



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/99/2466

Grozda LUČIĆ

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)(a) and Article VIII(2)(c) 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 her inability to realize the right to compensation before the First Instance Court (*Osnovni Sud*) in Sokolac for damages caused by the criminal offence of bodily injury that was committed against her. The applicant also complains that her gold necklace, gold medallion, and watch disappeared when the criminal offence took place.

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 COMMISSION

3. The application was submitted to the Chamber and registered on 13 December 1999.

4. On 8 December 2001 the Chamber received a letter and attached documents from the applicant.

5. On 16 April 2004 the Commission received a letter from the applicant with new information and several documents attached.

6. On 12 May 2004 the application was transmitted to the Republika Srpska for its observations in relation to Article 6 of the Convention.

7. On 14 June 2004 the Commission received the Republika Srpska's observations on the admissibility and merits. On 12 July 2004 the Commission received the applicant's response to the respondent Party's written observations. On 26 August 2004 the Commission received additional information from the applicant.

8. The Commission deliberated on the admissibility and merits of the application on 8 September 2004 and 1 November 2004. On the latter date it adopted the present decision.

III. STATEMENT OF FACTS

9. On 27 May 1998 D.H. and the applicant entered into a discussion about grazing cattle on D.H.'s parcel, at which time D.H. began hitting the applicant and caused her serious bodily injury.

10. On 13 October 1998 the First Instance Court in Sokolac issued a judgment finding D.H. guilty of causing serious bodily injury, an offence defined in Article 42, paragraph 1 of the Republika Srpska Criminal Code, Special Part (see paragraph 26 below). The First Instance Court considered the fact that D.H. was an older man and that he had never been convicted of a crime before to be mitigating factors. The court sentenced D.H. to six months' imprisonment, under the condition that the sentence would not be executed if D.H. did not commit a criminal offence within two years after the judgment became final and binding. In sentencing D.H., the First Instance Court relied on the applicant's witness statement and medical documents from the hospital in Pale dated 28 May 1998. The First Instance Court also instructed the applicant regarding her civil claim and her right to initiate civil proceedings as set out in Article 108, paragraph 2 of the Law on Criminal Proceedings (see paragraph 29 below).

11. On 10 February 1999 the applicant filed a complaint initiating civil proceedings before the First Instance Court, seeking compensation for damages caused by the criminal offence of grievous bodily injury. The applicant sought 5,700 KM for non-material damages and 1,150 KM for the jewellery that went missing during the fight that caused the applicant bodily injury.

12. On 14 July 1999 a medical expert, Dr. D.L., informed the First Instance Court that the applicant had several light bodily injuries.

13. On 6 September 1999 D.H.'s representative submitted a request for renewal of the criminal proceedings to the First Instance Court. D.H.'s representative argued that the expert report of Dr. D.L. showed that D.H. caused only light bodily injury as set out in Article 43 of the Republika Srpska Criminal Code (see paragraph 27 below). The First Instance Court, however, in its judgment of 13 October 1998, found D.H. guilty of causing serious bodily injury, based on the medical testimony of the hospital in Pale.

14. On 6 September 1999 the First Instance Court in Sokolac issued a procedural decision accepting D.H.'s request and suspending the applicant's civil proceedings until a final and binding judgment was issued in the criminal proceedings, because it considered Dr. D.L.'s expert report relevant to establish the criminal offence. The First Instance Court observed that the 13 October 1998 judgment was issued on the basis of the medical testimony of the hospital in Pale, without examining any evidence presented by a medical expert. On 29 September 1999 the applicant appealed against the procedural decision to the District Court in Srpsko Sarajevo.

15. By the procedural decision of 30 May 2001 the District Court in Srpsko Sarajevo accepted the applicant's appeal, quashed the first instance procedural decision on suspension of the civil proceedings, and returned the case for retrial. In its reasoning, the District Court stated that for civil proceedings it is only relevant that a court has established the existence of a criminal offence. And because the First Instance Court had issued a judgment finding the existence of a criminal offence and the existence of D.H.'s criminal responsibility, the District Court found it unnecessary to halt the civil proceedings until the issuance of a judgment in the renewed criminal proceedings.

16. On 10 July 2001 the First Instance Court issued a procedural decision halting the civil proceedings as of that date until one of the parties proposed their continuation. The First Instance Court's reason for this decision was that the applicant's authorized representative failed to appear at a hearing although he had been duly summoned. On 15 October 2001 the applicant filed a proposal for continuation of the proceedings.

17. While the civil proceedings were still pending, the applicant withdrew her compensation claim for the value of the missing jewellery.

18. On 25 February 2002 the First Instance Court in Sokolac issued a judgment, ordering D.H. to pay the applicant non-pecuniary damages of 750 KM for the physical pain she suffered and 250 KM for the fear she suffered, while the remainder of her claim was rejected. Both the applicant and D.H. appealed the judgment.

19. On 21 May 2002 the District Court in Srpsko Sarajevo issued a procedural decision accepting the appeals, quashing the 25 February 2002 judgment in part, and returning the case for reconsideration, while one part of the first instance judgment remained unaltered.

20. On 17 September 2002 the First Instance Court in Sokolac issued a judgment awarding the applicant 1,000 KM as non-pecuniary damages for physical pain and 500 KM for fear.

21. On 27 March 2003 the applicant submitted a proposal to permit the execution of the 17 September 2002 First Instance Court judgment to the First Instance Court.

22. On 26 August 2003 the First Instance Court informed the applicant that it had received an announcement that D.H. had died on 8 May 2003. It also informed the applicant that the Court would continue the proceedings upon the applicant's proposal to appoint a temporary representative for D.H.

23. On 2 September 2003 the applicant informed the First Instance Court that she proposed a temporary representative.

24. On 5 March 2004 the First Instance Court issued a procedural decision on enforcement, against which D.H.'s representative filed an appeal. On 30 March 2004 the applicant submitted an answer to the appeal, stating that the D.H.'s representative's appeal was ill-founded and not timely filed. The applicant further requested the First Instance Court to enforce the 17 September 2002 judgment without further delay. It appears that the appeal of D.H.'s representative remains pending, and no enforcement has taken place.

IV. RELEVANT LEGAL FRAMEWORK

A. Criminal Code

25. 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 D.H.'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).

26. Article 42 of the Criminal Code of the Republika Srpska (Special Part), regarding grievous bodily injury, provided as follows:

"(1) Whoever inflicts grievous bodily injury upon another person or gravely impairs his health, shall be punished by imprisonment for a term exceeding six months but not exceeding five years."

27. Article 43 of the Criminal Code of the Republika Srpska (Special Part), regarding light bodily injury, provided as follows:

"(1) Whoever inflicts light bodily injury upon another person or impairs his health in a minor way, shall be fined or punished by imprisonment for a term not exceeding three years.

"(2) The court may administer a judicial admonition to the perpetrator of an act referred to in paragraph 1 of this article if the offender has been provoked by rude or indecent behaviour of the injured person.

"(3) Prosecution shall be commenced upon personal action."

B. The Code of Criminal Procedure

28. 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). Thus, the previous Code of Criminal Procedure is applicable in this case.

29. Article 108 provides as follows:

"(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 data of criminal

proceedings do not afford a reliable basis for either a complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire claim under property law."

V. COMPLAINTS

30. The applicant complains that her right to a prompt and fair resolution of her case in the civil proceedings has been violated, as well as her right to obtain the compensation ordered by the 17 September 2002 First Instance Court judgment. The applicant also complains that her gold necklace, gold medallion, and watch disappeared during the attack by D.H., of which he was found guilty. The applicant seeks compensation for these items.

VI. SUBMISSIONS OF THE PARTIES

A. The Republika Srpska

1. As to the facts

31. The respondent Party argues that the application is really two separate applications. The first application is the application that was registered on 13 December 1999. The respondent Party is of the opinion that this application is incomplete and contradicts the evidence in the case file.

32. The respondent Party regards the applicant's letter of 16 April 2004 to be a second application in which she specifies non-enforcement of the judgment as the main issue.

33. The respondent Party points out that the applicant states in her application that her statement was not taken into account in a First Instance Court procedural decision. The applicant does not specify to which procedural decision she refers.

34. Moreover, the respondent Party asserts that the matter of the disappearance of the watch, gold medallion, and gold necklace specified in the application are no longer an issue. The 17 September 2002 judgment shows that the applicant withdrew her request for compensation of material damages for the loss of these items during the proceedings.

2. As to the admissibility

35. The respondent Party considers the application inadmissible because the first application was submitted to the Chamber on 9 December 1999 and the civil proceedings were initiated on 10 February 1999. Based on these dates, the respondent Party regards the application as premature.

36. The respondent Party repeats that the applicant stated in her application that "her statements were not inserted into the procedural decision of the court in Sokolac." The respondent Party, assuming that the applicant refers to the 6 September 1999 procedural decision, again asserts that the application is premature.

37. As to what it calls the "second application" (see paragraph 32 above), the respondent Party asserts that the applicant has not supported her allegation that the judgment was not executed with any evidence or statement of facts. The respondent Party suggests declaring the second application inadmissible because it is not substantiated.

3. As to the merits

38. The respondent Party asserts that the Commission, in transmitting the case, was not clear in its cover letter whether the case was transmitted under Article 6 of the Convention in relation to the right to fair proceedings or in relation to the reasonable time requirement.

39. The respondent Party points out that reasonable time must be evaluated in the light of the case at hand. The respondent Party further explains that the European Court's case law lists three factors that need to be discussed in order to establish whether the reasonable time requirement has been met: the complexity of the case, the conduct of the applicant, and the conduct of the authorities.

40. In regard to the complexity of the case, the respondent Party explains that the complexity depends on several matters such as the nature of the facts that must be established.

41. The respondent Party asserts that the appeal in this case was submitted in February 1999 and the judgment became final and binding in March 2003. The respondent Party considers that the reasonable time requirement has been met because the provisions of the Law on Civil Proceedings must have been properly applied in order to protect the right to appeal.

42. The respondent Party further asserts that the applicant herself caused delays in the proceedings because her representative did not appear at a hearing. Therefore, the proceedings were delayed.

43. The respondent Party further points out that during the proceedings, in March 2003, D.H. died and a temporary representative needed to be appointed, which caused another delay in the proceedings.

44. The respondent Party therefore asserts that the reasonable time requirement has been met and the application should be declared inadmissible.

45. The respondent Party also considers that the right to a fair trial has been respected because the applicant has not specified an exact violation. Assuming the applicant complains that her statements were not used as evidence and not referred to in the procedural decision, the respondent Party explains that the European Court has stated that it may not go into complaints concerning the way domestic courts have assessed the evidence in an applicant's case. The respondent Party therefore concludes that it is not within the Commission's competence to assess this part of the applicant's complaints.

46. The respondent Party further emphasizes that the applicant has not put forward any arguments in support of a violation of Article 6 of the Convention and her dissatisfaction is not sufficient grounds for finding a violation.

B. The applicant

47. The applicant confirms the respondent Party's statement that she withdrew the request for compensation of material damages. The applicant explains that she withdrew the request because she wanted to make the proceedings less complex in order to receive a final and binding decision. She further explains that the Court in Sokolac requested her to submit receipts for her jewellery and she could not do so because she lost them during the war. She therefore decided to withdraw the request.

48. The applicant further explains that she did not cause the delay in the proceedings. The applicant was represented by a lawyer assigned to her because she did not have the financial means to pay a representative. The applicant does not know why the representative did not appear at the 10 July 2001 hearing or why the representative withdrew on 15 October 2001. The

applicant therefore does not agree with the respondent Party's statement that it was her own conduct that caused the delay.

49. The applicant also states that she needed a lawyer representing her before the Court in Sokolac, even though she was in possession of evidence, such as photographs and a medical report. The applicant states that she needed to invest a lot of money into paying a representative and a court expert in order to show that she was beaten by D.H.

50. The proceedings are still pending, and the applicant considers it unreasonable that the Court needed all these years to decide on the case, although she presented sufficient evidence in support of her allegations.

VII. OPINION OF THE COMMISSION

A. Admissibility

51. 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.

52. 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 claim for compensation of material damages

53. The applicant complains that her jewellery was destroyed or taken from her and she seeks compensation for this loss. The Commission recalls that the applicant initiated civil proceedings with the First Instance Court in Sokolac seeking compensation for both material and non-material damages in her 10 February 1999 action. The Commission notes, however, that while the civil proceedings were still pending, the applicant withdrew her claim for compensation of material damages. The Commission therefore finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Commission therefore decides to declare this part of the application inadmissible.

2. As to the civil proceedings

54. The applicant complains about the length of the civil proceedings to obtain financial compensation, which have been pending since 10 February 1999. The applicant further complains that, although she received a judgment on 17 September 2002 awarding her compensation and she timely submitted a proposal to permit execution of the judgment, she has not received any compensation to date. The respondent Party submits that the applicant has failed to exhaust domestic remedies because the proceedings are still pending. As the Chamber repeatedly held, however, the fact that proceedings are still pending did 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, Decisions July-December 2003*). The same is true of the Commission.

55. The respondent Party regards the part of the application concerning the failure to execute the 17 September 2002 judgment to be inadmissible, allegedly because it is not substantiated. The Commission finds, however, that this complaint appears to be grounded in fact and cannot be regarded as manifestly ill-founded. Further, as no other ground for inadmissibility appears applicable, this part of the application must be declared admissible.

3. Conclusion as to admissibility

56. In sum, the Commission finds that the application is admissible insofar as it concerns the length of the civil proceedings pending before the First Instance Court in Sokolac since 10 February 1999, and it decides to declare the remainder of the application inadmissible.

B. Merits

57. 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

58. The Commission has declared the application admissible under Article 6, paragraph 1 of the Convention in relation to the length of the civil proceedings to obtain compensation for the injury caused by D.H. These proceedings have been pending since 10 February 1999 before the First Instance Court in Sokolac, and the matter was not resolved until 17 September 2002. On that date the First Instance Court in Sokolac issued a judgment awarding the applicant 1,500 KM as compensation for non-pecuniary damages for the physical pain and fear she suffered. The proceedings remain pending, however, because the judgment has not been executed.

59. 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."

60. 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*, judgment of 24 October 1989, Series A no. 162, paragraph 58).

a. Applicability of Article 6 of the Convention

61. 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 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 her civil claim resolved (see Eur. Court HR, *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241, paragraphs 121-122).

b. Length of proceedings

62. 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 the date the applicant initiated the civil proceedings, 10 February 1999 (see *Tomasi v. France*, paragraph 124). In its judgment of 17 September 2002, the First Instance Court in Sokolac awarded the applicant 1,500 KM as compensation for non-pecuniary damages for the physical pain and fear she suffered. Thereafter, the applicant submitted a proposal for execution of the 17 September 2002 judgment to the First Instance Court. The Commission notes that the applicant has not received the damage award to date, and the court proceedings have been pending for more than five and one-half years.

63. 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, the conduct 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*, judgment of 6 May 1981, Series A no. 42, paragraph 49).

(1) The complexity of the case

64. With regard to the complexity of the case, the Commission considers that the civil proceedings were relatively simple and straightforward. The Commission notes that, as stated in the District Court's reasoning of 30 May 2001, it is only relevant for the civil proceedings that one court has established the existence of a criminal offence in order for another court to decide in the civil proceedings. The Commission notes in this regard that the existence of a criminal offence was established in the 13 October 1998 First Instance Court judgment. Therefore, 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 more than five and one-half years of proceedings.

(2) The conduct of the applicant

65. With respect to the applicant's conduct, the Commission notes that the respondent Party argues that the applicant contributed to the prolonged delay because her representative failed to appear at a hearing and therefore the First Instance Court was obliged to halt the civil proceedings on 10 July 2001. The Commission notes that the failure of the applicant's representative to appear at one hearing cannot be sufficient reason to delay civil proceedings for more than three years. The Commission is of the opinion, however, that the applicant in this regard partly contributed to the delay in the civil proceedings.

66. The Commission further notes that the applicant appealed two times in the proceedings, first on 29 September 1999 against the 6 September 1999 procedural decision, and again on an unknown date against the 25 February 2002 First Instance Court judgment. The delays that have occurred are therefore partly attributable to the fact that the applicant availed herself of the procedural remedies available to her in law.

(3) Conduct of the relevant authorities

67. With respect to the conduct of the courts involved, the Commission notes that a portion of the delay was due to the fact that the District Court in Srpsko Sarajevo was not able to deal effectively with the case. The Commission notes that the 6 September 1999 First Instance Court procedural decision suspended the applicant's civil proceedings until a final and binding judgment was issued in the criminal proceedings. Immediately thereafter the applicant appealed against the

procedural decision. It took the District Court in Srpsko Sarajevo more than one and one-half years, however, to accept the applicant's appeal and to state that for civil proceedings it is only relevant that a court established the existence of a criminal offence and that therefore there was no reason to halt the civil proceedings. The Commission regards the length of time that was taken by the District Court in Srpsko Sarajevo to decide such a fairly simple matter as unreasonable, and it finds that the court therefore caused an unnecessary delay in the applicant's civil proceedings. The Commission observes, however, that the remainder of the delays in the civil proceedings do not fall within the respondent Party's responsibility.

(4) Other circumstances of the case

68. The Commission notes that D.H. died on 8 May 2003, while the civil proceedings against him were still pending. The proceedings were halted on 26 August 2003, and on 2 September 2003 the applicant proposed a temporary representative. The Commission notes in this regard that D.H.'s death caused further delay in the applicant's court proceedings. The Commission observes, however, that this delay was within neither the applicant's nor the respondent Party's responsibility.

2. Conclusion as to the merits

69. Having regard to the above, the Commission finds that the protracted delays in the civil proceedings were partly caused by the applicant's conduct and cannot, in that part, be attributed to the respondent Party's conduct. The Commission is therefore of the opinion that responsibility for the overall delay in the proceedings does not fall, in sufficient measure to establish a violation, upon the respondent Party.

70. Having regard to the above, the Commission concludes that the Republika Srpska has not violated the applicant's right to a fair hearing within a reasonable time, as guaranteed by Article 6, paragraph 1 of the Convention.

VIII. CONCLUSIONS

71. For the above reasons, the Commission decides,

1. unanimously, to declare the application inadmissible in relation to the claim for compensation of material damages;
2. unanimously, to declare the application admissible in relation to the length of the civil proceedings; and
3. unanimously, that the Republika Srpska has not violated the applicant's right to a fair hearing within a reasonable time under Article 6 of the European Convention on Human Rights.

(signed)
J. David YEAGER
Registrar of the Commission



(signed)
Jakob MÖLLER
President of the Commission