



DECISION ON ADMISSIBILITY

Case no. CH/02/9024

Ratko ŠAVIJA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 4 March 2002. The applicant requested that the Chamber order the responded Party, as a provisional measure, to take all necessary action to prevent his eviction from property located at Bolanog Dojčina no. 32, in Banja Luka, the Republika Srpska. On 25 March 2002 the President of the Second Panel decided not to order the provisional measure requested.

2 The subject matter of the application is the applicant's request that the Chamber prevent his eviction from the property in question.

II. FACTS

3. On 8 November 1993, the applicant and his wife concluded a contract on exchange with B.O., whereby they exchanged their real property situated in Visoko, the Federation of Bosnia and Herzegovina, for the real property in question in Banja Luka, the Republika Srpska. The applicant entered into possession of the property in Banja Luka and registered his ownership in the land registry.

4. On 31 May 2000 B.O. initiated civil proceedings before the Municipality Court in Visoko, seeking annulment of the contract on exchange of 8 November 1993.

5. On 5 June 2000 the Municipality Court issued a decision declaring itself incompetent and referring the case to the Municipality Court in Banja Luka as the competent court to decide this legal matter. B.O. appealed to the Cantonal Court in Zenica against the decision of 5 June 2000.

6. On 30 August 2000 the Cantonal Court accepted the appeal, annulled the first instance decision, and returned the case to the Municipality Court in Visoko for renewed proceedings.

7. On 24 January 2001 the Municipality Court in Visoko issued a judgment establishing that the contract on exchange of 8 November 1993 is invalid. The applicant appealed.

8. The Cantonal Court refused the applicant's appeal and upheld the judgment of 24 January 2001.

9. On 22 February 2002 the First Instance Court in Banja Luka issued a procedural decision on enforcement of the judgment of 24 January 2001. The applicant was obliged to vacate the property in Banja Luka within 8 days.

10. On 28 February 2002 the applicant filed a request for review, an extraordinary remedy (a *revizija*), before the Supreme Court of the Federation of Bosnia and Herzegovina.

11. On 1 March 2002 the applicant filed an objection against the decision of 22 February 2002, with a proposal to postpone enforcement until the conclusion of the proceedings before the Supreme Court.

12. On 26 April 2002 the First Instance Court in Banja Luka refused the applicant's objection. In the same decision, the Court also refused the applicant's proposal to postpone enforcement. The applicant appealed.

13. On 4 October 2002 the Regional Court (Second Instance Court) in Banja Luka refused the applicant's appeal and upheld the decision of 26 April 2002.

14. On 21 October 2002 the First Instance Court in Banja Luka issued a conclusion on enforcement and scheduled the applicant's eviction from the apartment in question for 12 November 2002.

III. OPINION OF THE CHAMBER

15. 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: ... (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.”

16. The Chamber notes that the domestic courts assessed the facts pertaining to this case and found the contract on exchange of 8 November 1993 invalid. The applicant complains that the competent courts wrongly assessed the facts of his case and breached the relevant provisions of civil proceedings. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts for 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). The applicant's allegations that the courts breached the relevant provisions of civil proceedings are unsubstantiated, and there is no evidence that the courts failed to act fairly as required by Article 6 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

17. The Chamber further notes that the applicant was ordered to vacate the apartment in question on the ground that he no longer has a right under domestic law to occupy it as the contract on exchange of 8 November 1993 has been declared invalid. In these circumstances, the Chamber finds that the facts complained of do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

IV. CONCLUSION

18. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mr. Viktor MASENKO-MAVI
Acting President of the Second Panel