



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/99/2457

Darko ĐURIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 1 November 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 application concerns the applicant's complaint about his inability to realize the right to compensation for damages before the courts in Banja Luka, Republika Srpska.
2. The application raises issues regarding the applicant's right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was introduced to the Chamber on 6 December 1999 and registered on the same day.
4. On 15 April 2004 the Commission received a letter from the applicant with recent documents attached.
5. On 12 May 2004 the application was transmitted to the Republika Srpska under Article 6 of the Convention. On 21 June 2004 the Commission received the Republika Srpska's observations on the admissibility and merits. On 15 July 2004 the Commission received the applicant's response to the respondent Party's written observations of 21 June 2004.
6. The Commission deliberated on the admissibility and merits of the application on 7 September 2004 and 1 November 2004. On the latter date it adopted the present decision.

III. STATEMENT OF FACTS

7. The applicant was the owner of a moveable grill and van with a cooler, electrical and gas installations, tables, and chairs. The applicant performed services with this van.
8. On 8 May 1992, during the curfew in Banja Luka, an armed soldier of the Republika Srpska Army, allegedly B.P., threw a bomb into the applicant's van, causing its destruction by fire.
9. On 4 June 1992 the applicant initiated proceedings before the First Instance Court (*Osnovni Sud*) in Banja Luka against the Republika Srpska Army ("VRS") and the City of Banja Luka, seeking compensation. The applicant initiated proceedings against the VRS because B.P., as a soldier of the VRS, was within its zone of responsibility. The applicant also initiated proceedings against the City of Banja Luka because the city imposed a curfew, which, the applicant alleges, allowed B.P. to commit his crime without being interrupted. The applicant seeks compensation in the amount of 13,380 KM for material damages and 300 KM per month since 8 May 1992 for lost profits.
10. On 9 July 1992 the Basic Public Prosecutor (*Osnovni Javni Tužilac*) submitted a request to the First Instance Court in Banja Luka to conduct investigations against B.P. and others on the basis of a reasonable suspicion that they committed several criminal offences. One of the charges against B.P. was throwing a bomb into the applicant's van.
11. On 31 August 1992 the Basic Public Prosecutor indicted B.P. and others, but not in relation to the bombing of the applicant's van. On the same day, the applicant initiated a private prosecution against B.P.
12. On 11 September 1992 the Basic Public Prosecutor issued a procedural decision terminating the investigation against B.P., based on the information of the Basic Public Prosecutor on giving up the criminal prosecution against B.P. of 5 September 1992.
13. On 1 October 1992 B.P. died.

14. On 3 April 1997, 9 June 1997, 21 December 2000, and 27 February 2002, the applicant submitted documents to the First Instance Court in Banja Luka specifying his compensation claim.

15. On 26 March 2001 the First Instance Court in Banja Luka issued a procedural decision terminating the criminal proceedings against B.P. because he had died on 1 October 1992.

16. On 7 November 2001 the First Instance Court in Banja Luka issued a judgement rejecting the applicant's claim for compensation. The Court stated that it was an established fact that on 8 May 1992 a bomb was thrown into the applicant's van and the van was completely destroyed. The First Instance Court opined, however, that it had not been established in the criminal proceedings against B.P. that he was responsible or that he was the person who threw the bomb into the van. The Court further held that the City of Banja Luka could not be held responsible because there was no causal relationship between the damage that occurred and the activities of the City of Banja Luka.

17. On 11 December 2001 the applicant filed an appeal with the District Court in Banja Luka. In his appeal the applicant complains that the First Instance Court in Banja Luka wrongly and incompletely assessed the facts of the case. These proceedings are still pending.

IV. COMPLAINTS

18. The applicant complains that his right to a prompt and fair resolution of the case in the civil proceedings has been violated and that both the respondent Party's representative and the First Instance Court were intentionally causing a delay in the civil proceedings. The applicant specifically complains that the respondent Party's representative did not respond to the First Instance Court's invitations because he was on a holiday and that the respondent Party did not receive the First Instance Court's invitations because the respondent Party's office moved. The applicant further complains that the First Instance Court continued waiting for the respondent Party's representative to accept an invitation instead of holding hearings without the respondent Party's representative being present.

19. Moreover, the applicant complains that the District Court in Banja Luka has not issued a decision on his appeal yet. These proceedings have been pending since 11 December 2001.

20. The applicant also complains of a violation of his right to obtain compensation for his destroyed van, lost profits, and costs for court proceedings in the total amount of 21,680 KM.

V. SUBMISSIONS OF THE PARTIES

A. The Republika Srpska

1. As to the facts

21. The respondent Party disputes the facts as put forward by the applicant.

22. The respondent Party notes that the applicant alleges that the Republika Srpska representative never accepted an invitation for a hearing. The Republika Srpska asserts, however, that the applicant failed to submit evidence in this regard.

23. The respondent Party further asserts that the allegation that the crime was committed by "the respondent Party's armed violence" is contrary to the evidence in the case file.

24. The respondent Party also argues that the applicant's complaint that the First Instance Court in Banja Luka did not decide in his civil proceedings is incorrect, noting that the First Instance Court issued a judgement on 7 November 2001.

25. The respondent Party generally regards the applicant's allegations to be unsubstantiated.

2. As to the admissibility

26. The respondent Party considers the application inadmissible because the applicant has not exhausted all available domestic remedies and he should have done so before submitting his application to the Chamber.

27. The respondent Party also regards the application to be inadmissible because the applicant's appeal is still pending.

3. As to the merits

28. The respondent Party states that it is unclear under which part of Article 6 of the Convention the application was transmitted.

29. As to the reasonable time requirement, the respondent Party argues that this issue cannot be examined in an abstract way, but only in the light of the concrete facts of each individual case. The respondent Party further points out that, in accordance with the European Court of Human Rights ("the European Court") practice, three criteria should be taken in account: the complexity of the case, the conduct of the applicant, and the conduct of the relevant authorities. The respondent Party notes that the applicant failed to mention in his application that he submitted four documents specifying his claim to the First Instance Court after initiating the proceedings—on 3 April 1997, 9 June 1997, 21 December 2000, and 27 February 2002. The respondent Party is therefore of the opinion that five years were lost in these proceedings due to the applicant's actions. The First Instance Court issued a judgement in less than a year after the applicant's 21 December 2000 submission. The respondent Party therefore concludes that it is the applicant's conduct that has caused the delay in the proceedings. The respondent Party further explains that the applicant purposefully withheld information from the Chamber that he had taken over the criminal prosecution against B.P. on "8 May 1992". By this action, the respondent Party argues, the applicant delayed the civil proceedings because this preliminary issue needed to be resolved before a judgement could be issued in the civil proceedings. Although the Basic Public Prosecutor gave up the criminal prosecution against B.P., the applicant initiated a private prosecution against B.P. on 31 August 1992, again causing a delay in the civil proceedings.

30. The respondent Party further notes that the criminal proceedings against B.P. were terminated on 26 March 2001 because he died in 1992, and thereby the preliminary issue in the civil proceedings was resolved. The First Instance Court issued its judgement rejecting the applicant's claim eight months later.

31. The respondent Party also considers the case to be a complex one because it was difficult to establish the facts, due to the applicant's four submissions and the difficulty in resolving the preliminary matter in the criminal proceedings.

32. The respondent Party therefore concludes that the reasonable time requirement has been met and that the case should be declared inadmissible as ill-founded.

B. The applicant

33. The applicant asserts that the respondent Party completely disregarded the fact that there was a curfew at the time his van was bombed and that therefore only authorized police officers and military officers were allowed to be outside.

34. The applicant also points out that there is still no District Court procedural decision, although he filed an appeal on 11 December 2001.

VI. OPINION OF THE COMMISSION

A. Admissibility

35. 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.

36. 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."

37. The respondent Party considers the application manifestly ill-founded because the claims are not substantiated. The Commission, however, sees no reason to declare the application inadmissible as manifestly ill-founded.

38. The applicant complains about the length of the civil proceedings to obtain financial compensation for his destroyed van. These proceedings have been pending since 4 June 1992. The Commission, however, only has competence to deal with the facts complained of that relate to the period after 14 December 1995, which is the date on which the Agreement entered into force. The applicant received the first judgement on 7 November 2001. He further complains that the District Court in Banja Luka has not decided on his 11 December 2001 appeal to date. The respondent Party, in turn, submits that the applicant has failed to exhaust domestic remedies because the 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, *Dobojuptevi d.d.*, decision on admissibility and merits of 5 December 2003, Decisions July-December 2003). The Commission therefore declines to declare inadmissible the application for failure to exhaust domestic remedies.

39. In sum, the Commission declares the application admissible insofar as it concerns the length of the civil proceedings pending since 14 December 1995 and declares the remainder of the application inadmissible.

B. Merits

40. 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)

41. 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 applicant’s van that was destroyed on 8 May 1992. On 4 June 1992 the applicant initiated civil proceedings before the First Instance Court in Banja Luka. On 7 November 2001 the First Instance Court in Banja Luka issued the first judgement in the case and rejected the applicant’s claim for compensation. On 11 December 2001 the applicant filed an appeal with the District Court in Banja Luka against the 7 November 2001 judgement. That appeal has not been resolved to date.

42. 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.”

43. 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).

a. Applicability of Article 6 of the Convention

44. The proceedings at issue 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 that this claim constitutes 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 his claim for compensation resolved (see Eur. Court HR, *Tomasi v. France*, judgement of 27 August 1992, Series A no. 241, paragraphs 121-122).

b. Length of proceedings

45. In establishing the validity of a claim related to the length of court proceedings, the Commission must first determine what time period 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 here starts on 14 December 1995. On 7 November 2001 the First Instance Court in Banja Luka issued a judgement rejecting the applicant’s compensation claim, against which the applicant filed an appeal one month later. The proceedings are still pending. Thus, the civil proceedings the applicant initiated on 4 June 1992 were pending before the First Instance Court in Banja Luka for more than nine years, including almost six years after 14 December 1995, the date on which the Agreement entered into force, and the appeal procedure initiated by the applicant on 11 December 2001 has been pending before the District Court in Banja Luka for nearly three years. Therefore, the applicant’s civil proceedings have been pending for more than twelve years in total, of which almost nine are within the Commission’s competence.

46. 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: the complexity of the case, the conduct of the applicant and 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).

(1) The complexity of the case

47. With regard to the complexity of the case, the Commission considers that the civil proceedings were relatively simple and straightforward. The Commission notes that, generally, and in the case at hand, it is far less complex to reach a decision in civil proceedings if another court has already established the existence of a criminal offence in criminal proceedings. It is, however, not reasonable to wait for the outcome of the criminal proceedings in order to decide in the civil proceedings if the person accused has died. In any case, in the view of the Commission, the issues raised in the determination of the applicant's civil proceedings are not so complex as to require almost nine years of proceedings.

(2) The conduct of the applicant

48. With respect to the applicant's conduct, the Commission notes that the respondent Party argues that the applicant contributed to the prolonged delay because he submitted documents on 3 April 1997, 9 June 1997, 21 December 2000, and 27 February 2002, specifying his compensation claim to the First Instance Court. The Commission is, however, of the opinion that the fact that the applicant submitted several documents updating his compensation claim cannot be regarded to cause delay that can be attributed to the applicant. The Commission notes that the applicant submitted the first document to the First Instance Court on 3 April 1997, almost five years after he had initiated the civil proceedings. The Commission is of the opinion that at the time the applicant submitted the first document specifying his compensation claim, the First Instance Court had already caused a delay of five years by not deciding in the civil proceedings.

49. The Commission further notes that the respondent Party also argues that the applicant caused delay in the civil proceedings because he initiated a private prosecution against B.P. The respondent Party argues that the First Instance Court could not issue a judgement in the civil proceedings because the preliminary issue, establishing the existence of a criminal offence in the criminal proceedings, had to be resolved first. Moreover, the applicant initiated a private prosecution against B.P. on 31 August 1992, although the Basic Public Prosecutor had issued a new indictment on 31 August 1992 that did not include the bombing of the applicant's van. The Commission is of the opinion that the applicant has not caused any delay in the civil proceedings by initiating a private prosecution because the civil proceedings do not formally depend on the outcome of the private prosecution. Moreover, it is within the responsibility of the courts to decide on both the civil proceedings and the private prosecution within a reasonable time. Therefore the Commission concludes that the applicant has not caused any delay in the civil proceedings.

(3) Conduct of the relevant authorities

50. With respect to the conduct of the courts involved, the Commission notes that a large portion of the delay was in fact caused by the domestic courts' failure to deal effectively with the case.

51. The Commission notes that the civil proceedings have been pending before the First Instance Court in Banja Luka since 4 June 1992 and have not been decided to date. The Commission further notes that the First Instance Court issued its first judgement on 7 November 2001, rejecting the applicant's claim for compensation. The respondent Party argues that the First Instance Court had to decide on the preliminary issue, the criminal proceedings against B.P., before it could decide on the civil proceedings. But on 26 March 2001 the First Instance Court in Banja Luka issued a procedural decision terminating the criminal proceedings against B.P. because he died on 1 October 1992. The Commission notes in this regard that the First Instance Court in Banja Luka rejected the applicant's claim for compensation because it was never established in the criminal proceedings against B.P. that he was responsible for the bombing

of the van on 8 May 1992. Thus, the First Instance Court issued its judgement rejecting the claim for compensation shortly after the First Instance Court in Banja Luka had issued a procedural decision halting the criminal proceedings against B.P. The Commission understands that it is the regular practice for the courts to conclude the criminal proceedings before ruling on the civil action because it is easier when the existence of a criminal offence has been established. The Commission notes, however, that these proceedings are formally independent of one another, and the civil proceedings do not depend on the outcome of the criminal proceedings. The Commission is therefore of the opinion that the civil proceedings have been pending for more than twelve years due to the inaction of the First Instance Court and the District Court in Banja Luka. The Commission finds that these delays were unnecessary and these courts' failure to act caused the extended and unnecessary delay.

52. The Commission finds that the protracted delays, due to ineffective and inefficient conduct of the civil proceedings, has adversely affected the applicant's efforts to have his claim for compensation adjudicated.

2. Conclusion as to the merits

53. Having regard to the above, the Commission considers that the delays in the civil proceedings are entirely due to the inaction of the First Instance Court and District Court in Banja Luka, for which the respondent Party is to be held responsible. The Commission finds, in examining the manner in which the civil proceedings were conducted, that there was no apparent justification for the prolonged delays that have caused the civil proceedings to remain pending for almost nine years.

54. The Commission therefore finds that the length of time that the proceedings on the applicant's compensation claim 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 his civil rights, as guaranteed by Article 6, paragraph 1 of the Convention.

VII. REMEDIES

55. 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.

56. The applicant submitted a claim for compensation before the Chamber. However, the claims made by the applicant relate only to the damages suffered as a direct consequence of the bombing of his van on 8 May 1992 and not to the delays before the domestic courts. 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.

57. 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 civil proceedings have been pending for almost nine 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.

58. The Commission also considers it appropriate to award monetary compensation 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. Accordingly, the Commission will order the respondent

Party to pay the applicant the sum of 3,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") for these non-pecuniary damages within one month of the date of receipt of this decision.

59. 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.

60. The Commission will further order the Republika Srpska to report to it, or its successor institution, within two months of its receipt of this decision, on the steps taken by it to comply with the above orders.

VIII. CONCLUSIONS

61. For the above reasons, the Commission decides,

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

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

3. 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 relating to the applicant's compensation claim, 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 in the applicant's case without further delay;

5. unanimously, to order the Republika Srpska to pay the applicant, within one month of the date of receipt of this decision, 3,000 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, or its successor institution, within two months of its receipt of this decision, 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