



DECISION ON ADMISSIBILITY

Case no. CH/01/7899

Himzo MUSTABAŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 October 2002 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. 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) and VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. On 3 June 1993 the applicant completed his university studies in the Republic Hungary.
2. On 20 December 2001 the Faculty of Philosophy of the University of Sarajevo issued a procedural decision deciding that the degree of the applicant will only be recognised if the applicant passes several additional exams.
3. In 1996 and 1997 the applicant worked in a Bosnian Night School in Germany on a voluntarily base.
4. In August 2000 the applicant applied for a job at a secondary school in Maglaj. The applicant was refused this job because the school decided that another person was better qualified for the job. After the school refused his objection against this decision, the applicant submitted a claim to the Municipal Court in Maglaj. According to the applicant the decisions of the school were based on discriminatory grounds.
5. On 11 April 2001 the Municipal Court in Maglaj refused the applicant's claim as manifestly ill-founded. On 21 November 2001 the Cantonal Court in Zenica refused the applicant's appeal and confirmed that it is in the discretion of the school to elect the candidate that is best qualified for a job. The Cantonal Court in Zenica by this decision established that the person who was elected was better qualified for the job than the applicant.
6. The house the applicant owns was devastated during the armed conflict in Bosnia and Herzegovina. According to a letter of the Municipality of Maglaj the house is not on a reconstruction priority list because the applicant did not live in Bosnia and Herzegovina before 1992.
7. On 7 May 2001 the Municipality of Maglaj refused the applicant's request for recognition of his status as a displaced person. On 13 July 2001 the Ministry of Social Affairs, Displaced Persons and Refugees of Bosnia and Herzegovina refused the applicant's appeal and confirmed that the decision of the Municipality of Maglaj was in accordance with national law.
8. On 8 June 1999 the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) issued a decision confirming that another person is the owner of the property where the applicant had been living since he came to Bosnia and Herzegovina. On 8 July 2002 the Municipality of Maglaj issued a decision ordering the enforcement of the CRPC decision. The Municipality of Maglaj informed the applicant that his temporary right to use the property in question will end on 23 July 2002 and that according to national law, he is not entitled to alternative accommodation.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMPLAINTS

9. The application and the claim for compensation were introduced with the Chamber on 17 September 2001. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to provide him with accomodation.
10. On 2 September 2002 the request for provisional measures was rejected.
11. The applicant complains of violations of his right to life, his right to a home, his right for compensation for war damage and his right to work. The applicant also complains that he has not received any salary for his work in the Bosnian Night School in Germany.

III. OPINION OF THE CHAMBER

12. 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...” and (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”.

13. With regard to the applicant’s claim that his University degree is not recognised, the Chamber notes that the applicant failed to appeal against the decision of the Faculty of Philosophy of the University of Sarajevo of 20 December 2001. The applicant has not shown that this remedy was ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare this part of the application inadmissible.

14. With regard to the applicant’s claim in relation to the job at the Bosnian Night School in Germany, the Chamber finds that the applicant failed to substantiate why he should have been entitled to receive a salary when it is undisputed that this job was on a voluntarily base.

15. With regard to the applicant’s claim that he was discriminated against when he applied for a job at the secondary school in Maglaj, the Chamber considers that the applicant failed to substantiate these allegations. Especially since the applicant does not contradict that the person who was engaged was better qualified for the job, the Chamber finds that it was up to the applicant to substantiate these allegations.

16. The Chamber further notes that the applicant failed to substantiate why the decisions of the Municipality of Maglaj and the Ministry of Social Affairs, Displaced Persons and Refugees of Bosnia and Herzegovina (see paragraph 7), by which the status as a displaced person was refused to him, disclose any appearances of violations of his rights.

17. With regard to the applicant’s allegations that his right to a home is violated because his temporary right to use a property will be ended, the Chamber considers that the applicant was ordered to vacate the house in question pursuant to a lawful decision terminating his right of temporary use.

18. Therefore, the Chamber finds that the parts of the application as discussed in paragraphs 13, 14, 15 and 16 do not disclose any appearances of violations of the rights and freedoms guaranteed under the Agreement. It follows that these parts of the application are manifestly ill-founded, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare these parts of the applications inadmissible.

19. With regard to the devastation of the house of the applicant, the Chamber notes that the applicant complains that there has been an interference with his right to compensation and humanitarian aid for reconstruction of his property. However, this is not a right which is included among the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the remainder of the application inadmissible.

IV. CONCLUSION

20. For the above mentioned reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel