

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KEMAL MEHINOVIC,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	1:98-CV-2470
)	
NIKOLA VUCKOVIC,)	
a/k/a NIKOLA NIKOLAC,)	
)	
Defendant.)	
_____)	

DEFENDANT'S MEMORANDUM IN SUPPORT OF HIS
PARTIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW Plaintiff and pursuant to Rule 12 of the Federal Rules of Civil Procedure moves this Court to dismiss Counts I thru VIII of Plaintiff's Complaint against Defendant that are based on the Georgia two-year statute of limitations. As shown below, the two-year statute of limitations expired prior to the filing of the Complaint.

Background

The allegations in Plaintiff's Complaint are as follows: Plaintiff's Complaint alleges that Defendant, Nikola Vuckovic, is a citizen from Bosnia and Herzegovina and was living in the town Bosanski Samac in Bosnia-Herzegovina when the acts alleged in the Complaint occurred. (Complaint ¶¶ 1, 18). In 1992, an armed

conflict arose in the Bosanski Samac region where Plaintiff lived. Plaintiff alleges that Defendant was a Bosnian Serb Soldier at that time and was involved in the violation of human rights of the Plaintiff in Bosnia and Herzegovina. (Complaint ¶¶ 1, 7). Plaintiff alleges that Defendant committed various torts, violating international law, United States' law and Georgia state law, against Plaintiff beginning in May 1992 through November 1992. (Complaint ¶¶ 19-20). Plaintiff alleges that the last time he saw Defendant was in November 1992. (Complaint ¶ 9). Plaintiff alleges that he was released from Serb Military detention in late 1994. (Complaint ¶ 31). He returned to his family and moved to the United States in 1995. (Complaint ¶¶ 31).

Plaintiff's Complaint enumerates a number of federal and Georgia state law claims against the Defendant which include the following:

- A. First Claim for Relief (Genocide) (Complaint ¶ 46);
- B. Second Claim for Relief (War Crimes and Crimes Against Humanity) (Complaint ¶ 52);
- C. Third Claim for Relief (Torture) (Complaint ¶ 58);
- D. Fourth Claim for Relief (Cruel, Inhuman, or Degrading Treatment) (Complaint ¶ 62);
- E. Fifth Claim for Relief (Arbitrary Detention) (Complaint ¶ 67);
- F. Sixth Claim for Relief (Assault and Battery/Violent Injury or Attempt to Commit Injury) (Complaint ¶ 71);

G. Seventh Claim for Relief (False Arrest and False Imprisonment) (Complaint ¶ 75);

H. Eighth Claim for Relief (Intentional Infliction of Emotional Distress) (Complaint ¶ 81).

Argument and Citation of Authority

28 U.S.C. § 1350, Alien's Action for Tort, contains no statute of limitations. In the absence of a federal statute of limitations, Courts look to the forum State's law for the most appropriate limitation period. Some Courts interpret the Alien's Action for Tort statute under the local forum state's personal injury statute of limitations. Forti v. Suarez-Mason, 672 F.Supp. 1531 (N.D. Cal. 1987), amended in part, 694 F.Supp. 707 (N.D. Cal. 1989). Under Georgia law, "[a]ctions for injuries to the person shall be brought within two years after the right of action accrues..." O.C.G.A. § 9-3-33.

This two-year statute of limitations applies to all of Plaintiff's federal and state law claims with the possible exception of claims under the Torture Victim Protection Act of 1991.¹ Accordingly, any federal action under 28 U.S.C. §1350 as well as any Georgia tort claim must be brought within two years of

¹ The Torture Victim Protection Act of 1991, Section 2(c), Statute of Limitations. No action shall be maintained under this section unless it is commenced within ten years after the cause of action arose.

accrual or it is time-barred.

Plaintiff's First Claim of genocide, Second Claim of war crimes and crimes against humanity, Third Claim of torture, Fourth Claim of cruel, inhuman, or degrading treatment, and Sixth Claim for assault and battery all clearly are tort claims for "injury to the person." Likewise, these three claims are subject to the two year statute of limitations.

Georgia law also requires that Plaintiff's Fifth Claim for arbitrary detention and Seventh Claim for false arrest and false imprisonment are subject to the two year statute of limitations. See Campbell v. Hyatt Regency, 193 Ga. App. 542, 543, 388 S.E.2d 341 (Ga. App. 1989). Finally, Plaintiff's Eighth Claim for intentional infliction of emotional distress is also subject to the two year statute of limitation. See Mears v. Gulfstream Aerospace Corp., 225 Ga. App. 636, 638, 484 S.E.2d 659 (Ga. App. 1997); Fox v. Ravinia Club, Inc., 202 Ga. App. 260, 262, 414 S.E.2d 243 (Ga. App. 1991).

From the Complaint, Plaintiff alleges that Defendant committed the various torts against him for a six month period beginning in May 1992 and that he last saw the Defendant in November 1992. Additionally, Plaintiff alleges that he eventually was released into freedom on October 6, 1994. Plaintiff did not file his Complaint until August 26, 1998 which is more than three years and ten months after Plaintiff was released. None of Defendant's state law claims were filed within the two year statute of limitations.

Therefore, all of the Plaintiff's federal and state law claims against Defendant based upon the two year statute of limitations should be dismissed.

WHEREFORE, Plaintiff respectfully requests this court to dismiss all of the federal 28 U.S.C. 1350 claims and state tort law claims alleged in Plaintiff's Complaint including the following:

- A. First Claim for Relief (Genocide);
- B. Second Claim for Relief (War Crimes and Crimes Against Humanity);
- C. Plaintiff's Third Claim for Relief (Torture);
- D. Plaintiff's Fourth Claim for Relief (Cruel, Inhuman, or Degrading Treatment);
- E. Plaintiff's Fifth Claim for Relief (Arbitrary Detention);
- F. Plaintiff's Sixth Claim for Relief (Assault and Battery/Violent Injury or Attempt to Commit Injury);
- G. Plaintiff's Seventh Claim for Relief (False Arrest and False Imprisonment);
- H. Plaintiff's Eighth Claim for Relief (Intentional Infliction of Emotional Distress).

Plaintiff has not specifically enumerated any other federal or state law claims. However, should Plaintiff contend that any other federal or state law claims involving injury to the person flow from the allegations in Plaintiff's Complaint, Defendant

respectfully requests those claims be dismissed and Plaintiff be
barred from further asserting those claims in this proceeding.

This the 14 day of September, 1998.

Pankey, Coffman & Horlock, L.L.C.

by: 

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CERTIFICATE OF SERVICE

The undersigned certifies that the forgoing Answer has been served on all parties by depositing a copy in the United States Mail, First Class, in a properly stamped envelope addressed to the following:

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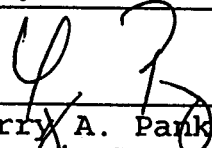
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This the 14 day of September, 1998.

By: _____


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