



DECISION ON ADMISSIBILITY

Case no. CH/01/7352

Ramiz ŠEHIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER, Vice-President
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
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 Article VIII(2) of the Agreement and Rule 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 30 March 2001. It concerns the applicant's eviction from an apartment in which he lived as an unlawful occupant for 33 years. The eviction was based on a final and binding decision of the Cantonal Court in Sarajevo, by which the applicant was ordered to vacate the apartment in question.

2. The applicant moved into the apartment located at Ul. Gradačaćka no. 128/4 on 26 August 1969 and lived there undisturbed until 25 February 1983, when "Osnovna banka Jugobanka Sarajevo" (its legal successor is "Union banka d.d.") initiated court proceedings seeking his eviction. On 14 December 1999, the Municipal Court II in Sarajevo rejected the petition of Union banka d.d. and decided in favour of the applicant. Union banka d.d. appealed against this judgment. On 24 May 2000, the Cantonal Court reached a judgment accepting the appeal and ordering the applicant to vacate the apartment. The applicant submitted a request for review (*revizija*) of the proceedings to the Supreme Court of the Federation of Bosnia and Herzegovina, which was rejected on 1 February 2001. Finally, on 27 March 2001, he filed an appeal to the Constitutional Court of Bosnia and Herzegovina. That appeal was rejected on 21 December 2001.

3. The applicant was evicted from the apartment in question on 8 July 2002.

II. OPINION OF THE CHAMBER

4. 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 and which was decided by the Constitutional Court on 21 December 2001.

5. 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.

6. 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.

7. 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).

8. 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).

9. In the light of these considerations and recalling that the applicant brought the same 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. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel