



DECISION ON ADMISSIBILITY

Case no. CH/03/12962

ALIS – COMERC D.O.O.

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 May 2003 with the following members present:

Mr. Jakob MÖLLER, Acting President
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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 Articles VIII(2) and XI of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 6 February 2003. The representative of the applicant is Mr. Alija Arnautović, C.E.O. and owner of d.o.o. Alis-Comerc. The applicant requested that the Chamber order the respondent Party, as a provisional measure, urgently to return paid taxes in the total amount of 31,711.30 KM, with appropriate interest, until a final decision is issued. On 31 March 2003, the Chamber decided not to order the provisional measure requested.

2. In his application, the applicant complains about the actions of the Customs Administration officials in the process of deciding on a request for return of special taxes paid by d.o.o. Alis-Comerc for merchandise imported to Bosnia and Herzegovina in 1997. The applicant alleges that his right to property has been violated.

II. FACTS

3. On 20 November 2000, the applicant submitted a request to Sarajevo Customs for the return of special taxes paid in the amount of 1,248.00 KM in respect of UCD - Import customs declaration no. 24636/97 of 15 December 1997. The applicant pointed out that the Customs Administration did not have any legal basis for collecting payment of 10% special taxes for the merchandise imported in 1997 because the Government, which is authorized to make decisions on special taxes, did not make any such a decision for 1997 applicable to merchandise imported into the territory of Bosnia and Herzegovina from 1 January 1997 to 31 December 1997.

4. On 21 November 2000, the Sarajevo Customs decided to reject the applicant's request for the return of special taxes as unfounded. The explanation of the decision states that UCD no. 24636 was submitted on 15 December 1997, and that the applicant submitted a request for the return of taxes on 20 November 2000. Based on Article 249, paragraph 1, sub-paragraph 2 of the Law on Customs (Official Gazette of the Federation of Bosnia and Herzegovina nos. 2/95, 9/96, 18/96, 25/97), it was established that the request was submitted after the legal one-year deadline, which cannot be extended, and by missing the deadline, the party forfeits its right, regardless of whether or not the request was well founded.

5. On 28 November 2000, the applicant filed an appeal against the first instance decision. On 19 February 2001, the Ministry of Finance of the Federation of Bosnia and Herzegovina rejected the appeal as unfounded.

6. The applicant filed a lawsuit initiating an administrative dispute against the Ministry's decision before the Supreme Court of the Federation of Bosnia and Herzegovina.

7. On 10 May 2001, the Supreme Court decided to reject the lawsuit. The Supreme Court established that the customs officials acted correctly by applying the decree of Article 249, paragraph 1, sub-paragraph 2 of the Law on Customs.

8. On 27 June 2001, the applicant submitted an appeal to the Constitutional Court of Bosnia and Herzegovina. In his appeal he pointed out that his right to property was violated and he requested that all the decisions made in the administrative procedure, including the Supreme Court decision, be abolished. Also, he requested to be reimbursed for the amount of taxes he paid, 1,248.00 KM, for the merchandise that cleared customs.

9. At the session held on 10 and 11 May 2002, the Constitutional Court of Bosnia and Herzegovina decided to reject the applicant's appeal against the decision of the Supreme Court. The Constitutional Court established that there was a legal basis for the Supreme Court's decision and that the Supreme Court did not interpret or apply the law in an unjustified or arbitrary manner. Therefore, it established that there was no violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights, nor of Article II(3) of the Constitution of Bosnia and Herzegovina.

III. OPINION OF THE CHAMBER

10. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. The question arises in this regard whether it should accept an application concerning a matter which had been brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber.

11. The Chamber recalls that pursuant to Article II(2) of the Constitution of Bosnia and Herzegovina, set forth in Annex 4 to the General Framework Agreement, the rights and freedoms enumerated in the Convention and its Protocols apply directly in Bosnia and Herzegovina.

12. Pursuant to Article VI(3)(b) of the Constitution, the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgment of any other court in Bosnia and Herzegovina. The “issues under this Constitution” in Article VI(3)(b) include alleged violations of human rights, as guaranteed by Article II of the Constitution, and the Constitutional Court has jurisdiction under Article VI(3)(b) to determine such issues upon appeal against the decisions of other courts.

13. The Chamber notes that in the specific circumstances of the present application, its jurisdiction overlaps with that of the Constitutional Court. The application to the Chamber concerns the same matter and involves the same parties as the case already decided by the Constitutional Court. Neither the Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement nor the Agreement in Annex 6 thereto establish a hierarchy between the two judicial bodies or otherwise regulate the relationship between their respective jurisdictions. The Chamber recalls that the Constitutional Court has held that Article VI(3)(b) of the Constitution does not give it jurisdiction to review decisions of the Human Rights Chamber (see case no. U 11/98, Decision of the Constitutional Court of 26 February 1999, Decisions 1997-1999).

14. Under Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept and in what priority to address them. As the Chamber noted in the case of *Sijarić v. Federation of Bosnia and Herzegovina* (case no. CH/00/4441, decision on admissibility of 6 June 2000, paragraph 13, Decisions January – June 2000), the wording of this provision does not exclude that the Chamber, in so doing, may rely on grounds other than those set forth in the criteria listed in subparagraphs (a) through (d) of Article VIII(2).

15. In the light of these considerations and recalling that the applicant brought the matter before the Constitutional Court before he lodged his application with the Chamber, the Chamber finds it appropriate in the present case to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept the application.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President of the Second Panel