



PRESS RELEASE

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Human Rights Chamber Delivers 5 Decisions on Admissibility and Merits

Today, **Friday, 9 May 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered the following 5 decisions on admissibility and merits:

CH/02/9434 Sabira JUSIĆ-KESEROVIĆ, Maid KESEROVIĆ and Mumo KESEROVIĆ v. the Federation of Bosnia and Herzegovina

Factual background

The applicants are citizens of Bosnia and Herzegovina of Bosniak origin residing in Velika Kladuša in the Federation of Bosnia and Herzegovina. The applicants are the wife and children of Fikret Keserović, a former member of the National Defence of the Autonomous Province of Western Bosnia who was killed on 6 April 1995 in Velika Kladuša. The applicants complain that members of the National Defence and families of its fallen fighters are denied the right to financial and health compensation which is enjoyed by former members of the Army of Bosnia and Herzegovina and the Croatian Defence Council (HVO).

Alleged violations of human rights

The case raises issues of discrimination in the enjoyment of the rights protected under Article 9 of the International Covenant on Economic, Social and Cultural Rights (the right to social security), Article 26 of the International Covenant on Civil and Political Rights (the right to equal protection before the law) and Articles 26 (the right of every child to social security) and 27 (the right of every child to a standard of living) of the UN Convention on the Rights of the Child.

Findings of the Chamber

The Chamber declared the application admissible in relation to the complaint of discrimination in the enjoyment of the rights protected under Article 9 of the International Covenant on Economic, Social and Cultural Rights, Article 26 of the International Covenant on Civil and Political Rights, and Articles 26 and 27 of the UN Convention on the Rights of the Child. The Chamber declared the application inadmissible insofar as it concerned the applicants' failure to receive any social security and pension benefits for the period of 1995 to 1999.

The Chamber held that the difference in treatment was justified on the ground that according to the Washington Agreement and the laws of the Federation, the Army of BiH and the HVO were the regular armed forces of the Republic of BiH and now of the Federation, while the National Defence of the Autonomous Province of Western Bosnia has not been recognised such status.

The Chamber therefore found that the Federation of Bosnia and Herzegovina had not discriminated against the applicants in the enjoyment of the rights protected under Article 9 of the International Covenant on Economic, Social and Cultural Rights, Article 26 of the International Covenant on Civil and Political Rights, and Articles 26 and 27 of the UN Convention on the Rights of the Child. As the Chamber found no violation of the applicants' rights it did not order any remedies.

CH/02/11108 & CH/02/11326 Zoran BAŠIĆ & Željko ĆOSIĆ v. the Federation of Bosnia and Herzegovina***Factual background***

The applicants are citizens of Bosnia and Herzegovina of Croat origin. Zoran Bašić and Željko Ćosić were jointly charged, along with four named others, for the murder of Jozo Leutar, the former Deputy Minister of Interior of the Federation of Bosnia and Herzegovina. On 6 April 2000 the Cantonal Court in Sarajevo issued a procedural decision ordering the arrest and detention on remand of the applicants on suspicion of having been involved in the criminal act of terrorism under Article 146 paragraphs 1 and 3 of the Criminal Code of the Federation of Bosnia and Herzegovina. Zoran Bašić was arrested and detained on 10 September 2000 and Željko Ćosić was arrested and detained on 17 September 2000. The applicants' trial before the Cantonal Court in Sarajevo commenced on 7 June 2001 and they were held on remand until 12 November 2002 whereupon they were acquitted of all charges and released. The applicants' acquittal is not a final decision and is currently pending appeal before the Supreme Court of the Federation of Bosnia and Herzegovina. The applicants complain of various violations of their rights in relation to their detention and trial. The applicants further complain that they were discriminated against in the enjoyment of these rights because of their Croat origin.

Alleged violations of human rights

The case raises issues under Article 5 paragraph (1)(c), Article 5 paragraph 2, Article 5 paragraph 3, Article 6 paragraph 1 and Article 6 paragraph 3(a) of the European Convention on Human Rights.

Findings of the Chamber

The Chamber found that, in the period before 9 November 2001, when the High Representative abolished Article 183(1) of the Criminal Procedure Code of the Federation, the applicants' right to be promptly brought before a judge for the review of the procedural decision to detain them was violated. This is so because under the old Article 183(1) the judges did not have the discretion to release the applicants required by the European Convention.

With regard to the detention after 9 November 2001, the Chamber found that it had lasted unreasonably long. The Chamber noted that the European Convention requires criminal proceedings to be conducted with "special diligence" when the accused are in detention. This "special diligence" has been lacking in the case of the applicants.

As the appeals proceedings in the applicants' trial are still pending, the Chamber found itself incompetent to deal with the question whether the way testimony of protected witnesses was used in the applicants' trial was compatible with the right to a fair trial. The Chamber dismissed the applicants' complaints of ill-treatment by the police and of discrimination on grounds of their Croat origin as unsubstantiated.

Remedies

The Chamber ordered the Federation of Bosnia and Herzegovina to pay to each applicant 5,000 KM by way of compensation for non-pecuniary damage and 1,000 KM by way of legal costs and expenses.

CH/99/2007 Jandrija RAKITA v. the Federation of Bosnia and Herzegovina***Factual background***

The applicant, who is of Serb origin, is the former Secretary of the Association for the Hearing Impaired and Deaf Persons of Bosnia and Herzegovina ("the Association"). The applicant himself is deaf. During the war, he was placed on the "waiting list" by his employer, the Association, and subsequently his contract was terminated. On 10 May 1996, the applicant sued his employer to get his position back. After several courts' decisions, his proceedings were suspended and his case was referred to the Cantonal Commission for Implementation of Article 143 of the Labour Law. His case is currently registered and pending before the Cantonal Commission.

Alleged violations of human rights

The applicant alleges a violation of his right to a fair trial and an effective remedy, his right to work and the right to be free from discrimination in the enjoyment of those rights.

Findings of the Chamber

Regarding the claim related to the termination of the employment, the Chamber observed that the Association was and still is a private law entity. The Chamber found that the applicant's complaint does not concern an interference with his rights under the Human Rights Agreement by the authorities of any of the signatories to the Agreement. Therefore, the Chamber declared inadmissible as incompatible *ratione personae* with the Agreement this part of the application. The Chamber then declared admissible the part of the application concerning the alleged violation of Article 6 of the Convention with regard to the length of proceedings.

The applicant's proceedings have lasted 6 years and 11 months as of the date of the decision, principally due to the fact that it took the Municipal Court almost five years to issue its first decision in the applicant's case. The Chamber noted that the applicant's proceedings are still pending before the Cantonal Commission of the Federation which is however not competent to solve the case. The Chamber noted that the applicant contributed to the delay of the procedure and that the parallel criminal proceedings until 13 December 1999 might have caused some further delay in the civil proceedings. However these elements did not explain why it required almost five years of proceedings to issue a first decision, having in mind that this decision is only partial. Therefore, the Chamber found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention.

Remedies

The Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the applicant's case is resolved by a final and binding decision in a reasonable time. Further the Chamber ordered the Federation of Bosnia and Herzegovina to pay to the applicant the sum of 1,000 KM by way of compensation for non-pecuniary damages.

CH/98/640 S.J. v. the Federation of Bosnia and Herzegovina***Factual background***

This case concerns the applicant's attempts to establish ownership over an apartment which he purchased on 3 April 1992. The applicant purchased the apartment from B.Č., who had purchased the apartment from the former Yugoslav National Army ("JNA") on 24 February 1992. The applicant left the apartment during the armed conflict, and returned to it in March 1996. Upon his return, members of the Republic of Bosnia and Herzegovina Army Housing Fund informed him that he did not legally use the apartment and that he could be evicted. The apartment was declared permanently abandoned in September 1996. In April 1996, the applicant initiated proceedings before the Municipal Court II in Sarajevo to establish his ownership over the apartment. Those proceedings are still pending. While the court has not issued a decision yet in the case, the authorities of the Federation Ministry of Defence refuse to recognise the applicant as owner over the apartment in question.

Alleged violations of human rights

The case raises issues primarily under Article 6 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

Findings of the Chamber

The Chamber found that, as to the violation of Article 6 of the Convention, the case before the domestic courts is not so complex as to warrant such a delay as has occurred, and the actions of the respondent Party violate the applicant's right to a fair trial within a reasonable time under Article 6 of the Convention.

As to a violation of Article 1 of Protocol No. 1 to the Convention, the Chamber first found that although the contractual rights of B.Č. may have been subject to some uncertainty, B.Č. nevertheless

had possessory rights to the apartment in question. Therefore, the Chamber held that the applicant has valid rights to the apartment in question flowing from his purchase contract with B.Č., and the failure of the authorities to recognise his rights to the apartment under the purchase contract constitutes an ongoing interference with his right to the peaceful enjoyment of his possessions, the Federation of Bosnia and Herzegovina thereby being in violation Article 1 of Protocol No. 1 to the Convention.

Remedies

The Federation of Bosnia and Herzegovina was ordered to take all necessary steps to ensure the speedy resolution of the applicant's claim before the Municipal Court II and in all further judicial proceedings in the same matter. The Chamber also ordered that the Federation of Bosnia and Herzegovina bring an end to all further attempts to evict the applicant from the apartment in question, until a final and binding decision determining the applicant's rights to the apartment is issued by the domestic organs.

CH/02/12226 Ibrahim HAZIRAJ and Ašida HAZIRAJ-FEJZIĆ v. the Republika Srpska

Factual background

The case concerns the attempts of the applicants, a married couple, to regain possession of their house in the municipality Pale, Republika Srpska. The applicants have lodged applications with the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) which has issued decisions confirming their status as pre-war *bona fide* possessors. The competent authorities have failed to execute those decisions.

Alleged violations of human rights

The case raises issues primarily under Articles 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention in relation with the right not to be discriminated against. The applicants seek repossession of their house and compensation.

Findings of the Chamber

The Chamber declared the application admissible as directed against the Republika Srpska as the applicants cannot be required to exhaust any further domestic remedies.

The Chamber finds that, due to their ethnic origin (a couple of mixed Bosniak and Albanian origin), the applicants have been discriminated against, by the authorities of the Republika Srpska, in the enjoyment of their rights to respect for their home and to peaceful enjoyment of their possessions.

The Chamber also found that there had been an interference with the applicants' right to respect for their home which was not in accordance with the law and therefore there was a violation of Article 8 of the Convention. The Chamber further found a violation of the applicants' right as guaranteed by Article 1 of Protocol No. 1 to the Convention as the interference with the applicants' right to peaceful enjoyment of their possessions was not subject to conditions provided by law.

Remedies

The Chamber ordered the Republika Srpska to reinstate the applicants without further delay, and at latest by 9 June 2003, regardless of whether either party files a motion to review the decision under Article X(2) of the Human Rights Agreement. The Chamber further ordered the Republika Srpska to pay the applicants compensation in recognition of their suffering as a result of their inability to regain possession of their house in a timely manner and for the loss of use of their home.