



## **DECISION ON ADMISSIBILITY**

**Case no. CH/01/7633**

**Adil ALIŠKANVIĆ**

**against**

**FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 June 2002 with the following members present:

Ms. Michèle PICARD, President  
Mr. Rona AYBAY, Vice President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Želimir JUKA  
Mr. Miodrag PAJIĆ  
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS 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 application alleges that Z.A. initiated proceedings against the applicant requesting compensation for damage caused by a water leak in the applicant's apartment into Z.A.'s apartment.
2. The Municipal Court in Lukavac issued a procedural decision in favor of Z.A. By this procedural decision the applicant is obligated to pay 1,179.50 KM as pecuniary compensation for the damage he caused. The applicant filed an appeal against this procedural decision. On 22 November 1999 the judgment became valid after the proceedings on the applicant's appeal were finalized.
3. The applicant submitted a request for renewal of the proceedings as an extraordinary remedy, but the Municipal Court in Lukavac rejected the request as ill-founded. That procedural decision became valid on 11 April 2001.
4. The applicant alleges that his rights have been violated because the expert appointed to assess the damage to Z.A.'s apartment performed his job unprofessionally and established an excessively high amount of damage. Based upon this excessive damage assessment, the Court issued a decision obliging the applicant to pay excessive compensation for damages to Z.A.

## **II. ALLEGED VIOLATION OF HUMAN RIGHTS**

5. The applicant claims that his right to repair himself the damage caused to Z.A.'s apartment instead of paying compensation, as guaranteed under Article 185 of the Law on Contractual Relations, has been violated. The applicant also complains that the court assessed the damage in an excessive amount.

## **III. RELEVANT DOMESTIC LAW**

6. Article 185 of the Law on Contractual Relations of the Federation of Bosnia and Herzegovina (Official Gazette of the SFRY no. 29/78, 39/85, 45/89,57/89; Official Gazette of the Federation of Bosnia and Herzegovina no. 2/92, 13/93), provides as follows:

- “(1) The responsible person is obliged to restore the situation to the state before the damage.
- “(2) If the restoration of the situation does not remedy the entire damage, the responsible person is obliged to pay for the remaining part of the damage.
- “(3) When the restoration into the previous state is not possible or when the court considers that it is not necessary for the responsible person do that, then the court shall determine that it shall pay an appropriate sum for compensation of the damage.
- “(4) The court shall determine the pecuniary compensation to be paid to the damaged person if he requests it, except if the circumstances of the case justify the restoration to the previous situation.”

## **IV. OPINION OF THE CHAMBER**

7. 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.”

8. The Chamber notes that the applicant complains that the Municipal Court as well as the Cantonal Court wrongly assessed the facts pertaining to his case and misapplied the law. 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). 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 the application inadmissible.

#### **IV. CONCLUSION**

9. For this reason, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

(Signed)  
Ulrich GARMS  
Registrar of the Chamber

(Signed)  
Michèle PICARD  
President of the First Panel