



## DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/99/1885

**Gordana STRIKA**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 4 May 2004 with the following members present:

Mr. Jakob MÖLLER, President  
Mr. Miodrag PAJIĆ, Vice-President  
Mr. Želimir JUKA  
Mr. Mehmed DEKOVIĆ  
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar  
Ms. Olga KAPIĆ, Deputy Registrar  
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned application introduced to the Human Rights Chamber for Bosnia and Herzegovina 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;

Noting that the Human Rights Chamber for Bosnia and Herzegovina (“the Chamber”) ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina (“the Commission”) has been mandated under the Agreement Pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 (“the 2003 Agreement”) to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement, Articles 5 and 9 of the 2003 Agreement, and Rules 50, 54, 56 and 57 of the Commission’s Rules of Procedure:

## **I. INTRODUCTION**

1. The applicant sustained bodily injuries in a car accident, and thereafter the Public Prosecutor initiated criminal proceedings against the other party involved in the accident. The applicant complains that a judgement was not issued within a reasonable time and that, consequently, criminal proceedings were abandoned because the prosecution for the criminal act in question became time-barred. The applicant further complains that she is unable to obtain a final decision in the civil proceedings she initiated, due to the termination of the criminal proceedings.

2. The application raises issues regarding the applicant's right to a fair trial in a reasonable time under Article 6 of the European Convention on Human Rights ("the Convention").

## **II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION**

3. On 25 March 1999 the application was submitted to the Chamber. The applicant, a housewife, is represented by her husband, Mr. Rade Strika, who is a police officer.

4. On 23 September 2003 the application was transmitted to the Republika Srpska under Article 6 of the Convention. On 23 October 2003 the Chamber received the Republika Srpska's observations on the admissibility and merits.

5. On 23 March 2000 and 23 September 2003 the Chamber sent letters to the applicant requesting her to clarify certain key issues. On 10 February 2004 the Commission also requested additional information from the applicant.

6. The applicant submitted additional observations on 26 May 1999, 29 October 1999, 29 March 2000, 3 January 2001, 29 January 2001, 13 August 2001, 21 January 2002, 30 July 2002, 22 November 2002, 29 January 2003, 2 October 2003, 6 November 2003, and 19 February 2004.

7. On 5 September 2003 the Chamber deliberated on the admissibility and merits of the application. The Commission deliberated on the admissibility and merits of the application on 15 January 2004 and 4 May 2004. On the latter date it adopted the present decision.

## **III. STATEMENT OF FACTS**

8. On 24 July 1996 the applicant and her husband were driving their vehicle on the road between Prijedor and Kozarska Dubica, the Republika Srpska. A minibus that S.D. was driving hit their vehicle. S.D. immediately left the scene of the accident. Due to this accident, the applicant was seriously injured and as a result became physically disabled.

9. On 12 September 1996 the Public Prosecutor charged S.D. with the criminal offence of threatening public traffic safety. At this time the applicant raised a claim under property law (*i.e.*, a civil claim for compensation for damages arising out of the commission of a crime, see paragraph 31 and footnote 1 below, also referred to in this decision as a "compensation claim").

10. On 22 October 1997 the Basic Court in Prijedor (*Osnovni sud u Prijedoru*) ("the Basic Court") issued a judgement finding S.D. guilty of driving under the influence of alcohol and at an excessive speed, thereby committing the criminal offence set out in Article 181, paragraph 1 in conjunction with Article 181, paragraph 3 of the Republika Srpska Criminal Code (see paragraph 23 below). The Basic Court, however, considered the fact that the brakes gave out while S.D. was trying to stop the vehicle as a mitigating factor and applied Articles 42 and 43 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (see paragraphs 24 and 25 below) in determining

the punishment. Accordingly, the Basic Court imposed a monetary fine on S.D. in the amount of 2,000 dinars, to be paid within 15 days after the judgement became final and binding, considering a monetary fine sufficient punishment. The Basic Court relied on witness statements, an expert report of the car garage "Autotransport" on the condition of the vehicle after the accident, and documentation regarding the road and its condition where the accident occurred. The Basic Court also instructed the applicant to initiate civil proceedings for claim under property law, in accordance with paragraph 2 of Article 108 of the Code of Criminal Procedure (see paragraph 31 below). The Basic Court stated that it could not award any compensation or decide on the civil claim within the criminal proceedings because the information acquired during the criminal proceedings did not provide a reliable basis for either a complete or partial award. S.D. appealed the judgement of the Basic Court.

11. On 3 June 1997 the applicant contacted S.D.'s insurance company, Krajina Osiguranje seeking the reimbursement for pecuniary damages (medical expenses) and compensation for non-pecuniary damages. S.D. has held an insurance policy there since 11 January 1996.

12. On 27 July 1998 the applicant initiated civil proceedings before the Basic Court in Prijedor against S.D., his insurance company Krajina Osiguranje, and the car company that owned the minibus S.D. was driving, with a view to obtaining compensation.

13. On 28 October 1998 the Higher Court in Banja Luka (*Okružni sud u Banja luci*), upon the appeal of S.D., quashed the Basic Court judgement of 22 October 1997. The Higher Court, in its procedural decision, stated that the operative section of the Basic Court ruling was incomprehensible, and that the court had therefore violated the rules governing criminal proceedings. The Higher Court further regarded the relevant facts to be incomplete; in particular, facts establishing the actual speed of the vehicle driven by S.D. and the condition of the road were missing. The Higher Court, therefore, returned the case to the Basic Court for renewed proceedings and instructed the Basic Court to issue a judgement containing this information.

14. On 21 June 1999 the Basic Court held a hearing in the civil proceedings, to which the applicant and her lawyer were invited.

15. On 28 December 1999 in the renewed criminal proceedings, the Basic Court issued a judgement imposing the same fine on S.D. and establishing his responsibility for the same offence as it had in the judgement of 22 October 1997. S.D. appealed against this judgement.

16. On 10 June 2000 the applicant received a letter from S.D.'s insurance company, Krajina Osiguranje, requesting her to submit the Basic Court's final and binding judgement or an expert report on traffic and technical issues in order for the insurance company to finalize her request.

17. On 12 October 2000 the Higher Court in Banja Luka, upon S.D.'s appeal, again quashed the judgement of the Basic Court of 28 December 1999 and returned the case to the Basic Court for renewed proceedings. The Higher Court repeated its earlier reasoning of 28 October 1998 and ordered the Basic Court to comply with its instructions.

18. On 18 November 2002 the Basic Court issued a procedural decision terminating the criminal proceedings on the ground that the criminal prosecution of the underlying act was time barred pursuant to Article 111, paragraph 6 and Article 112, paragraph 6 of the Criminal Code (see paragraphs 27 and 28 below). The Basic Court also instructed the applicant to initiate a civil action for her claims under property law.

19. Sometime after the termination of the criminal proceedings, S.D. died.

20. On 17 February 2003 the applicant received an invitation to participate in the 14 March 2003 main hearing in the civil proceedings she had initiated. After this hearing, the civil proceedings seem to have halted.

21. In June 2003 the applicant submitted a complaint to the Independent Judicial Commission in Banja Luka. On 1 July 2003 the Independent Judicial Commission confirmed its receipt of the complaint and stated that it had concluded that her allegations were founded and that a report would be submitted to the High Judicial and Prosecutor's Council.

#### **IV. RELEVANT LEGAL FRAMEWORK**

##### **A. Criminal Code**

22. A new Criminal Code of the Republika Srpska entered into force on 1 July 2003 (Official Gazette of the Republika Srpska ("OG RS") no. 49/03). However, at the time of S.D.'s conviction, the Criminal Code of the Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia ("OG SFRY") nos. 44/76, 34/84, 74/87, 57/89, and 3/90 and OG RS no. 12/93) and the Criminal Code of the Republika Srpska (Special Part) were in force (OG RS nos. 15/92, 4/93, 17/93, 26/93, 14/94, and 3/96).

23. On 22 October 1997, S.D. was found guilty of threatening public traffic safety as defined by paragraph 1, in conjunction with paragraph 3, of Article 181 of the Criminal Code of the Republika Srpska (Special Part) which provided as follows:

"(1) A participant in traffic on the road that does not comply with traffic regulations and therewith endangers the public traffic endangering the life of people or property to the greater extent due to which another person suffers heavily bodily injury or property is damaged exceeding the amount of three thousand dinars shall be punished by sentence of imprisonment from six months to five years.

"(2) Whoever endangers the human life or body or damages property to a greater extent by endangering the railway, shipping, tram, trolley bus, bus traffic or cableway traffic shall be punished by sentence of imprisonment from six months to five years.

"(3) Whoever commits the offences under paragraphs 1 and 2 of this Article out of negligence shall be punished by imprisonment of up to three years."

24. The Basic Court mitigated the sentence for the criminal offence in accordance with Article 42 and 43 of the Criminal Code of the Socialist Federal Republic of Yugoslavia. Article 42, regarding the mitigation of punishment, provided as follows:

"The court may set the punishment for the perpetrator below the limit prescribed by the law or apply a milder kind of punishment:

"(1) when the law provides the possibility of reducing punishment;

"(2) when the court determines the existence of very mitigating circumstances which indicate that the purpose of the punishment can be attained by a lesser punishment."

25. Article 43, regarding the limitation on the mitigation of punishments, provided as follows:

"(1) When the conditions for the reduction of punishment referred to under Article 42 of this Code exist, the court shall reduce the punishment within the following limits:

"(1) if a period of three years' imprisonment is prescribed as the lowest punishment for the criminal offence, it may be reduced down to one year of imprisonment;

“(2) if a period of two years’ imprisonment is prescribed as the lowest punishment for the criminal offence, it may be reduced down to six months of imprisonment;

“(3) if a period of imprisonment of one year is prescribed as the lowest punishment for the criminal offence, it may be reduced down to three months of imprisonment;

“(4) if a period of imprisonment not exceeding one year is prescribed as the lowest punishment for the criminal offence, it may be reduced down to 15 days of imprisonment;

“(5) if a punishment of imprisonment is prescribed for a criminal offence without indication of the lowest limit, the court may pronounce a fine in lieu of imprisonment;

“(6) if a fine is prescribed as the lowest limit for the punishment for a criminal offence, it may be reduced to 500 dinars.

“(2) When deciding on the extent of reducing punishments in accordance with the rules set forth in paragraph 1 of this Article, the court shall take into special consideration the smallest and the largest punishment prescribed for the particular criminal offence.”

26. The Republika Srpska adopted another Criminal Code that entered into force on 1 October 2000 (OG RS nos. 22/00, 33/00, and 37/01). The Basic Court relied on this Code in issuing its 18 November 2002 procedural decision terminating the criminal proceedings.

27. Article 111, regarding the bar to prosecution by lapse of time, provided, in relevant part, as follows:

“(1) Unless it is stipulated otherwise in this Code, criminal prosecution is barred after the lapse of:

...

(6) three years from the commission of criminal offence for which the law provides imprisonment for a term exceeding one year; ...”

28. Article 112, regarding the running and interruption of the period of expiry of criminal prosecution, provided, in relevant part, as follows:

“(6) There shall be an absolute bar to prosecution when twice as much time lapses as required, by provisions of the law, for the bar to prosecution.”

## **B. Code of Criminal Procedure**

29. A new Code of Criminal Procedure of the Republika Srpska entered into force on 1 July 2003 (OG RS no. 50/03). However, the previous Code of Criminal Procedure of the Socialist Federal Republic of Yugoslavia (OG SFRY nos. 26/86, 74/87, 57/89, 3/90, and 27/92) was applied in the Republika Srpska by the Law on Application of the Code of Criminal Procedure (OG RS no. 4/93), as later amended by the Law on Amendments of the Code of Criminal Procedure of the Republika Srpska (OG RS nos. 26/93, 14/94, 6/97, and 60/01). This Code of Criminal Procedure is applicable in this case.

30. Chapter X of the Code of Criminal Procedure governed “claims under property law<sup>1</sup>”. It provides, in pertinent part, as follows:

Article 103

“(1) A claim under property law which has arisen due to the commission of a crime shall be deliberated upon on the motion of the authorised persons in the criminal proceedings if this would not considerably prolong those proceedings.

“(2) A claim under property law may pertain to compensation for damage, repossession of things, or annulment of a particular legal transaction.”

Article 104(1)

“The petition to realise a claim under property law in criminal proceedings may be filed by the person authorised to pursue that claim in a civil action.”

Article 105(1)

“A petition to pursue a claim under property law in criminal proceedings shall be filed with the body or agency to whom the criminal charge is submitted or to the court before which the proceedings are being conducted.”

Article 107

“(1) The court before which proceedings are being conducted shall interrogate the accused concerning the facts alleged in the petition and shall investigate the circumstances that have a bearing on the establishment of the claim under property law. But even before a petition to that effect is presented, the court has a duty to gather evidence and investigate what is necessary to decide upon the claim.

“(2) If the investigation of the claim under property law would considerably prolong the criminal proceedings, then the court shall restrict itself to gathering that information for which the subsequent establishment would be impossible or considerably more difficult.”

31. The Basic Court, in its judgements issued on 22 October 1997 and 28 December 1999, instructed the applicant to initiate civil proceedings in accordance with paragraph 2 of Article 108.

Article 108

“(1) The court shall render a judgment on claims under property law.

“(2) In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the information gathered in the criminal proceedings does not afford a reliable basis for either a complete or partial award, then the court shall instruct the injured party that he may file a civil action to pursue his entire claim under property law.”

32. Article 442 provided as follows:

“(1) The main trial shall be held even if the competent prosecutor does not appear though duly summoned. In this case, the injured party has the right to defend the accusation in the main trial within the limits of the indicting proposal.”

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<sup>1</sup> For the sake of clarification, the concept of “claims under property law” in the domestic law and domestic practice is not exclusively related to property claims, but rather applies more broadly to civil claims for compensation for damages arising out of or related to the commission of a crime. The term property claim or compensation claim will be used interchangeably in this decision.

## C. The Law on Civil Proceedings

33. A new Law on Civil Proceedings of the Republika Srpska entered into force on 17 July 2003 (OG RS nos. 58/03 and 85/03). However, before 17 July 2003, the Law on Civil Proceedings of the Socialist Federal Republic of Yugoslavia was applicable (OG SFRY nos. 4/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, and 35/91) as later amended by the Law on Amendments of the Law on Civil Proceedings (OG RS nos. 17/93, 14/94, and 32/94). This Law on Civil Proceedings is applicable in this case and the relevant provisions are cited below.

34. Article 12 provided as follows:

“When the court’s decision depends on a prior decision on whether a certain right or legal relation exists or not, and such a decision has not yet been reached by the court or another competent body (prior question), the court may resolve the issue itself, if not stipulated otherwise in special regulations.

“The court’s decision on prior question has legal effect only in terms of that particular case in which the issue has been decided upon.

“During the civil proceedings, in respect to the existence of a criminal act and criminal responsibility of the perpetrator, the court is bound by the final decision of the criminal court pronouncing the defendant guilty.”

## V. COMPLAINTS

35. The applicant complains that her right to a prompt and fair resolution of the criminal proceedings has been violated, as well as her right to obtain a satisfactory judgement sentencing S.D. The applicant further complains that she is unable to obtain compensation in the criminal proceedings although she submitted a compensation claim within those proceedings. Moreover, she complains about her inability to obtain a final decision and compensation within the civil proceedings she initiated, due to the delay in of the criminal proceedings and the eventual termination thereof. The applicant states that she is not able to obtain compensation from S.D.’s insurance company due to the termination of the criminal proceedings.

## VI. SUBMISSIONS OF THE PARTIES

### A. The Republika Srpska

#### 1. As to the facts

36. In its observations, the respondent Party points out that the applicant’s statement regarding the length of the proceedings contradicts the 18 November 2002 procedural decision of the Basic Court on termination of the proceedings. The respondent Party also regards the applicant’s statement that she was not able to realize her right to obtain compensation as ill-founded because the applicant was clearly directed to initiate a civil lawsuit for compensation and she also could have participated in the criminal proceedings. The respondent Party also points out that the applicant did not submit an appeal against the 18 November 2002 procedural decision.

#### 2. As to the admissibility

37. The respondent Party points out that the civil proceedings remain pending and have not yet been concluded. Therefore, the application is inadmissible because the applicant did not exhaust all available remedies. Moreover, the applicant could have appealed within three days against the 18 November 2002 procedural decision of the Basic Court in Prijedor, which she did not do. Therefore, the respondent Party regards the application as inadmissible under the six-month rule.

### 3. As to the merits

38. The respondent Party considers that the applicant's complaint that she has not been provided with access to court has no basis. In support of this, the Republika Srpska proffered a letter, dated 6 October 2003, that it obtained from the Basic Court in Prijedor. The letter contains a short summary of the relevant criminal proceedings. The respondent Party emphasizes the part in which the Basic Court in Prijedor confirms that the applicant was regularly summoned to all hearings, that she was actually present, and that the public prosecutor was not. The respondent Party explains that Article 442, paragraph 1 of the Code of Criminal Procedure applies in such circumstances (see paragraph 32 above). Under that provision, when the public prosecutor receives a proposal for an indictment and is not present at the main trial in person, the damaged party takes on the capacity of prosecutor. The Republika Srpska is therefore of the opinion that the applicant had access to all the available rights during the hearings.

39. The respondent Party again points out that the Basic Court directed the applicant to initiate civil proceedings, which also provided her with access to court.

#### B. The applicant

40. In response to the respondent Party's observations, the applicant states that the respondent Party confirms that the proceedings were still not finished at the time she submitted her application to the Chamber. The applicant points out that her application concerns the fact that the courts did not promptly resolve her case and that, as a consequence, the prosecution for the underlining criminal act became time-barred.

41. The applicant explains that she received the Higher Court's procedural decision of 12 October 2000 together with the Basic Court's procedural decision of 18 November 2002. Further, she received the procedural decision of the Higher Court after the death of S.D.

42. As to the possibility to appeal against the procedural decision of the Higher Court of 18 November 2002, the applicant states that the lawyer representing her in the civil proceedings informed her that there was no right of appeal against such procedural decision. Therefore, the applicant sought relief before the Chamber and the Independent Judicial Commission. The applicant further states that she was informed that she could not obtain a procedural decision in the civil proceedings as long as the criminal proceedings were pending.

43. As to the merits, the applicant states that she was never informed about the procedure provided for in Article 442, paragraph 1 of the Code on Criminal Procedure (see paragraph 32 above). Therefore, she never used the available privileges and only made a statement during the hearing.

44. The applicant asserts that the criminal court proceedings were not conducted in an adequate manner. For example, another person riding in S.D.'s minibus at the time of the accident was never heard as a witness. She further states that the vehicle was not inspected by an authorized court expert (*ovlašteni sudski vještak*) immediately after the accident, but only some time after, which created an opportunity to fix the damage. Moreover, the court expert never confirmed the facts concerning S.D.'s actual speed and the condition of the road at the time of the accident. The applicant states that although this matter was raised in the procedural decision of the Higher Court of 12 October 2000, the applicant did not receive that procedural decision until 18 November 2002, at the time she received the procedural decision of the Basic Court of 18 November 2002. The applicant alleges that a report exists on the condition of the vehicle, issued by the Faculty of Machinery in Banja Luka, which was never sent to her. The applicant also claims that there are witnesses who could confirm that S.D. did not try to stop his vehicle. The applicant notes that the Court verified the report of "Autotransport" Prijedor and it agreed that an essential part of the vehicle broke at the moment S.D. was trying to stop the vehicle. She asserts,

however, that the employees of “Autotransport” Prijedor are not experts. The applicant alleges that S.D. had influence over the judges because he knew them and had the financial means to influence them. Finally, the applicant asserts that the sentence was not a proper one.

## VII. OPINION OF THE COMMISSION

### A. Admissibility

45. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicant’s case, from those of the Chamber, except for the composition of the Commission.

46. In accordance with Article VIII(2) of the Agreement, “the [Commission] shall decide which applications to accept.... In so doing, the [Commission] shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ...” and “(c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

#### 1. As to the criminal proceedings

47. Article 6, paragraph 1 of the Convention provides, in relevant part, as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

48. The Commission notes that Article 6 of the Convention does not indicate that the applicant, as a victim of a crime, has a viable claim under that Article in relation to the criminal proceedings (see case no. CH/99/2150, *Unković*, decision on admissibility and merits of 9 November 2001, paragraph 87, Decisions July—December 2001). The applicant herself has not been “charged” with an offence within the meaning of Article 6 of the Convention and it has not been shown that her “civil rights” would be determined in these criminal proceedings (see also case no. CH/98/981, *Galijašević*, decision on admissibility adopted 12 November 1998, paragraph 10, Decisions and Reports 1998). Although domestic law provides the applicant with the right to participate in criminal proceedings as an injured party, this is not a right guaranteed by the Convention. The applicant’s claim under Article 6 of the Convention, insofar as it concerns the criminal proceedings against S.D. regarding the accident of 24 July 1996, is therefore outside the scope of Article 6 of the Convention. The Commission therefore finds this part of the application inadmissible *ratione materiae* with the Agreement.

#### 2. As to the civil proceedings

##### a. The applicant's complaint concerning the fairness of the proceedings (Article 6 of the Convention)

49. The applicant complains that the Courts before which the criminal proceedings and the civil proceedings have been pending, and in particular the judges, are biased due to alleged connections with S.D. She further alleges that the judges were, in collaboration with S.D., prolonging the criminal proceedings in order to prevent the applicant from obtaining compensation

in the civil proceedings. These complaints raise issues under Article 6, paragraph 1 of the Convention concerning the fairness of the proceedings.

50. The Commission observes, however, that the applicant has failed to substantiate these allegations. It follows that this part of the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Commission therefore decides to declare this part of the application inadmissible.

**b. The applicant's complaint concerning the length of proceedings (Article 6 of the Convention)**

51. The applicant further complains about the length of her civil proceedings to obtain financial compensation, which have been pending before the Basic Court in Prijedor since 27 July 1998. The respondent Party submits that the applicant has failed to exhaust domestic remedies because these proceedings are still pending. As the Chamber has repeatedly held, however, the fact that proceedings are still pending does not prevent it from examining an applicant's complaint in relation to the length of the proceedings (see, e.g., case no. CH/02/8770, *Dobojsputevi d.d.*, decision on admissibility and merits of 5 December 2003). The Commission therefore decides not to declare inadmissible the applicant's complaint under Article 6, paragraph 1 concerning the length of the civil proceedings to obtain financial compensation.

**3. Conclusion as to admissibility**

52. In sum, the Commission finds that the application is admissible insofar as it concerns the length of the civil proceedings pending since 27 July 1998 and decides to declare the remainder of the application inadmissible.

**B. Merits**

53. Under Article XI of the Agreement, the Commission must next address the question of whether the facts established above disclose a breach by the Republika Srpska 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 international agreements listed in the Appendix to the Agreement.

**1. Article 6, paragraph 1 of the Convention (length of proceedings)**

54. The Commission has declared the application admissible under Article 6, paragraph 1 of the Convention concerning the length of the civil proceedings to obtain compensation for the injury she suffered in the traffic accident in July 1996. This claim has been pending before the Basic Court in Prijedor since 27 July 1998, and it has not been resolved to date.

55. Article 6, paragraph 1 of the Convention provides 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."

56. The European Court of Human Rights (the "European Court") has explained that, by requiring in Article 6, paragraph 1 that cases be heard within a reasonable time, "the Convention underlines the importance of rendering justice without delays which might jeopardise its effectiveness and credibility" (Eur. Court HR, *H. v. France*, judgement of 24 October 1989, Series A no. 162, paragraph 58).

57. The proceedings at issue, insofar as relevant, concern the applicant's right to compensation as an injured party damaged in some personal or property right by the commission of a crime. As such, the Commission finds this claim to constitute a civil right within the meaning of Article 6, paragraph 1 of the Convention. Accordingly, that provision is applicable to the proceedings in the present case, be they criminal or civil proceedings, by which the applicant is entitled to have her civil claim resolved (see Eur. Court HR, *Tomasi v. France*, judgement of 27 August 1992, Series A no. 241, paragraphs 121-122).

58. In establishing the validity of a claim related to the length of court proceedings, the Commission must first determine what period of time is to be considered. For the purposes of Article 6, paragraph 1 of the Convention, the Commission finds that the period of time to be considered starts on the date on which the applicant first raised her compensation claim in the criminal proceedings against S.D., 12 September 1996 (see *Tomasi v. France* at paragraph 124). In its judgement of 22 October 1997, the Basic Court however, did not decide upon the applicant's compensation claim in the criminal proceedings. Instead, the Basic Court directed the applicant to initiate a civil action, since it did "not have sufficient information to decide on the injured party's claim under property law either partly or in its entirety". Thereafter, the Basic Court terminated the criminal proceedings on 18 November 2002. The Commission notes that the applicant will, due to the termination of the criminal proceedings, never receive a decision on her compensation claim within the criminal proceedings. Moreover, the civil proceedings the applicant initiated in July 1998 have also been pending for more than five years.

59. The reasonableness of the length of proceedings is to be assessed having regard to the criteria set forth by the European Court, and established in the Chamber's jurisprudence, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and the 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 reference to the corresponding case law of the European Court). In civil cases, the defendant's behaviour and what is at stake in the litigation for the plaintiff are also taken into account (Eur. Court HR, *Buchholz v. Germany*, judgement of 6 May 1981, Series A no. 42, paragraph 49).

60. The Commission notes that, as an injured party, the applicant's civil lawsuit against S.D., Krajina Osiguranje, and the car company, would be more speedily adjudicated if the criminal proceedings against the perpetrator of the crime were finalised. The Commission understands that it is the regular practice for the courts to conclude the criminal proceedings before ruling on the civil action, despite these proceedings formally being independent of one another. Therefore, the criminal proceedings against the defendant S.D. also bear upon the analysis of the reasonableness of the length of the proceedings to determine the applicant's civil claim.

61. With respect to the complexity of the case, the Commission considers that the criminal prosecution against S.D. was a relatively simple and straightforward legal matter. The criminal proceedings were conducted against only one defendant for one criminal offence (a car accident in which the defendant was allegedly at fault). The defendant raised different defences against the criminal offence for which he was charged, namely that he had not consumed any alcohol before the accident, that the brakes did not work at the moment he tried to stop the vehicle, and that he only left the scene of the accident because he was afraid he would be attacked by the applicant's husband. In the evidentiary proceedings, the Basic Court heard testimony from only one witness and reviewed the statements of all the parties involved. It further considered the minutes submitted by the car garage "Autotransport", which examined the vehicle after the accident; and reports concerning the condition of the road. Therefore, in the view of the Commission, the issues raised in the prosecution of the defendant, and therefore in the determination of the applicant's civil claim, are not so complex as to require more than seven years of proceedings.

62. With respect to the applicant's conduct, the Commission sees nothing in the court record to indicate that the applicant has been in any way responsible for the delay in the proceedings. Nor has the respondent Party argued that she has contributed to the prolonged delay.

63. With respect to the conduct of the courts involved, the Commission notes that a large portion of the delay was due to the fact that the domestic court has not been able to deal effectively with the case. The Commission notes that the Basic Court in Prijedor issued two judgements and was supposed to issue a third and final one, yet it terminated the proceedings due to lapse of time. The Basic Court's judgements have been quashed two times by procedural decisions of the Higher Court, and the case has been returned to the Basic Court for retrial. In the decisions of the Higher Court some instructions on possible action by the Basic Court have been given. Although the Basic Court was obliged to conduct the proceedings and examine the issues as instructed by the Higher Court's decisions, it appears that the Basic Court failed to do so. The Commission notes that the Basic Court could have easily applied the Higher Court's instructions. Moreover, the Commission observes that the Higher Court gave identical instructions to the Basic Court for the second time on 12 October 2000. The Basic Court, however, never issued a judgement following these instructions, but instead issued a procedural decision terminating the proceedings on 18 November 2002, more than two years after the instructions were given. The Commission finds that this delay by the Basic Court was unnecessary and its failure to act promptly and upon the instructions of the Higher Court caused the termination of the proceedings because the prosecution for the crime became time barred.

64. The Commission finds that the combination of protracted delays, ineffective and inefficient conduct of the criminal proceedings, and their subsequent termination, have adversely affected the applicant's efforts to seek justice and to have her civil claim for damages adjudicated.

65. The Commission further notes that the applicant has also been unsuccessful in obtaining compensation from S.D.'s insurance company due to the termination of the criminal proceedings and the delays in the civil proceedings.

## **2. Conclusion as to the merits**

66. Having regard to the above, the Commission considers that the delay in the civil proceedings can be regarded as entirely due to the conduct of the Basic Court in Prijedor, for which the respondent Party is to be held responsible. The length of the criminal trial, which is clearly imputable to the respondent Party, directly contributed to the delay in the adjudication of the applicant's civil claim under property law arising out of the car accident. Finally, the Commission finds, in examining the manner in which the criminal proceedings were conducted, that the Basic Court in Prijedor should have dealt far more expediently with the criminal proceedings, and there was no apparent justification for the prolonged delays that occurred prior to the prosecution for the crime becoming time-barred.

67. The Commission therefore finds that the length of time that the proceedings to determine the applicant's property claim stemming from the car accident have been pending before the courts of the respondent Party is unreasonable and that the Republika Srpska has therefore violated the applicant's right to a fair trial within a reasonable time in the determination of her civil rights, as guaranteed by Article 6, paragraph 1 of the Convention.

## VIII. REMEDIES

68. Under Article XI(1)(b) of the Agreement, the Commission must next 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 Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

69. The applicant requested a fair trial and a “fair judgement”. In fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Commission with broad remedial powers, and the Commission is not limited to the requests’ of the applicant.

70. The Commission notes that it has found a violation of the applicant's right protected by Article 6, paragraph 1 of the Convention with regard to the length of proceedings. Since the applicant's rights have been violated by the fact that the criminal case was pending for more than seven years, and the civil proceedings for more than five years, the Commission considers it appropriate to order the respondent Party to take all necessary steps to conclude the pending civil proceedings promptly and without any further delay. The Commission notes that S.D., who is deceased, can no longer be a party to the case. The Commission further notes, however, that the applicant continued her case against S.D.'s inheritors, his insurance company, and the company that owns the minibus. The Commission orders the respondent Party to conclude the relevant proceedings expeditiously.

71. The Commission also considers it appropriate to award monetary compensation to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to have her case decided within a reasonable time. Accordingly, the Commission will order the respondent Party to pay the applicant the sum of five thousand (5,000) Convertible Marks (*Konvertibilnih Maraka*, “KM”) for these non-pecuniary damages within one month of the date of receipt of this decision.

72. The Commission will further order the Republika Srpska to pay the applicant simple interest at a rate of 10% (ten per cent) per annum over the sum stated above or any unpaid portion thereof from the due date until the date of settlement in full.

73. The Commission will further order the Republika Srpska to report to it no later than 29 October 2004 on the steps taken by it to comply with the above orders.

## IX. CONCLUSIONS

74. For the above reasons, the Commission decides,

1. unanimously, to declare admissible the part of the application relating to the length of the civil and criminal proceedings in relation to the applicant's compensation claim;

2. unanimously, to declare inadmissible the remainder of the application;

3. unanimously, that there has been a violation of the applicants' rights under Article 6, paragraph 1 of the European Convention on Human Rights with regard to the length of proceedings relating to the applicant's civil claim under property law, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, to order the Republika Srpska, through its authorities, to take all necessary steps to promptly conclude the civil proceedings pending since 27 July 1998;

5. unanimously, to order the Republika Srpska to pay the applicant, within one month of the date of receipt of this decision, five thousand (5,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;
6. unanimously, to order the Republika Srpska to pay the applicant simple interest at a rate of 10% (ten per cent) per annum over the sum stated in conclusion no. 5 or any unpaid portion thereof from the due date until the date of settlement in full; and
7. unanimously, to order the Republika Srpska to report to it no later than 29 October 2004 on the steps taken by it to comply with the above orders.

(signed)  
J. David YEAGER  
Registrar of the Commission

(signed)  
Jakob MÖLLER  
President of the Commission