



DECISION ON ADMISSIBILITY

Case no. CH/99/2779

ISLAMIC COMMUNITY ODŽAK

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 December 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced 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;

Adopts the following decision pursuant to Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is the current occupant of a building in the city centre of Odžak Municipality. Prior to the nationalisation of the land in 1958, the legal predecessor of the applicant, Vakuf Mosque Odžak, owned the premises. After the nationalisation, however, the Municipality owned the premises.
2. Before the war in Bosnia and Herzegovina, the Odžak Municipality sold the right to possession of the premises to Prevoz Turist, a business in Odžak. On 26 December 1991 Prevoz Turist concluded a contract for transfer of the right to use the premises with Mr. Jusuf Hamzić. During the war, the premises were temporarily allocated to the applicant as Mr. Hamzić was too ill to use it.
3. Mr. Hamzić initiated civil proceedings to have the applicant evicted from the premises. On 24 June 1998 the Municipal Court in Odžak determined that Mr. Hamzić had a valid contract for use of the building and ordered the applicant's eviction. It is indicated in the decision that the applicant's representative was duly informed of the proceedings but failed to appear.
4. The applicant appealed to the Cantonal Court in Odžak, which rejected the appeal as ill-founded on 11 May 1999. On 4 June 1999 the applicant filed a request for revision, an extra-ordinary legal remedy, to the Municipal Court in Odžak to be forwarded to the Supreme Court of the Federation of Bosnia and Herzegovina.
5. On 30 June 1999 the Municipal Court issued a procedural decision allowing execution of the judgment of 24 June 1998. In response the applicant submitted a special appeal against the procedural decision of 30 June 1999 and a proposal to delay the eviction until the Supreme Court had issued a decision, both to the Municipal Court. On 23 August 1999 the Municipal Court refused the special appeal and on 20 September 1999 refused the proposal, stating that in both cases that the applicant had failed to substantiate its claims.
6. The applicant has solicited the aid of the Orašje office of the OSCE, which allegedly has not taken action in the case.

II. COMPLAINTS

7. The applicant complains that its right to a fair hearing before an impartial tribunal under Article 6 of the European Convention on Human Rights has been violated because it was not represented by counsel during the initial proceedings, because the opposing party was represented by a lawyer not certified to practice in Bosnia and Herzegovina, and because the Municipal Court has not forwarded the applicant's request for revision to the Supreme Court.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The case was introduced on 19 August 1999 and registered the following day.
9. On 8 September 1999 the Chamber refused a request for provisional measures.
10. On 27 September and 4 October 1999, per the Chamber's request, the applicant submitted additional information regarding its allegations that its right to a fair hearing had been infringed upon.
11. The Chamber considered the case on 3 November 1999 and 8 December 1999 and adopted the present decision on the latter date.

IV. OPINION OF THE CHAMBER

12. Before considering a case on its merits the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article

VIII(2)(c), the Chamber shall dismiss any case it considers manifestly ill-founded.

13. The applicant complains that because it did not have the benefit of counsel during the proceedings that its right to a fair hearing was violated. The court records indicate, however, that the representative of the applicant was duly informed of the proceedings but still failed to appear. The applicant has not submitted any information that refutes this assertion.

14. In addition the applicant asserts that the representative of the opposing party was not certified to practice law in Bosnia and Herzegovina. Noting that there is nothing in the file to support this allegation, the Chamber considers, in any event, that this does not violate the applicant's right to a fair hearing under Article 6 of the Convention.

15. Lastly, the applicant complains that the Municipal Court did not forward its request for revision to the Supreme Court. However, lacking substantiation and noting that a revision by the Supreme Court is an extraordinary remedy, the Chamber finds that this complaint fails to show a violation of Article 6 as well.

16. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded for non-substantiation of the alleged violations within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

17. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel