



DECISION ON ADMISSIBILITY

Cases nos. CH/98/863, CH/00/3463, CH/00/3464 and CH/00/4490

Suljo ČUTUNA, Milenko ANĐELIĆ, Z.P. and Stevo MOMČILOVIĆ

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 May 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

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 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 1992-95 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 lives 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 with force of law to the effect that each pensioner of the JNA would be paid by the Republic of Bosnia and Herzegovina a pension amounting to 50 percent of his previous pension. This decree 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. Primarily they consider that the payment of 50 percent of their original JNA pension violates their right to a full pension in accordance with the procedural decisions on their retirement. This, in turn, violates their right to peaceful enjoyment of their possessions, as protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention"), and constitutes discrimination against them on the ground of their status as JNA pensioners, as protected by Article 9 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). One of the applicants also complains that his right to access to an independent and impartial tribunal for the determination of his civil rights, as protected by Article 6 of the Convention, and his right to have an effective remedy before a national authority for violations of his rights, as protected by Article 13 of the Convention, have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced between 12 August 1998 and 31 March 2000 and registered on the date of their submission or soon afterwards.

4. The applications were not transmitted to the respondent Parties.

5. The Chamber considered the admissibility of the applications on 8 May 2002, when it decided to join the applications and to adopt the following decision.

IV. FACTS OF THE INDIVIDUAL CASES

1. Case no. CH/98/863 Suljo ČUTUNA

6. The applicant is a citizen of Bosnia and Herzegovina living in Sarajevo. He was in active military service in the JNA until 31 December 1981 when he retired with the rank of first class ensign (*zastavnik*). Due to the outbreak of the war in Bosnia and Herzegovina, the applicant has not received any payments on account of his pension from the JNA Pension Fund. In 1992 he started receiving an amount equivalent to 50 percent of his previous pension from the Pension and Disability Insurance Fund of Bosnia and Herzegovina (the "PIO BiH") in Sarajevo. On 19 February 1998 the PIO BiH informed the applicant in writing that, as a retired member of the JNA living in Bosnia and Herzegovina, his pension was taken over by the PIO BiH and that he was entitled to a pension in the amount of 50 percent of his original pension. The applicant claims that it is very difficult to live on that pension and that he and his wife do not enjoy any health insurance.

2. Case no. CH/00/3463 Milenko ANĐELIĆ

7. The applicant is a citizen of Bosnia and Herzegovina living in Sarajevo. He was in active service in the JNA until 31 December 1991 when he retired with the rank of general-major. The applicant states that in April 1992 he stopped receiving payments on account of his pension from the JNA Pension Fund and started receiving an amount equivalent to 50 percent of his original pension from the PIO BiH, as it was established by the last pension check he received from the JNA Pension Fund. That amount was subsequently adjusted in accordance with applicable legislation of the Federation of Bosnia and Herzegovina. The applicant complains that he has been paid a decreased pension without the issuing of a procedural decision decreasing his pension by 50 percent.

3. Case no. CH/00/3464 Z.P.

8. The applicant is a citizen of Bosnia and Herzegovina living in Sarajevo. He was in active service in the JNA until 4 January 1992 when he retired. In April 1992 he stopped receiving payments on account of his pension from the JNA Pension Fund and started receiving an amount equivalent to 50 percent of his original pension from the PIO BiH, as it was established by the last pension check he received from the JNA Pension Fund. That amount was subsequently adjusted in accordance with applicable legislation of the Federation of Bosnia and Herzegovina.

4. Case no. CH/00/4490 Stevo MOMČILOVIĆ

9. The applicant is a citizen of Bosnia and Herzegovina living in Sarajevo. The applicant claims that he is a retired member of the JNA with the rank of colonel. The date of his retirement is not known to the Chamber. The applicant states that in April 1992 he stopped receiving payments on account of his pension from the JNA Pension Fund and started receiving an amount equivalent to 50 percent of his original pension from the PIO BiH, as it was established by the last pension check he received from the JNA Pension Fund. That amount was subsequently adjusted in accordance with applicable legislation of the Federation of Bosnia and Herzegovina. The applicant points out that he, as a military pensioner, belongs to a most endangered group and a group of citizens deprived of their rights.

V. OPINION OF THE CHAMBER

10. According to 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 criteria listed in sub-paragraphs (a) through (d). As the Chamber explained in *Sijarić v. the Federation of Bosnia and Herzegovina* (case no. CH/00/4441, decision on admissibility of 6 June 2000, paragraph 13, Decisions January-June 2000), the wording of this provision indicates that the admissibility criteria listed in sub-paragraphs (a) through (d) of Article VIII(2) are only some of the criteria the Chamber may apply in deciding whether to accept an application. Accordingly, the Chamber has the discretion under Article VIII(2) of the Agreement not to accept applications for a reason expressly specified in that provision or for another appropriate reason.

A. Caselaw of the Chamber with respect to JNA pension cases

11. The Chamber has in three previous decisions considered applications filed by JNA pensioners who receive pensions from the Pension and Disability Insurance Fund of Bosnia and Herzegovina (the "PIO BiH"). In these cases, the applicants raised claims under Article 1 of Protocol No. 1 to the Convention, Articles 6 and 13 of the Convention, and discrimination in the enjoyment of their rights protected by Article 9 of the ICESCR. In each case, as described more fully below, the Chamber concluded that the so-called "JNA pension cases" do not disclose any violation of the rights protected by the Human Rights Agreement.

12. 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 to JNA pensioners (cases nos.

CH/98/706, 740 and 776, *Šećerbegović, Biočić and Oroz*, decision on admissibility and merits of 9 March 2000, Decisions January-June 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 therefore it declared the applications inadmissible insofar as they were directed against the State (*id.* at paragraphs 69-71).

13. As to the merits in *Šećerbegović, Biočić and Oroz*, the Chamber considered the applications under Article 1 of Protocol No. 1 to the Convention, which guarantees the right to peaceful enjoyment of possessions. The Chamber also considered possible discrimination toward the applicants in the enjoyment of their right to social security protected by Article 9 of the ICESCR.

14. With regard to the peaceful enjoyment of possessions, the Chamber noted that the European Court and Commission on Human Rights had considered that the right to a pension could, under certain limited circumstances, amount to a possession protected by Article 1 of Protocol No. 1 to the Convention (*id.* at paragraph 82). However, the applicants in *Šećerbegović, Biočić and Oroz* had not paid any contributions to the Pension Fund of Bosnia and Herzegovina, so they had no legal relationship to that fund before the enactment of the 1992 decree with force of law on pension and disability insurance. The Chamber therefore concluded that the applicants did not have a claim for interference with their possessions, within the meaning of Article 1 of Protocol No. 1, against the PIO BiH to receive their full JNA pensions. Accordingly, the Chamber found no violation of that provision (*id.* at paragraphs 88-89).

15. Regarding the issue of discrimination in the enjoyment of the right to social security, the Chamber first compared the position of the applicants in *Šećerbegović, Biočić and Oroz* 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. In addition, the JNA pension scheme was very favourable toward its pensioners as a result of unique mechanisms for calculations upon which pension amounts were based. 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 (*id.* at paragraphs 94-95).

16. 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 of Bosnia and Herzegovina 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 was considerably higher than the average pension received by the JNA pensioners and the civil pensioners. 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 the Army of the Federation of Bosnia and Herzegovina, 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 (*id.* at paragraphs 96-99).

17. On 4 April 2000 the Chamber adopted its second decision concerning the issue of pensions paid by the PIO BiH to JNA pensioners living in the Federation of Bosnia and Herzegovina (cases nos. CH/98/875, 939 and 951, *Živković, Sarić and Jovanović*, decision on admissibility and merits of 4 April 2000, Decisions January-June 2000). In this decision the Chamber fully confirmed its findings 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, as protected by Article 6 of the Convention, nor of their right to have an effective remedy before a

national authority for violations of their rights under the Convention, as protected by Article 13 of the Convention (*id.* at paragraphs 74 and 76).

18. On 5 June 2001 the Chamber adopted a third decision in two further cases concerning the issue of the pensions paid by the PIO BiH to JNA pensioners living in the Federation of Bosnia and Herzegovina (cases nos. CH/98/232 and 480, *Barjac and M.M.*, decision on admissibility and merits of 5 June 2001, Decisions July-December 2001). Again the Chamber confirmed its findings in the *Šećerbegović, Biočić and Oroz* decision. It added that the applicants' complaints of discrimination compared with pensioners living in other successor states of the former Socialist Federal Republic of Yugoslavia were ill-founded (*id.* at paragraphs 52 and 62).

19. In summary, 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 Agreement.

B. The JNA Pension cases currently before the Chamber

20. 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.

21. 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.

VI. CONCLUSION

22. For these reasons, the Chamber, by 13 votes to 1,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber