the applications and adopted the following decision.

IV. OPINION OF THE CHAMBER

5. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept.

6. The Chamber recalls that on 9 March 2000 it adopted for the first time a decision on the admissibility and merits of three applications concerning the issue of the pensions paid by the Pension and Disability Insurance Fund of Bosnia and Herzegovina (the "PIO BiH") to JNA pensioners (cases nos. CH/98/706, 740 and 776, *Šećerbegović, Biočić and Oroz*, decision delivered on 7 April 2000). In that decision the Chamber noted that pensions are not among the matters within the responsibilities of the institutions of the State of Bosnia and Herzegovina listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement) and that the State institutions did not take any action in this matter. The Chamber concluded that no responsibility for the matter complained of can attach to the State of Bosnia and Herzegovina and declared the applications inadmissible insofar as they were directed against the State.

7. As to the merits, the Chamber considered the applications under Article 1 of Protocol No. 1 to the European Convention on Human Rights, protecting the right to peaceful enjoyment of possessions, and as an issue of possible discrimination in the enjoyment of the right to social security, protected by Article 9 of the International Covenant on Economic, Social and Cultural Rights.

8. With regard to the right to enjoy one's possessions, the Chamber noted that the European Court and Commission on Human Rights had considered that the right to a pension could, under certain circumstances, amount to a possession protected by Article 1 of Protocol No. 1. It also noted, however, that the applicants had not paid any contributions to the Pension Fund of Bosnia and Herzegovina, and that they had no legal relationship to that fund before the enactment of the 1992

Decree on pension and disability insurance. The Chamber therefore concluded that the applicants did not have a claim against the PIO BiH to receive the full JNA pension which could be regarded as a possession under Article 1 of Protocol No. 1. It therefore found no violation of that provision.

9. Regarding the issue of discrimination in the enjoyment of the right to social security, the Chamber first compared the position of the applicants to that of the civil pensioners insured with the PIO BiH. The Chamber noted that the civil pensioners had paid contributions to the PIO BiH, while the applicants had paid their contributions to the JNA Pension Fund in Belgrade. The Chamber therefore concluded that the civil pensioners were not in a relevantly comparable situation to that of the applicants. It also considered that, although the applicants received only an amount equivalent to 50 percent of their original pension, they still received payments higher than the average pension of the insurees of the PIO BiH.

10. The Chamber then compared the situation of the applicants to that of the former members of the JNA who subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation and retired as members of these armed forces. The Chamber noted that these persons received credit for the time served in the JNA for the purpose of their pension treatment. It also noted that the average pension of this group (amounting to 573 Convertible Marks; KM) was considerably higher than the average payment received by the JNA pensioners (KM 325) and the average pension of the civil pensioners (KM 180). The Chamber found, however, that the difference in treatment between on the one hand the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation and, on the other hand, the JNA pensioners was justifiable considering that the former had served in the armed forces of the country whose pension fund paid their pensions. It added that the favourable treatment of veterans was not a feature peculiar to the society of the post-war Federation of Bosnia and Herzegovina, and that the JNA pensioners still received a higher pension than the average pensioners. The Chamber therefore concluded that the applicants had not been discriminated against in their right to social security.

11. On 4 April 2000 the Chamber adopted another decision concerning the issue of the pensions paid by the PIO BiH to JNA pensioners living in the Federation (cases nos. CH/98/875, 939 and 951, *Živković, Sarić and Jovanović*, decision on admissibility and merits delivered on 12 May 2000). In this decision the Chamber fully confirmed its findings made in the *Šećerbegović, Biočić and Oroz* decision. It added that the cases before it did not reveal a violation of the applicants' right to access to a tribunal for the determination of their civil rights under Article 6 of the Convention, nor of the right to have a remedy against violations of their rights under the Convention protected by Article 13 thereof.

12. To sum up, the Chamber has consistently found that the situation complained of by the applicants in the so-called "JNA pension cases" does not disclose any violation of the rights protected by the Human Rights Agreement.

13. Turning back to the cases currently before it, the Chamber finds that the facts and complaints presented by these applicants (see paragraphs 1 and 2 above), do not relevantly differ from the facts and complaints in the previous JNA pension cases, in which the Chamber found no violation of the rights protected by the Agreement. Accordingly, an examination of the present applications could not lead to a finding of a violation of any right protected by the Agreement.

14. Under Article VIII(2) of the Agreement:

"The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:
(a) ..."

The Chamber considers that the wording of this provision clearly implies that the admissibility criteria in sub-paragraphs (a) to (d) of Article VIII(2), i.e. exhaustion of domestic remedies, the six-month rule, *res judicata*, incompatibility with the Agreement, manifestly ill-founded and *lis alibi pendens*, are not the only criteria it may apply in deciding whether to accept a case. Accordingly, under Article VIII(2) the Chamber enjoys a certain discretion not to accept cases on grounds other than those expressly spelled out in that provision. (See cases nos. CH/98/706, 740 and 776 *Šećerbegović, Biočić and Oroz*, decision delivered on 7 April 2000).

15. Considering that an examination of the present applications could not lead to a finding of a violation of any right protected by the Agreement, the Chamber finds it appropriate to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept these applications.

V. CONCLUSION

16. For these reasons, the Chamber, by 5 votes to 1 ,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel