



DECISION ON ADMISSIBILITY

Case no. CH/02/11125

Mirsad OMERAGIĆ, Aida OMERAGIĆ, Suvada SMAJEVIĆ, Mušan SMAJEVIĆ, Muhamed SMAJEVIĆ and Mina SMAJEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 July 2003 with the following members present:

Mr. Miodrag PAJIĆ, Acting President
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 6 June 2002. Mr. Mirsad Omeragić represents himself and five other applicants before the Chamber.
2. The applicants requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent the enforcement of a judgment of the Municipal Court I in Sarajevo, scheduled for 10 June 2002, until the Chamber decides on the application. On 7 June 2002, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

3. The application concerns a private dispute between the applicants and a third party, N.A., conducted before the Municipal Court I in Sarajevo in relation to construction works undertaken by JKP "Vodovod i Kanalizacija" (Water Company and Sewage System) (the "Company") to property located on Stolačka Street in Sarajevo, the Federation of Bosnia and Herzegovina.
4. N.A. claimed that the construction works in question disturbed his property, located at ulica Stolačka no. 18. N.A. obtained a judgment from the Municipal Court I in Sarajevo on 13 July 1999, ordering the Company to construct a supporting wall and to undertake other construction works to prevent further disturbance of his property. On 16 May 2000, the Municipal I in Sarajevo issued a conclusion on enforcement of the decision of 13 July 1999.
5. The applicants, who own the apartments located at ulica Stolačka no. 17, oppose the enforcement of the judgment of 13 July 1999 because they claim that construction of the supporting wall and other construction works will cause them irreparable harm.
6. On 2 October 2001, two applicants, Mirsad Omeragić and Muhamed Smajević, filed a petition against the conclusion on enforcement and a proposal for postponement of the enforcement, initially scheduled for 3 October 2001. On 22 October 2001, the Court issued a procedural decision in which it rejected the applicant's proposal. The Court noted that by the construction works on the existing wall, the previous state of the property will be restored; thereby, there will be no breach of the property rights of the mentioned owners.
7. On 20 February 2002, the Cantonal Court refused the applicant's appeal and confirmed the validity of the first instance procedural decision of 22 October 2001. According to the Court, the applicants have the right of ownership over the apartments, the common parts of the building, and the land under the building, but they have no rights over the subject of the enforcement established by the judgment of 13 July 1999.
8. On 4 June 2002, the applicants Mirsad Omeragić, Muhamed Smajević and Mušan Smajević sent a letter to the Construction Inspection Service of the Municipal Centre complaining about the allegedly unlawful construction of a private parking space opposite to number 18 on Stolačka ulica. They allege that the location is unstable and that the construction will endanger their property. On the same day, they submitted a request to the Cantonal Ministry for Environmental Planning and Environmental Protection seeking that any construction be prevented.

III. COMPLAINTS

9. The applicants claim that the facts contained in the judgment of the Municipal Court I in Sarajevo of 13 July 1999 are not correct and that the construction works in question have never been undertaken, and thus there was also no undermining of the terrain requiring the ordered restoration. They contend that the previous condition of the property, which is to be restored, has never existed. They further claim that the Company "gave away the lawsuit" to their detriment and for the benefit of N.A. They submit that their ownership rights are in jeopardy because damage may occur to their property as a result of the ordered restorations. The applicants allege that neither the

urban plan approval nor the building permits have been issued, since all construction works are forbidden according to the regulatory plan.

IV. OPINION OF THE CHAMBER

10. 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.”

11. The Chamber notes that the applicants appear to complain that the Municipal Court I in Sarajevo wrongly assessed the facts and misapplied the law pertaining to their case and also that the Company “gave away the lawsuit” to their detriment. 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 and application of the law 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), especially when the case concerns a private dispute. Moreover, to the extent the applicants’ complaints can be interpreted as alleging a lack of impartiality of the court, these claims 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 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 application inadmissible.

12. As to the applicants’ numerous complaints about possible future damage to their property as a result of enforcement of the judgment of 13 July 1999, the Chamber notes that the construction works in question were ordered pursuant to a lawful decision by the Municipal Court, as confirmed by the Cantonal Court. In these circumstances, the Chamber finds that the facts complained of do not disclose any appearance of 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 application inadmissible, as well.

V. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Miodrag PAJIĆ
Acting President of the First Panel