



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/98/795

Mehmed ALISPAHIĆ, Šahbaz ČERGIĆ and Emin SALETOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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 Articles VIII(2)(a), VIII(2)(c) and VIII(3)(b) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was submitted on 21 July 1998 and registered on 22 July 1998.
2. The applicants complain about the failure of the authorities to enforce a valid court judgment in their favour regarding a dispute over a priority list for allocation of apartments in Banovići, Federation of Bosnia and Herzegovina.

II. FACTS

3. On 9 September 1996 the First Instance Court in Banovići (the "Court") issued a judgment accepting all the requests of the applicants. It nullified a priority list for allocation of apartments made by the Commission for Housing Relations of the Brown Coal Mine "Tito" Banovići ("RMU"), in the part where total points were also, *inter alia*, established for the applicants. Also, the decision on allocating apartments to persons T.R., M.R., S.Đ., Z.M., P.D., S.P., P.D., Nj.S., S.M., J.M. and S.D. was nullified. By the same judgment, D.D. RMU Banovići was ordered (as the legal successor of OOUR "Open-pit coal mining" Banovići), *inter alia*, to establish the number of points for the applicants under all criteria, to determine a new list of priorities, and to issue a new decision on the allocation of apartments. The defendant was ordered to comply with this obligation within 60 days from the date when the judgment entered into force, under the threat of forcible enforcement. The judgment became valid on 29 April 1997, and it became enforceable 60 days later when the defendant RMU failed to voluntarily satisfy his obligations within the set time limit.
4. On 12 September 1997 the applicants filed a request for forcible enforcement to the Court. On 5 November 1997 the Court issued a procedural decision on enforcement, ordering RMU to comply with the judgment of 9 September 1996 in its entirety.
5. RMU still failed to satisfy its obligations and no forcible enforcement occurred. On several occasions the applicants requested the Court to perform the forcible enforcement of the judgment, but these requests were unsuccessful. Afterwards, they addressed the Ombudsman Office of the Federation of Bosnia and Herzegovina in Tuzla (the "Ombudsman"). Despite several interventions by the Ombudsman, the enforcement was still not carried out.
6. After several pleas by the Ombudsman, on 30 March 1999, the Court issued a procedural decision ordering RMU, as a legal person, to pay a monetary fine in the amount of 75 KM and ordering the director, as the person in charge, to pay a monetary fine in the amount of 25 KM.
7. On 17 December 1999 the Ombudsman issued a Decision finding a violation of the applicants' human rights and establishing that RMU and the Municipal Court in Banovići, by failure to act in accordance with the valid court judgment of the First Instance Court in Banovići, had violated the right to property, right to efficient court proceedings, and right to equal protection of the law. The Ombudsman recommended, once again, enforcement of the aforementioned judgment at the latest by 31 January 2000.
8. On 11 May 2000 the Court issued the third procedural decision ordering to RMU to pay the monetary fine to the amount of 300 KM and ordering to the director to pay the monetary fine to the amount of 100 KM. The Court gave them 30 days time limit to act in accordance with the valid court judgement.
9. On 16 June 2000 the Court issued a new procedural decision, ordering RMU to pay a monetary fine in the amount of 600 KM and ordering the director to pay a monetary fine in the amount of 200 KM. They were given a new 30-day time limit for enforcement of the judgment.
10. On 6 February 2003 the applicants informed the Chamber that the court judgment was finally enforced, and they have entered into the possessions of the apartments.

III. COMPLAINTS

11. The applicants allege violations of their rights guaranteed by Article 6, Article 13, Article 8, and Article 1 of Protocol No. 1 to the European Convention on Human Rights. Initially, they complained about the lack of enforcement of the court judgment in their favour. After notifying the Chamber that that judgment had finally been enforced, they further allege that they are not allowed to purchase the apartments because the legal time limit in which occupancy right holders could file a request for purchasing the apartments expired previously, due to the delay in enforcing the court judgment. They also allege that their apartments have been damaged by the previous occupants.

12. The applicants request the Chamber to order the respondent Party to secure their right to their apartments and to enable them to purchase the apartments. They also seek compensation for the cost of the proceedings.

IV. OPINION OF THE CHAMBER

A. With respect to enforcement of the court judgment

13. In accordance with Article VIII(3) of the Agreement, “the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that ... (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights.”

14. The Chamber notes that the applicants complain about the non-enforcement of the valid court judgment of 9 September 1996. However, considering that the applicants have informed the Chamber that this judgment was finally enforced and that they have entered into possession of their apartments, the Chamber finds that this matter raised in the application has been resolved. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of this part of the application to be continued. The Chamber therefore decides to strike out this part of the application pursuant to Article VIII(3)(b) of the Agreement.

B. With respect to purchasing the apartments

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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

16. The Chamber notes that the applicants also complain that they are not allowed to purchase the apartments over which they are the occupancy right holders. However, the Chamber further notes that the applicants may initiate civil proceedings before the domestic courts requesting to be enabled to purchase the apartments. The applicants have not initiated such proceedings. They also have not shown that this remedy is ineffective, and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicants have not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies with respect to their claim to be allowed to purchase their apartments. The Chamber therefore decides to declare this part of application inadmissible.

C. With respect to damage to property

17. 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.”

18. Regarding the applicant’s claim for damage to their apartments by the previous tenants, the Chamber notes that the applicants have not shown that this alleged damage was directly caused by the respondent Party or any person acting on its behalf. Therefore, the Chamber finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms

guaranteed under the Agreement. 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 as well.

D. With respect to claim for compensation

19. Concerning the applicants' claim for compensation, the Chamber recalls that it may only award compensation if it finds a violation of any of the rights and freedoms protected by the Agreement. However, for the reasons set forth above, the Chamber has not made any such finding. Therefore, it also rejects the claim for compensation.

V. CONCLUSION

20. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE IN PART and
STRIKES OUT THE REMAINDER OF THE APPLICATION.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel