



DECISION ON ADMISSIBILITY

Case no. CH/02/12287

Said DELIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 27 September 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to prevent the kidnapping of his son by his former wife, who lives with the child in Sweden. On 4 November 2002, the Chamber decided not to order the provisional measure requested.

II. FACTS

2. The applicant was married to Š.F.. On 25 April 1991 their son was born. During the 1992-95 war the applicant's wife left Sarajevo taking her son along. She and the child moved first to Macedonia and then to Sweden, where the mother and the child currently live. It appears that in the meantime the child has acquired Swedish citizenship and thereby lost his citizenship of Bosnia and Herzegovina. The applicant complains that he was not consulted in this context.

3. On 3 November 1997 the applicant filed an action for divorce with the Municipal Court in Sarajevo. The Court appointed a legal representative because the wife's address was unknown to the Court. On 22 January 2001 the Municipal Court issued a judgement declaring the marriage to be divorced. The judgement further declared the mother and the legal representative to be the custodians of the child and obliged the applicant to contribute to the child's support.

4. The applicant appealed against the part of the judgement by which the mother was declared the custodian of the child. On 20 June 2001 the Cantonal Court rejected the appeal.

5. On 26 January 2001 the applicant brought charges against his wife for taking away the child before the Municipal Prosecutor's office in Sarajevo. The applicant claims that no proceedings were initiated upon his charges.

6. On 23 May 2002 the Welfare Office of the Municipality in Novo Sarajevo issued a procedural decision allowing the applicant to have free contact with his son from 1 July to 30 July of every year. The procedural decision obliges the father to take and return his son via diplomatic/consular channels and the mother is obliged to allow the applicant free contact with the child.

III. COMPLAINTS AND ALLEGED VIOLATIONS

7. The applicant alleges that since 1994 he unsuccessfully tried to get in contact with his child and to have it returned to Bosnia and Herzegovina. He also claims that he applied to the Welfare Office of the Municipality in Novo Sarajevo to enable him to have contact with his child.

8. The applicant complains of a violation of his rights guaranteed by Article 6 of the Convention, as the Welfare Office acted inefficient and slowly. He further claims that the fact that his former wife took the child with her to Sweden and the fact that the Swedish authorities granted his child the Swedish citizenship violates his right to respect for family life as guaranteed under Article 8 of the Convention, his right as guaranteed by Article 4 of Protocol No.7 to the Convention (the right not to be tried and punished twice), and his right as guaranteed by Article 5 of Protocol No. 7 to the Convention (guarantee of equality between spouses). He further alleges a violation of the rights protected by the Hague Convention on Civil and Legal Aspects related to the International Kidnapping of Children and of Article 8 of the Convention on the Rights of the Child.

IV. OPINION OF THE CHAMBER

9. 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."

10. In so far as the applicant complains about the behaviour of his former wife and about the fact that the Swedish authorities granted his child Swedish citizenship, the Chamber finds that the applicant's complaint does not concern an interference with his rights under the Agreement by the authorities of any of the signatories to the Agreement. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

11. With regard to the other complaints of the applicant and in particular the complaint that the respondent Party's authorities failed to act efficiently in the protection of the applicant's rights, the Chamber recalls that the Municipal Court in the divorce proceedings decided to grant the custodianship over the child to the mother. The issue of custodianship over the child was again examined by the Cantonal Court, which rejected the applicant's appeal on 20 June 2001. On 23 May 2002 the Welfare Office of the Municipality in Novo Sarajevo issued a procedural decision allowing the applicant to have free contact with his son from 1 July to 30 July of every year. In light of these circumstances, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. In particular the Chamber does not find that the Welfare Office of the Municipality in Novo Sarajevo acted inefficiently and too slowly or that the procedural decision of 23 May 2002 to grant the applicant access to his child was issued with undue delay. 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.

V. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel