



DECISION ON ADMISSIBILITY

Case no. CH/97/66

Nedžad JAHIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 January 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice President
Mr. Jakob MÖLLER
Mr. Manfred NOWAK
Mr. Mato TADIĆ

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

I. FACTS

1. The applicant, who is of Bosniak origin, was the owner of a house in Bijeljina, ulica Arsenija Čarnojevića. P.B. and S.B, who are of Serb origin, were the owners of a house in Sarajevo, ulica Tešanjaska 22. In 1994 the applicant concluded a contract on exchange with P.B. and S.B. of the house in Bijeljina for the house in Sarajevo, which he currently occupies.
2. P.B. and S.B. are registered in the Municipal Court in Bijeljina and the Land Books as the owners of the house they exchanged with the applicant.
3. On 2 September 1997 the applicant initiated proceedings before the Municipal Court Sarajevo for registration into the Land Books of his ownership of the house in Sarajevo on the basis of the contract on exchange of real estate. On 15 June 1998 the Municipal Court informed the applicant that he could not be registered as the owner because the facts in the contract did not match the description of the property in the Land Books.
4. On 11 May 1998 the applicant initiated proceedings before the Municipal Court Sarajevo for establishment of his ownership right over the real estate in Sarajevo, ulica Tešanjaska 22.
5. The applicant states that P.B. and S.B. initiated proceedings before the Municipal Court in Bijeljina for annulment of the contract on exchange.
6. The applicant alleges his right to peaceful enjoyment of his possessions as protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights has been violated.

II. PROCEEDINGS BEFORE THE CHAMBER

7. On 1 June 1998 the application was transmitted to the respondent Party for its observations. The respondent Party considers the application inadmissible because domestic remedies have not been exhausted. For a variety of reasons, the respondent Party also considers that there are no violations of Article 1 of Protocol No. 1 to the Convention, Articles 6 and Article 8 of the Convention.
8. The respondent Party informed the Chamber several times about the proceedings before the Municipal Court Sarajevo. On 29 October 2001 the respondent Party informed the Chamber that at the hearing held on 4 October 2001 in the proceedings before the Municipal Court Sarajevo, the applicant withdrew his lawsuit because the applicant and the opposite party reached an extra judicial settlement of their dispute.
9. On 6 November 2001 the applicant sent a letter to the Chamber in which he pointed out that it was correct that he withdrew his lawsuit for the reason that he expected "the decision from the Municipal Court in Bijeljina to be complied with". The applicant attached a copy of the verdict of the Municipal Court in Bijeljina. The verdict of the Municipal Court in Bijeljina annulled the contract on exchange of real estates concluded on 28 August 1994 and ordered the parties in the proceedings to re-establish the situation that existed before the contract was concluded.
10. On 1 November 2001 the applicant filed an appeal against the judgment of the Municipal Court in Bijeljina and the proceedings upon that appeal are still pending.

III. OPINION OF THE CHAMBER

11. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept... In so doing the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...".
12. The Chamber notes that the applicant initiated proceedings before the domestic court but he later withdrew his complaint before the Municipality Court Sarajevo. The proceedings upon the

applicant's appeal against the judgement of the Municipal Court in Biljeljina are still pending. Accordingly, the applicant has not yet exhausted available and effective domestic remedies. Under these circumstances, it is appropriate for the Chamber to declare the application inadmissible under Article VIII(2)(a) of the Agreement.

IV. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel