



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 February 2000)

Case no. CH/99/1859

Ruža JELIČIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 January 2000 with the following members present:

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

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 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 is a citizen of Bosnia and Herzegovina. She is the holder of savings accounts with Banjalučka Banka d.d., a company limited by shares. On 26 November 1998 the Court of First Instance in Banja Luka ordered the bank to pay to the applicant the sums she has on deposit with it. This decision entered into force on 30 December 1998. The applicant has sought execution of the decision, without success.

2. The case raises issues principally under Article 6 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 23 February 1999 the Human Rights Ombudsperson, in accordance with Article V(5) and Article VIII(1) of the Agreement, referred the application to the Chamber. The application was registered on 5 March 1999.

4. The applicant is represented by Mr. Dragutin Đurić, a lawyer practising in Banja Luka. He requested that the Chamber order the respondent Party as a provisional measure to pay to the applicant the sum of 50,000 German marks ("DEM"). At its session in April 1999 the Chamber decided to refuse the applicant's request for a provisional measure and to transmit the application to the respondent Party for its observations on its admissibility and merits.

5. On 30 July 1999 the applicant was requested to submit a written statement and any claim for compensation or other relief which she wished to make. This statement, which did not contain a claim for compensation, was received by the Chamber on 17 August 1999. On 24 August 1999 it was transmitted to the Agent of the respondent Party for information.

6. No observations have been received from the respondent Party.

7. The Chamber deliberated upon the admissibility and merits of the application on 4 November 1999 and on 12 January 2000. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

8. The facts of the case as they appear from the applicant's submissions and the documents in the case-file have not been contested by the respondent Party and may be summarised as follows.

9. The applicant is the holder of two savings accounts at Banjalučka Banka d.d., a company whose capital is divided into shares. She opened the first account on 31 January 1983. On 3 October 1997 she initiated proceedings before the Court of First Instance in Banja Luka, requesting the termination of her accounts and the payment to her of all sums she had on deposit with the bank. As of the date she initiated proceedings, the total amount of money she had placed on deposit at the bank was DEM 300,169.94. This figure is composed of DEM 4,895.85 on the first account and DEM 295,274.09 on the second account.

10. On 26 November 1998 the court issued its decision in the applicant's proceedings. It terminated the applicant's second contract with the bank. It ordered the bank to pay to her all of the sums she had on deposit with it as of 3 October 1997, totalling DEM 300,169.94. In addition the bank was ordered to pay her the interest rate applicable in the country of the currency (i.e. Germany) on the sum awarded as and from 3 October 1997 until the date of payment. This sum was not quantified in the decision.

11. The court ordered the bank to pay to the applicant the sum of 9,076 Yugoslav dinars ("YUD") in respect of the costs of the proceedings, together with interest at the legal rate to be calculated from the date of the decision until payment. It rejected the applicant's claim for interest to be paid as and from 1 January 1997 and her request to terminate her first account with the bank. The decision allowed for an appeal to be filed, within 15 days of receipt, to the Regional Court. The bank did not do so and accordingly the decision became final on 30 December 1998.

12. On 5 February 1999 the Court of First Instance, pursuant to a request of the applicant's representative, ordered the enforcement of the decision of 26 November 1998. This has not occurred to date, allegedly due to the refusal of the Bureau for Payment Transactions (*Služba platnog prometa*) to execute the payment. According to the applicant, the reason for this is the decision of the Government of the Republika Srpska dated 3 May 1996, which purports to prevent the payment of so-called "old" foreign currency savings.

B. Relevant legislation

13. The Law on Enforcement Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 20/78), as amended, is still in force in the Republika Srpska and sets out a detailed regime for the enforcement of court decisions. Article 2 states that such enforcement is initiated at the request of the person in whose favour the decision was given. Article 3 states that enforcement is carried out by the regular courts. Article 7 provides for the issuing of a decision on enforcement by the competent court. Enforcement proceedings are, according to Article 10, to be carried out as a matter of urgency.

IV. COMPLAINTS

14. The applicant does not make any specific allegations of violations of her human rights as protected by the Agreement. She complains of the fact that, due to the actions of the bank, she is unable to access her savings, which she requires in order to pay for her son's operation.

V. SUBMISSIONS OF THE PARTIES

15. The respondent Party has not made any submissions regarding the application.

16. The applicant maintains her complaint and requests that the Chamber issue a decision in the case as soon as possible, claiming that she needs the money urgently to pay for her son's operation.

VI. OPINION OF THE CHAMBER

A. Admissibility

17. 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.

18. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. The Chamber notes that the respondent Party has not suggested that there is any "effective remedy" available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

19. The applicant initiated proceedings before the Court of First Instance on 3 October 1997, which issued its decision on 26 November 1998. This decision became final on 30 December 1998. The applicant sought execution of the decision, which the court ordered on 5 February 1999. The Chamber notes that there is no other step which the applicant may take at national level to seek execution of the decision. Accordingly, the applicant has exhausted the remedies available to her.

20. The Chamber considers that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

21. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 6 of the Convention

22. The applicant did not specifically allege a violation of her rights as protected by Article 6 of the Convention. The Chamber raised it of its own motion when transmitting the application to the respondent Party. Article 6 paragraph 1, insofar as 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”

23. The Chamber has previously held that Article 6 paragraph 1 applies to enforcement proceedings following from a decision of a tribunal which is within its scope (see case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 35, Decisions on Admissibility and Merits 1996-1997).

24. The decision of the Court of First Instance of 26 November 1998 is enforceable, as the time-limit for the lodging of an appeal against it has passed without such an appeal being lodged. The question of whether the decision of the court is in accordance with the law of the Republika Srpska is not for the Chamber to decide. The application before the Chamber concerns the non-enforcement of this decision. The respondent party in the domestic proceedings had the opportunity to appeal against it, which it did not avail itself of. The decision of the court is therefore fully binding and enforceable under the law of the Republika Srpska.

25. The court, pursuant to a request of the applicant, ordered the enforcement of the decision on 5 February 1999. However, the Bureau for Payment Transactions refused to pay the amount to the applicant, without giving reasons. Thus the decision of the court has not yet been enforced. The court has not taken any steps to ensure that this will happen, although such a possibility is provided for by the law of the Republika Srpska. The court has remained completely passive in the face of the clearly expressed intention of the Bureau for Payment Transactions to refuse to comply with a decision of a court of the Republika Srpska.

26. Accordingly, the applicant appears to have no prospect of having the decision of the Court of First Instance of 26 November 1998 enforced. This failure engages the responsibility of the Republika Srpska, as the Bureau for Payment Transactions, a public body for whose actions the Republika Srpska is accordingly responsible, has not taken any steps to have the decision enforced. Neither has the court taken any further steps to ensure such enforcement.

27. As the Chamber held in the above-mentioned *M.J.* decision, a situation where the authorities take no action to enforce a decision of a court deprives Article 6 paragraph 1 of all useful effect (*sup. cit.*, paragraph 36). Accordingly, there has been a violation of the applicant's rights to a fair hearing in the determination of her civil rights as guaranteed by that provision.

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

28. The applicant did not specifically complain that her right to peaceful enjoyment of her possessions has been violated as a result of the non-enforcement of the decision of the Court of First Instance of 26 November 1998. Article 1 of Protocol No. 1 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.”

29. The respondent Party did not submit any observations under this provision.

30. The Chamber finds that the applicant's deposits with the bank constitute her “possessions” within the meaning of Article 1 of Protocol No. 1.

31. The present case concerns the failure of the authorities of the Republika Srpska to enforce a court decision in the applicant's favour. As the Chamber has previously held (in the *M.J.* case, sup. cit., at paragraph 33), Article 1 of Protocol No. 1 imposes positive obligations on the Parties to provide effective protection for the rights of an individual. The Chamber considers that these obligations extend to the enforcement of court decisions such as that concerned in the present case. In the present case the failure of the respondent Party to take any steps to enforce the decision of the court of 26 November 1998 constitutes a failure to effectively secure the applicant's right to peaceful enjoyment of her possessions. Thus, there has been a breach of her rights as guaranteed by Article 1 of Protocol No. 1.

VII. REMEDIES

32. 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 the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

33. The Chamber notes that the applicant requests that the decision of the Court of First Instance of 26 November 1998 be enforced. The Chamber has found that the failure to do so involves a breach by the respondent Party of the applicant's rights as protected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. It is accordingly appropriate that the respondent Party ensure the enforcement of the decision in full as soon as possible.

VIII. CONCLUSION

34. For the above reasons, the Chamber decides,

1. by 5 votes to 1, to declare the application admissible;

2. by 5 votes to 1, that the failure to take any steps to enforce the decision of the Court of First Instance of 26 November 1998 in the applicant's favour constitutes a violation of her right to a fair hearing in the determination of her civil rights as protected by Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of its obligations under Article I of the Human Rights Agreement;

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3. by 5 votes to 1, that this failure also constitutes a violation of the applicant's right to peaceful enjoyment of her possessions as protected by Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of its obligations under Article I of the Agreement;

4. by 5 votes to 1, to order the Republika Srpska to ensure the full enforcement of the decision of the Court of First Instance in Banja Luka of 26 November 1998 in the applicant's proceedings against Banjalučka Banka d.d. without further delay; and

5. unanimously, to order the Republika Srpska to report to it, within one month of the date of the present decision becoming final in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel