DECISION ON ADMISSIBILITY

Case no. CH/00/5605

Enver LJUCA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 November 2001 with the following members present:

> Ms. Michèle PICARD, President
> Mr. Dietrich RAUSCHNING, Vice-President
> Mr. Hasan BALIĆ
> Mr. Želimir JUKA
> Mr. Miodrag PAJIĆ
> Mr. Andrew GROTRIAN
>
> Mr. Ulrich GARMS, 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) the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 25 August 2000.

2. The applicant complains that the decision of the Supreme Court of the Federation of 25 May 2000 upon the extra-ordinary remedy of revision violates his rights under Article 6 of the European Convention of Human Rights, namely the right to a fair trial before an impartial court. In this decision the Supreme Court changed the judgements of the first two instances to the detriment of the applicant. The applicant complains that the decision of the Supreme Court was based on a new assessment of the facts of the case regarding the question whether the applicant had stopped using leased business premises. He alleges that the Law on Civil Proceedings does not allow the Supreme Court to make such a new assessment of facts.

3. The applicant further claims that the Supreme Court was not impartial. To support this allegation the applicant points at the fact that the Supreme Court decided the matter after the unusually brief period of only twenty days after the introduction of the revision.

II. OPINION OF THE CHAMBER

4. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept … and shall take into account the following criteria: … (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

5. The Chamber notes that the applicant complains that the Supreme Court of the Federation of Bosnia and Herzegovina re-assessed the facts pertaining to his case and thereby misapplied the Law on Civil Proceedings. The Chamber recalls that it has stated on several occasions that it is not within its competence to substitute its own application of the law to that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000).

6. In regard to the applicant's second complaint that the decision of the Supreme Court was not impartial the Chamber finds that the applicant's claim is unsubstantiated. The fact that the Court decided within the brief period of twenty days cannot be interpreted as a sign of partiality of the Supreme Court. In the light of all the material in its possession, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement.

7. Accordingly, the Chamber decides not to accept the application, in part for being outside the Chamber's jurisdiction *rationae materiae* and in part for being manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

8. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)   (signed)
Ulrich GARMS   Michèle PICARD
Registrar of the Chamber   President of the First Panel