



PRESS RELEASE

Published Friday, 7 February 2003

Human Rights Chamber Delivers 4 Decisions on Admissibility and Merits

On **Friday, 7 February 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber delivered the following 4 decisions on Admissibility and Merits:

CH/98/168 Omer BIJELONJA v. the Federation of Bosnia and Herzegovina

Factual background and proceedings

The applicant is the owner of a house in the Municipality of Ilidža, the Federation of Bosnia and Herzegovina. The case concerns the applicant's attempts to obtain compensation for his house, which was confiscated for temporary use by the then Army of the Republic of Bosnia and Herzegovina during the armed conflict. Since 3 May 1996, the applicant has pursued proceedings before different domestic bodies, both judicial and administrative, in order to obtain compensation for the use of his house and for the damage and loss of his property after the confiscation, but to date, these proceedings are still pending.

Alleged violations of human rights

The applicant complains that the peaceful enjoyment of his possessions has been violated by the confiscation of his house, and during the confiscation his house was damaged and property removed. The applicant further specifically complains about the fact that the administrative organs and domestic courts failed to issue decisions within the prescribed time limits.

The application raises issues relating to the right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights, and his right to a fair hearing as guaranteed by Article 6, paragraph 1 of the Convention.

Findings of the Chamber

The Chamber declared inadmissible the parts of the application which relate to the time period prior to 14 December 1995 insofar as the complaints relate to the use of the house, and parts of the application which relate to the claim of damage and loss of property.

The Chamber found that the authorities have failed to ensure that the proceedings initiated by the applicant for compensation for the use of his house and for the damage to his house are dealt with within a reasonable time. In particular, the competent administrative bodies several times failed to issue decisions within the prescribed time limits. In addition, the Supreme Court of the Federation of Bosnia and Herzegovina referred the case in both sets of proceedings back to the Cantonal Court. However, the Cantonal Court appears not to have taken any procedural steps in the cases since 1998. The Chamber thus finds a violation of Article 6 paragraph 1 of the Convention because the proceedings in the applicant's case have not been determined within a reasonable time.

The Chamber further found that the Federation of Bosnia and Herzegovina has interfered with the applicant's protected possession in the time period from 14 December 1995 until 26 August 1997, the date the house was returned to the applicant. The Chamber finds that the confiscation of private property in order to support the national defense in time of war, and the interference with the applicant's property rights during the time period after the war, was lawful and justified in the public interest until 23 December 1996, the official declaration ending the state of war in Bosnia and Herzegovina. For the period from 23 December 1996 until 26 August 1997, the Chamber finds that respondent Party has violated the applicant's right to peaceful enjoyment of possession guaranteed under Article 1 Protocol no. 1 to the Convention.

Remedies

The Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to promptly conclude both sets of the pending proceedings, at latest within two months of the date on which this decision becomes final and binding. Furthermore, the Chamber awarded the sum of 3,000 KM for non-pecuniary compensation. The Chamber reserves the right to order further remedies if deemed necessary.

CH/01/8529 Andrija MARJANOVIĆ v. the Federation of Bosnia and Herzegovina***Factual background and proceedings***

The case concerns the attempts of the applicant to have his assets, which were confiscated during the armed conflict by the Army of Bosnia and Herzegovina, returned to him or compensated for his loss.

In 1993, the 3rd Corps of the Army Headquarters of Bosnia and Herzegovina confiscated material assets of the applicant. These assets consisted of, among other things, a motor vehicle and a trailer. Since 27 June 1996, the applicant has pursued proceedings before different domestic bodies, both judicial and administrative, in order to obtain compensation for the damaged motor vehicle and trailer, but to date, these proceedings are still pending.

Alleged violations of human rights

The applicant complains that the respondent Party violated his right to compensation, his right to work, his right to welfare, and his right to a pension. The applicant further complains that his right to the legal protection of his civil rights has been violated. Finally, he alleges that the respondent Party caused damage to his property.

The application raises issues related to the right to a fair hearing as guaranteed by Article 6 paragraph 1 of the European Convention on Human Rights and his right to the peaceful enjoyment of his possessions guaranteed under Article 1 of Protocol No. 1 to the Convention.

Findings of the Chamber

The Chamber declared the part of the application relating to proceedings prior to 14 December 1995 inadmissible. The Chamber also declared the application inadmissible with regard to the applicant's claims concerning the right to work, the right to welfare and the right to a pension.

The Chamber found that the courts in this case have not met their responsibility to ensure that the proceedings have been expedited in a reasonable time. In particular, since the Law on Civil Proceedings does not provide for a possibility for a second instance court to settle a case on the merits if the first instance court makes procedural errors, and since the Municipal Court in the current case failed to comply with the directions of the Cantonal Court, the Chamber finds that their conduct caused an unnecessary delay in the over-all proceedings. Due to this failure of the courts to conclude the proceedings, the applicant has been in a state of uncertainty with regard to his property for a prolonged time. The Chamber thus finds a violation of Article 6 paragraph 1 of the Convention because the proceedings in the applicant's case have not been determined within a reasonable time.

The Chamber, considering 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, does not consider it necessary to separately examine the application under Article 1 of Protocol No. 1 to the Convention.

Remedies

The Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to promptly conclude the pending civil proceedings. Furthermore, the Chamber awarded the sum of 1,000 KM for non-pecuniary compensation.

CH/01/7257 Rade BOROTA v. the Republika Srpska

Factual background

This case concerns the attempt of the applicant to prevent his eviction from the property he is living in and whose ownership is registered in his name in the Land Book records. In August 1995 the applicant concluded an exchange contract whereby he exchanged his real property situated in Croatia for a real property in Republika Srpska, Laktaši, Trn, co-owned by four brothers. The applicant currently lives in one part of the exchanged property, consisting of one house previously owned by two of the brothers who subsequently were issued two CRPC decisions confirming that they were "bona fide possessors" of two parts of the exchanged property located in Laktaši. In November 2000 and January 2001 the Ministry for Refugees and Displaced Persons, Department in Laktaši, issued two conclusions on enforcement for the two CRPC decisions. The applicant was given 90 days to vacate the property.

The applicant then initiated proceedings before the Court of First Instance in Banja Luka seeking confirmation of the validity of the contract on exchange. At the same time, he requested the Court to issue provisional measures to suspend the enforcement of the CRPC decisions. The Court has still not decided on this request.

Alleged violations of human rights

The applicant alleges a violation of his rights as protected by Articles 6 paragraph 1 of the European Convention on Human Rights in that the Court's failure to suspend the enforcement proceedings while the dispute is pending before it violates the principle of equality of arms. The applicant also alleges that, for the same reason, his rights as protected by Article 13 in conjunction with Article 6 paragraph 1 of the Convention have been violated. The applicant further claims violations of his rights protected by Article 8 and Article 1 of Protocol No. 1 to the Convention. Finally, the applicant complains of discrimination against him as a refugee from Croatia, in that persons displaced during the war from Bosnia and Herzegovina to Croatia enjoy a right to return and repossess property, while refugees from Croatia are not able to repossess their pre-war property.

Findings of the Chamber

The Chamber declared the application admissible regarding the complaints under Articles 6, 8 and 13. However it declared it inadmissible with regard to the complaint of discrimination under Article 14 and under Article 1 of Protocol No. 1 to the Convention.

As to the merits, the Chamber found a violation by the Republika Srpska of the right of the applicant to respect for his home as guaranteed by Article 8 of the Convention and the right of the applicant to an effective remedy as guaranteed by Article 13 in conjunction with Article 8 of the Convention. It further decided that it is not necessary to examine whether there has been a violation of the applicant's rights protected by Article 6 of the Convention.

Remedies

The Republika Srpska was ordered to take all necessary legislative or administrative action to ensure that in the applicant's case all administrative proceedings, including enforcement proceedings, are suspended ex officio by the administrative bodies pending the final (pravosnažno) decision of the judiciary as to the validity of the exchange contract.

CH/01/7224, Milenko VUČKOVAC v. the Republika Srpska

Factual background

This case concerns a dispute between the applicant who is the pre-war owner of real property in Zagreb, Croatia, and I.T., the pre-war owner of real property in Banja Luka, over their contract on exchange of property concluded in 1992. Neither party disputes that the contract on exchange was concluded voluntarily, but rather, they disagree on the scope of the contract either covering two houses or only one. The applicant claims that the contract covers both. The applicant has registered his ownership of both properties in the cadastral books. He uses one of the houses and rents the

other one to a third party. I.T. transferred the exchanged property in Zagreb to his son, B.T., through a donation, and B.T. subsequently registered his name in the land books. I.T. now lives in Vojnić in Croatia. I.T. subsequently was issued a CRPC decision confirming that he was “bona fide possessor” of one of the houses (the disputed one). In June 2001 the Ministry for Refugees and Displaced Persons, Department in Banja Luka, issued a conclusion on enforcement of the CRPC decision. The dispute between the applicant and I.T. over the validity of the contract on exchange is presently pending before the domestic courts.

Alleged violations of human rights

The applicant alleges violations of his rights as protected by Article 6 (right to a fair hearing), Article 13 (right to an effective remedy) and Article 8 (right to respect for home) of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions). The applicant further complains of discrimination in conjunction with Article 1 of Protocol No. 1 and Articles 6, 8 and 13 of the Convention.

Findings of the Chamber

The Chamber declared the application admissible regarding the complaints under Article 13 and 1 of Protocol No. 1 to the European Convention on Human Rights. It declared the remainder of the application is inadmissible.

As to the merits, the Chamber found a violation by the Republika Srpska of the right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. It further decided that it is not necessary to examine whether there has been a violation of the applicant’s rights protected by Article 13 of the European Convention on Human Rights.

Remedies

The Republika Srpska was ordered to take all necessary legislative or administrative action to ensure that in the applicant’s case all administrative proceedings, including enforcement proceedings, are suspended ex officio by the administrative bodies pending the final (pravosnažno) decision of the judiciary in the pending civil dispute over the contract on exchange.