



DECISION ON ADMISSIBILITY

Case no. CH/01/7637

Saša VUKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 April 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 Articles VIII(2)(a) and VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application before the Chamber concerns proceedings before the competent courts in regard to the cancellation of the applicant's occupancy right over an apartment, located at ul. Z. Dizdarevića no. 30a, Zenica, the Federation of Bosnia and Herzegovina (the "apartment").
2. The first instance proceedings against the applicant were initiated before the Municipal Court in Zenica, by the owner of the apartment, "Željezara Zenica", a Zenica steel manufacturer. The first instance judgement of the Municipal Court in Zenica was issued on 20 October 1998 denying the applicant's status as occupancy right holder. The applicant's appeal against the first instance judgement was refused by the Cantonal Court in Zenica on 30 June 1999.
3. On 23 December 1999 the Supreme Court of the Federation of Bosnia and Herzegovina issued a judgement by which the applicant's request for "revision" of the judgement of the Cantonal Court in Zenica was refused.
4. On 14 January 2002 the Municipal Court in Zenica issued a conclusion that the applicant's eviction was to be carried out on 5 February 2002, at 11:00 a.m. The Chamber has no information whether the applicant was evicted.
5. On 1 September 1999 the applicant submitted a claim regarding the apartment to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"). The CRPC has not issued a decision yet.
6. The applicant complains that the courts of the Federation of Bosnia and Herzegovina wrongly applied the law in his case. He, therefore, considers these court proceedings null and void.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 26 June 2001. On 10 October 2001 the Chamber considered the case for the first time. The Chamber requested further information from the applicant about the date on which the judgement of the Supreme Court of the Federation of Bosnia and Herzegovina No. Rev 238/99 of 23 December 1999 was delivered to him and to submit a copy of the delivery slip. The applicant additionally was requested to explain why the application to the Chamber has not been submitted within six months from the date of delivery the judgement of 23 December 1999.
8. On 23 October 2001 the applicant submitted a response to the Chamber's letter of 18 October 2001. However, he failed to submit the information he was asked by the Chamber.
9. In the application form the applicant requested that the Chamber order the respondent Parties, as a provisional measure, to take all necessary action to suspend the eviction procedure until the CRPC issues its decision. On 10 October 2001 the Chamber decided not to order the provisional measure requested. On 24 January 2002 the applicant submitted, once again, a request for provisional measure asking that the Chamber prevent the eviction from the apartment scheduled on 5 February 2002, until the CRPC issues a decision upon the applicant's claim before it. On 3 February 2002 the Chamber decided again not to order the provisional measure requested.

III. 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: ... (a) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken" and ... (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 application was lodged on 26 June 2001. It finds that the final decision, concerning the denial of the applicant's status as occupancy right holder, for the purposes of Article VIII(2)(a) of the Agreement, was issued by the Supreme Court of the Federation of Bosnia and Herzegovina on 23 December 1999. This date is more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

12. As to the applicant's complaint that the Municipal Court and the Cantonal Court in Zenica and the Supreme Court of the Federation of Bosnia and Herzegovina misapplied the law in his case, the Chamber notes that the eviction order is based on a final and binding judgements and the conclusion of the Municipal Court in Zenica. 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 court 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 of the application inadmissible as well.

IV. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel