



DECISION ON ADMISSIBILITY

Case no. CH/00/4391

Mustafa OMERČEHAJIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 June 2000 with the following members present:

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

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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant, a citizen of Bosnia and Herzegovina, is in a dispute over family property with his brother. The property is located in Bosanka Krupa. He alleges that he received the property as a gift from his late father in 1971 on the basis of a deed of donation which was certified by the Municipal Court in Bosanska Krupa. There is no evidence to support this claim, however. Apparently, the father gifted the same real estate to the applicant's brother by a deed of donation in 1982. The exact dates of either donation are not known to the Chamber. It appears that the applicant is currently in possession of the property

2. In 1987 the applicant allegedly initiated proceedings with the Municipal Court in Bosanska Krupa for annulment of the deed of donation from 1982. According to the applicant the Court has never issued a judgment upon this suit. He states that he took some action with respect to these proceedings but did not specify what those actions were.

3. On 30 June 1997 the applicant's brother filed a suit with the same court asking that the applicant be ordered to vacate the premises and pay all legal costs. The court issued a judgment on 27 April 1998 granting these requests. In the judgment, the court stated that the deed of donation is in the applicant's brother's name. Further, the judgment states that minutes from proceedings before the relevant municipal cadaster's office, dated 8 November 1986, show that the applicant acknowledged the deed of donation from 1982 between his father and his brother. The court established that the applicant has no evidence of ownership of property aside from his own allegations.

4. The applicant then filed an appeal against the judgment to the Cantonal Court in Bihać. On 27 September 1999 that Court issued a judgment refusing the appeal as ill-founded and confirming the judgment of the Municipal Court. During both sets of proceedings the applicant argued that the Municipal and Cantonal Courts should first resolve the dispute from 1987 as it concerns the same dispute. The Cantonal Court's judgment states, however, that the 1987 proceedings are neither an obstacle to resolve the suit of 30 June 1997 nor a reason to dismiss the suit *lis pendens* as the two cases concern different issues.

5. On 19 October 1999 the applicant's brother submitted a request to the Municipal Court that the judgement of 27 April 1998 be executed as the applicant had neither left the property nor paid the legal costs. On 20 October 1999 the Court decided that the decision of 27 April 1998 could be executed but did not set a date. On 27 October 1999 the applicant filed an appeal against this decision but there has apparently been no decision taken to this point.

II. COMPLAINTS

6. The applicant complains that his right to respect for his home and his right to property have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was received on 22 March 2000 and registered the following day. In his application the applicant asked the Chamber to issue an order for provisional measures which would prohibit the execution of the judgment of 27 April 1998 and the procedural decision of 29 October 1999 until the dispute from 1987 is resolved. On 6 April 2000 the Chamber refused this request.

IV. OPINION OF THE CHAMBER

8. Before considering the merits of the case 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 application which it considers manifestly ill-founded.

9. In this case, the courts, after examining the evidence presented to them, have found that the applicant's brother has a better right to the property in question. The Chamber is not competent to review the national courts' evaluation of the facts and evidence in the case. Moreover, the applicant's submissions do not indicate that the courts, in any other way, have violated the rights invoked by the applicant or other rights protected by the Agreement.

10. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

11. 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