DECISION ON ADMISSIBILITY AND MERITS
(delivered on 5 September 2003)

Case no. CH/99/1905

Živko TANASIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 case concerns the attempts of the applicant to be compensated for his vehicles, which were confiscated during the armed conflict by the Crisis Headquarters of the Local Community Koševsko Brdo and the Regional Headquarters of the Territorial Defence of Koševsko Brdo.

2. The case raises issues under Article 6 paragraph 1 (length of proceedings) of the European Convention on Human Rights (the "Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 19 April 1999 and registered on the same date.

4. On 17 September 1999, the case was transmitted to the respondent Party for its observations on admissibility and merits under Article 6 of the Convention.

5. On 21 October 1999, the respondent Party submitted its written observations.

6. On 11 January 2000, the applicant responded to the respondent Party's observations by raising arguments opposite to the respondent Party's observations. He further set forth a claim for compensation for pecuniary damages in the amount of 65,750 German Marks (*Deutsche Marks*, "DEM"), corresponding to the value of his confiscated vehicles, plus interest, counting from the dates when the confiscation took place.

7. On 28 February 2000, the respondent Party provided the Chamber with its observations on the applicant's compensation claims.

8. On 17 May 2001, the respondent Party submitted additional observations.

9. On 20 January 2003, the applicant further requested compensation for non-pecuniary damages in the amount of 30,000 Convertible Marks (*Konvertibilnih Maraka*, "KM").

10. On 22 May 2003, the applicant informed the Registry that the court proceedings in his case were still pending and that the next hearing was scheduled for 24 June 2003.

11. On 11 July 2003, the applicant informed the Chamber that the hearing mentioned in paragraph 10 above was postponed until 18 July 2003, due to the absence of the defendant Party, the Army of Bosnia and Herzegovina. Such information was confirmed on 16 July 2003 by the respondent Party.

12. The Chamber deliberated on the admissibility and merits of the application on 8 September 1999, 5 June 2003 and 3 July 2003. On the latter date, the Chamber adopted the present decision on admissibility and merits.

III. STATEMENT OF THE FACTS

13. On 9 June 1992, the Crisis Headquarters of the Local Community Koševsko Brdo and on 10 June 1992, the Regional Headquarters of the Territorial Defence of Koševsko Brdo confiscated two vehicles, an Audi 80 TD and a Mercedes 207D, owned by the applicant. These confiscations were confirmed by receipts issued to the applicant at the time of the confiscations.

14. On 24 January 1997, the applicant initiated proceedings before the First Instance Court I in Sarajevo against the Army of Bosnia and Herzegovina – Federation of Bosnia and Herzegovina and the Municipality Centar, Sarajevo ("the defendant Party"). It appears that, later on, the applicant indicated the Federal Ministry of Defence as a defendant Party. He requested compensation in the amount of 65,750 DEM, with corresponding interest calculating from 11 June 1992 until settlement in full. A number of hearings have been held in these proceedings, but no decision has been reached to date.

15. After he was invited by the Court, on 29 January 1997, to "submit evidence that he had previously applied to regain possession of the confiscated vehicles or to obtain compensation for them from the defendant Party", the applicant submitted a request for compensation to the Headquarters of the Army of Bosnia and Herzegovina in Sarajevo (hereinafter: the "Headquarters") on 12 February 1997. The applicant further asked the Headquarters to forward his request to the competent organ in case the Headquarters was not, itself, competent to decide upon his request.

16. In its reply of 3 March 1997, the Headquarters stated that the vehicles in question were not confiscated nor used by it. Further, it instructed the applicant to file a request with the competent Department of the Ministry of Defence of the Federation of Bosnia and Herzegovina or, in case a particular military troop confiscated the vehicles, to apply to its legal successor.

17. On 18 May 1998, the applicant filed a request with the Ministry of Defence of the Federation of Bosnia and Herzegovina, Secretariat of Defence Sarajevo, Department of Defence Centar, Sarajevo (hereinafter the "Department of Defence Centar") requesting it to establish the fact that damage had occurred, to estimate the damage, and to conclude a settlement with the applicant in order to compensate him.

18. According to information provided by the respondent Party, on 19 May 1998, the applicant's representative requested that the proceedings before the First Instance Court I in Sarajevo be interrupted for an indefinite period of time in order to define the defendant Party.

19. On 4 June 1998, the Department of Defence Centar informed the applicant that it was not in its competency to proceed upon his request, as it had not carried out the confiscation. Further, the Department of Defence Centar informed the applicant that one of the vehicles was used by a particular military troop, but that it had no information regarding the other vehicle.

20. On 21 March 2000, the representative of the applicant requested that the proceedings before the First Instance Court I in Sarajevo be continued. These proceedings are still pending. A hearing was scheduled for 24 June 2003, but it was postponed until 18 July 2003 due to the absence of the defendant Party. Based upon the information submitted by the respondent Party, it is evident that the defendant Party was properly summoned to appear at the hearing.

IV. RELEVANT LEGISLATION

A. Law on Civil Proceedings

21. Article 10 of the Law on Civil Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina nos. 42/98, 3/99) provides that "the Court shall ensure that the proceedings are conducted without delay and with the least possible expenses and it shall prevent any misuse of the rights of the parties in the proceedings."

B. Decree on Criteria and Standards of Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defence

22. In accordance with the Law on Defence (Official Gazette of the Republic of Bosnia and Herzegovina — hereinafter "OG RBiH" — nos. 4/92 and 9/92), the Government of the Republic of Bosnia and Herzegovina enacted the Decree on Criteria and Standards of Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defence (OG RBiH no. 19/92) providing that the persons whose resources were used, damaged or lost when confiscated are entitled to

compensation. This Decree also provides for the procedures to determine the amount of compensation to be awarded and the establishment of damage.

23. Article 82, insofar as relevant, provides as follows:

"Compensation referred to in Article 77, 78 and 79 of this Decree shall be paid to the owners of resources who utilised those resources. Such compensation shall be calculated and paid *ex officio* or following a request by the owner of the resources (...)."

"Compensation under paragraph 1 of this Article shall be calculated and paid as follows:

- For the means exempted for the needs of armed forces – the Defence Headquarters of social-political community, which submitted the request for the exemption of means".

24. Article 86 provides as follows:

"The compensation amount referred to in Articles 77, 78 and 79 of this Decree shall be determined by a commission composed of three members, established by the municipal secretariat that ordered the seizure of the resources.

"The compensation referred to in paragraph 1 of this Article shall be determined by a procedural decision.

"An appeal may be filed against the procedural decision referred to in paragraph 2 of this Article to the Ministry of Defence within 15 days from the day of receipt of the procedural decision.

"The procedural decision issued following the appeal is final."

25. Article 87 provides as follows:

"If the resources referred to in Articles 53, 66 and 75 of this Decree, except for perishable resources, are destroyed or damaged or go missing during the period of utilisation by the users of those resources, then the owner of those resources is entitled to compensation for sustained damage pursuant to general rules on compensation for damage."

26. Article 88, insofar as relevant, provides as follows:

"The existence of damage and the amount of compensation for damaged, destroyed or missing resources shall be established by a commission composed of three members formed by the competent body of the user of those resources, who utilised those resources as follows:

1. the municipal secretariat – for resources seized for the needs of armed forces, civil protection, surveillance and information service, communication and crypto-protection units, as well as the organs of the state; (...)."

27. Article 89 provides as follows:

"The procedure for establishing the existence of damage and realising the compensation referred to in Article 87 of this Decree shall be initiated *ex officio* or following a request by the owner of the resources.

"In the procedure for establishing the existence of damage and its amount, the bodies referred to in Article 88 paragraph 1 of this Decree shall, in accordance with the finding of the commission, try and conclude an agreement with the injured person concerning damage compensation, but in case an agreement cannot be concluded, those bodies shall either

decide about the amount of compensation or refuse the claim for compensation by issuing a procedural decision.

"A procedural decision of the body referred to in paragraph 2 of this Article is final.

"The owner of resources may, if not satisfied with the decision contained in the procedural decision referred to in paragraph 2 of this Article, within 30 days from the day of receipt of such procedural decision, initiate proceedings before a competent regular court in order to effectuate damage compensation."

28. The Law on Establishment and Pursuing Claims Originating from the Period of State of War and Immediate Threat of War (Official Gazette of the Federation of Bosnia and Herzegovina 41/01) regulates the manner of establishing and pursuing the claims of physical and legal persons to the Federation, which arose due to the needs of defense during the period of the State of War and the Immediate Threat of War.

29. Article 2 provides as follows:

"The right to lodge a claim lies with the physical and legal persons whose claims arose pursuant to the following legislation:

... - The Decree on Criteria and Standards for Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defense. ..."

30. Article 6 provides as follows:

"The claims under Article 3 of this Law shall be declared public debt of the Federation of Bosnia and Herzegovina and no interest shall be paid on their amounts for the period between the date of their arising and the day of their fulfillment.

31. Article 7 provides as follows:

"The Government of the Federation of Bosnia and Herzegovina, upon proposal of the Ministry of Finance, will provide the manner of establishment and settlement of the public debt under Article 6 of this law within 30 day as of the date of this law's coming into effect."

V. COMPLAINTS

32. The applicant claims that his rights as protected under Article 6(1) of the Convention have been violated due to the length of the court proceedings. Further, he complains that his property was confiscated and he was not compensated for it.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

33. In its submissions of 21 October 1999, the respondent Party argues with respect to admissibility that the application is inadmissible *ratione temporis* as the vehicles were confiscated in June 1992. The respondent Party further alleges that the applicant has failed to exhaust domestic remedies.

34. As to the merits, the respondent Party argues that the applicant's complaints are ill-founded. According to the respondent Party, Article 6 of the Convention was not violated since the reasons for the length of the proceedings are attributable to the complexity of the case. The respondent Party argues that the court was required to establish all relevant facts in a complex case. Therefore, the

conduct of the court did not have any influence on the length of proceedings, and there could not be an excess of "reasonable time".

35. On 28 February 2000, the respondent Party provided the Chamber with its observations on the applicant's compensation claim. The respondent Party notes that the applicant's compensation claim constitutes by itself the merits of the case and the respondent Party already found the application ill-founded in its merits. In addition, the respondent Party opines that the reasons for the length of the proceedings are attributable to the applicant's conduct in that the applicant's representative requested an interruption of the proceedings for an indefinite period of time (see paragraph 18 above).

B. The applicant

36. On 11 January 2000, with regard to the respondent Party's observations, the applicant points out that there are certificates that the vehicles for which he claims compensation were confiscated; therefore, there is no need to submit new evidence to the court in order to establish such factual situation and thereby extend the length of the proceedings.

VII. OPINION OF THE CHAMBER

A. Admissibility

37. The respondent Party has argued that the applicant has not exhausted domestic remedies since he filed his application to the Chamber while the proceedings are still pending before the competent domestic bodies, and moreover, that the application is outside the competence of the Chamber *ratione temporis* as the vehicles were confiscated in June 1992.

1. Exhaustion of domestic remedies

38. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) 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."

39. In the *Blentić* case (case no. CH/96/17, *Blentić*, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996–1997, with further references), the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11 to the Convention). The European Court of Human Rights (the "Court") has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

40. In the present case the Federation of Bosnia and Herzegovina objects to the admissibility of the application on the ground that the applicant initiated court proceedings and prior to the final outcome of these proceedings, he filed his application with the Chamber. The civil proceedings afford remedies which might in principle qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement, insofar as the applicant is seeking to have his vehicles returned or compensation provided to him. Accordingly, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

41. The Chamber observes that the essence of the applicant's claim with regard to his property concerns the over-all length of all the proceedings to attempt to obtain compensation for his confiscated vehicles. Considering that the applicant initiated proceedings on 24 January 1997 before

the First Instance Court I in Sarajevo, *i.e.* more than six years earlier, and that these proceedings are still not concluded, the Chamber finds that in this specific case these proceedings cannot be considered effective.

42. In these particular circumstances, the Chamber opines that the applicant could not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy provided by domestic law. The Chamber will therefore reject this basis for declaring the application inadmissible.

2. Admissibility *ratione temporis*

43. In accordance with Article VIII(2) of the Agreement, "The Chamber shall decide which applications to accept... In doing so, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

44. The respondent Party has argued that the applicant's complaints concern the confiscation of his goods and since this event took place before the Agreement entered into force, the application should be declared inadmissible.

45. The Chamber notes, however, that the applicant is not complaining about the act of confiscation. The Chamber recalls that the application concerns the applicant's attempts to obtain compensation for his confiscated vehicles, which appear to have been damaged afterwards. Since the applicant's request before the First Instance Court I in Sarajevo was initiated on 14 January 1997, and the Agreement governs facts subsequent to its entry into force, *i.e.* subsequent to 14 December 1995, it cannot be held that the application is incompatible *ratione temporis* with the provisions of the Agreement.

46. Therefore, for the purposes of Article VIII(2)(c) of the Agreement, the Chamber will reject this basis for declaring the application inadmissible.

3. Conclusion as to admissibility

47. The Chamber finds that none of the grounds for declaring the case inadmissible has been established. Accordingly, the Chamber declares the application admissible with respect to Article 6 paragraph 1 concerning the length of the proceedings.

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.

1. Article 6 of the Convention

49. The applicant complains about the length of the proceedings to obtain compensation for his damaged and confiscated vehicles. The respondent Party argues that the period of time to be considered in examining a potential violation of Article 6 paragraph 1 of the Convention was prolonged because of the complexity of the case and the applicant's conduct.

50. Article 6 of the Convention, insofar as relevant to the present case, reads as follows:

> "1. 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. Noting that the pending proceedings concern the applicant's right to obtain compensation for his vehicles, which were confiscated during the hostilities, the Chamber finds that these proceedings relate to the determination of his "civil rights and obligations", within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, that provision is applicable to the proceedings in the present case.

52. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The Chamber finds that, considering its competence *ratione temporis,* it is competent to assess the reasonableness of the length of the proceedings (see paragraph 41 above).

53. Therefore, the Chamber finds that for the purpose of Article 6 paragraph 1 of the Convention, the period of time to be considered starts on the date on which the applicant initiated proceedings before the Court requesting compensation for his confiscated vehicles, *i.e.*, 24 January 1997 (see paragraph 14 above). To sum up, the total proceedings have lasted more than six years to date.

54. 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 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 of Human Rights).

55. The Chamber notes that the issue before the First Instance Court I in Sarajevo in the underlying case is whether or not the applicant's vehicles were confiscated during the armed conflict and whether or not the applicant, as a consequence of such confiscation, is entitled to compensation. The case does not seem to the Chamber to be so complex as to require over six years of proceedings. The Chamber especially notes that it is undisputed that in 1992, the Crisis Headquarters of the Local Community Koševsko Brdo and the Regional Headquarters of the Territorial Defence of Koševsko Brdo affirmed to the applicant that his vehicles were confiscated. Accordingly, the Chamber finds no reason why, after all these years, the proceedings are still not concluded.

56. As to the conduct of the applicant, the respondent Party notes that the applicant's representative on 19 May 1998 requested an interruption of the proceedings for an indefinite period of time in order to define the defendant Party. He requested continuation of proceedings on 21 March 2000. This factor, however, was not raised in the respondent Party's observations on admissibility and merits submitted on 21 October 1999, but rather, the respondent Party raised it later on. The applicant made no comment on such statement. Even if the Chamber accepts that a certain delay was partially caused due to applicant's behaviour — which was necessitated in part by confusion as to the proper defendant Party caused by the organisation of the military bodies of the respondent Party — it is still beyond any doubt that the First Instance Court, in this particular case, has not met its responsibility to ensure that the proceedings have been expedited within a reasonable time. The proceedings have been pending for over six years, and over three years since the applicant's representative requested that they continue. As the Chamber previously held in *Marijanović* decision (case no. CH/01/8529, *Andrija MARIJANOVIĆ v, The Federation of Bosnia and Herzegovina*, decision on admissibility and merits delivered on 7 February 2003, paragraph 59), due to the failure of the Court to conclude the proceedings, the applicant has been in a state of uncertainty with regard to his property for a prolonged time.

2. Conclusion as to the merits

57. In view of the above, the Chamber finds that the respondent Party violated Article 6 paragraph 1 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time.

VIII. REMEDIES

58. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy the established breaches of the Agreement. In this regard, the Chamber shall consider issuing orders to cease and desist and for monetary relief.

59. The applicant has requested compensation for pecuniary damage in the amount of 65,750 DEM with corresponding interest and interest on overdue payments. He, further, has requested to be paid the amount of 30,000 KM for compensation for non-pecuniary damage.

60. The Chamber notes that it has found a violation with regard to the length of proceedings. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to promptly conclude the pending civil proceedings, taking into account that the vehicles were registered as confiscated on 9 and 10 June 1992.

61. Furthermore, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time.

62. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of one thousand (1,000) Convertible Marks ("*Konvertibilnih Maraka*") as compensation for non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

63. Additionally, the Chamber further awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The interest shall be paid as of 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 on the sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

64. For these reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that there has been a violation of the applicant's rights under Article 6 paragraph 1 of the European Convention on Human Rights with regard to the length of proceedings, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, to order the Federation of Bosnia and Herzegovina, through its authorities, to take all necessary steps to promptly conclude the pending civil proceedings in the applicant's case initiated on 14 January 1997 before the First Instance Court I in Sarajevo;

4. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, one thousand (1,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

5. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

6. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than two months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel