



DECISION ON ADMISSIBILITY

Case no. CH/00/4128

DD “Trgosirovina” Sarajevo (DDT)

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 September 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, 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. FACTS

1. The applicant is a mixed shareholders' company engaged in the business of collecting and preliminary processing of industrial waste and the trade of secondary raw materials. By a procedural decision of 10 July 1997, the Tax Administration Department for Inspection, in the Cantonal office of Sarajevo, ordered the applicant "Trgosirovina" to pay taxes in the amount of 4,821.589,00 dinars and overdue interest in the amount of 266.487,00 dinars.
2. On 11 July 1997 the applicant filed an appeal against that decision with the Federal Ministry of Finance, Tax Administration ("Ministry"). On 13 November 1997 the Ministry issued a procedural decision denying the applicant's appeal. The Ministry explained in its decision that the applicant, while purchasing wastage, violated Article 8 paragraph 3 line 3 and Article 14 paragraph 5 of the Law on Tax on Sales of Goods and Services ("OG of the FbiH", no. 6/95), and Article 20 paragraphs 3 and 4 of the Statute on Application of Provisions of the Law on Tax on Sales of Goods and Services ("OG of the FbiH", no. 4/97).
3. On 18 December 1997 the applicant filed a lawsuit with the Supreme Court of the Federation of Bosnia and Herzegovina. In its complaint the applicant requested that the procedural decision ordering it to pay taxes be annulled. The applicant argued that the Ministry improperly interpreted the facts of the case and incorrectly applied the law when requiring the applicant to pay taxes.
4. On 11 February 1999 the Supreme Court issued a procedural decision rejecting the applicant's lawsuit as ill-founded.
5. On 13 March 1999 the applicant appealed against that decision to the same Court requesting a review of the decision. This remedy is regarded as an extraordinary remedy under the Law of Civil Proceedings. The applicant alleged, once again, that the Court in its 11 February 1999 decision misapplied substantive and procedural law.
6. On 14 December 1999 the Supreme Court refused the request for extraordinary review explaining that in this case the Court properly applied the substantive as well as procedural law.
7. At some point, the applicant's giro account was blocked in order to collect the taxes owed by the company.

II. COMPLAINTS

8. The applicant claims, without further specification, that the decisions of the Supreme Court are wrong and that blocking the company's giro account to collect the unpaid taxes violates the rights of the company's employees. The applicant has requested that the Chamber issue an order directing the respondent Party to unblock the company's giro account.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced on 21 February 2000 and registered on 22 February 2000. On 6 September the Chamber considered the case and adopted the following decision.

IV. OPINION OF THE CHAMBER

10. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application, which it considers incompatible with the Agreement, manifestly ill-founded, or an abuse of the right of petition.

11. The applicant complains that the administrative bodies and the Supreme Court wrongly established the facts pertaining to its case and misapplied the law. The applicant also appears to be asking the Chamber to re-instate the proceedings and suspend the decisions of the Supreme Court.

12. The Chamber recalls that Article 1 of Protocol No. 1 to the European Convention on Human Rights, which deals with the right to property, contains an exception for lawful measures aiming at securing the payment of taxes. The decision to level taxes on the applicant does not as such violate the applicant's property rights.

13. Moreover, the Chamber recalls that the European Court of Human Rights has stated that it is not within its competence to substitute its own assessment of the facts to that of the national courts (see e.g. the *Dombo Beheer B.V. v. the Netherlands* judgment of 27 October 1993, Series A no. 274, pp. 31-32, paragraph 31). The same principles apply to proceedings before the Chamber regarding domestic courts. Accordingly, it is not within the province of the Chamber to determine whether national authorities and courts erred in finding the applicant liable to pay taxes or in fixing the tax amounts in question.

14. Furthermore, there is no indication that the proceedings in the case have violated the applicant's procedural rights under Article 6 of the Convention.

15. Accordingly, the Chamber decides not to accept the application, partly for being outside the Chamber's jurisdiction *ratione materiae* and partly for being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel