



DECISION ON ADMISSIBILITY

Case no. CH/01/8454

Salko ČENGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 May 2002 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. Mato TADIĆ

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. INTRODUCTION

1. The applicant's firm D.O.O. "Harix" purchased a 68,06 m² business space in Goražde at ulica Trg Branlaca grada bb at a public auction from the Bosansko-podrinjski Canton Privatisation Agency and concluded a contract for this purchase on 24 March 2000.

2. Subsequent to the conclusion of the contract, the applicant was approached by E.P. who requested that the applicant surrender a part of the aforementioned business space in Goražde, citing as his reason their prior oral agreement on joint participation at the public auction and his services during the war and his well-respected standing in the region. The applicant refused to relinquish part of the business space and E.P. subsequently filed an action against the applicant and his business for obstruction of possessions in the Goražde Municipal Court. On 4 July 2000 the Municipal Court rejected E.P.'s claim, ruling that E.P. had not gained any possession of the disputed property. E.P. subsequently appealed to the Goražde Cantonal Court and on 29 September 2000 the Cantonal Court issued a procedural decision in favour of E. P. In its reasoning, the Cantonal Court stated that there was an agreement to jointly purchase the business premises and that after the registration of the ownership right, E.P. was to receive a part consisting of 20 m². It was further concluded that after the purchase the applicant and E.P. had entered the premises together and concluded an oral agreement to share those premises and to invest money into the business premises. As a result of the Cantonal Court's findings, it ordered the applicant to suspend all activities and to establish joint possession and to further compensate E.P. for the cost of litigation to the amount of 209,40 KM under the threat of forcible execution.

3. On 6 November 2000 the Municipal Court issued a procedural decision implementing the Cantonal Court decision of 29 September 2000. It appears from the application that the applicant has failed to file any objections to this procedural decision. Subsequent to the issuance of the procedural decision, on a date unspecified to the Chamber, the applicant filed an action before the Municipal Court, asking the court to establish the ownership over the concerned premises. The Municipal Court issued a procedural decision on 30 August 2001 establishing the applicant's company as the sole and exclusive owner of the premises. This decision was appealed and as such has not become final and binding. On 29 October 2001, the applicant submitted a proposal to postpone the execution of the Municipal Court's procedural decision of 6 November 2000. The Municipal Court denied this proposal on 12 November 2001 as the court assessed that the proceedings to establish ownership rights may not be considered a reason pursuant to Article 63 of the Law on Enforcement Procedure (Official Gazette for the Republic of Bosnia and Herzegovina, nos. 16/92 and 13/94) for postponement of execution.

II. COMPLAINTS

4. The applicant alleges violations of his rights guaranteed under Article 6(1) of the Convention and Article 1 of Protocol 1 to the Convention.

5. The applicant further requested that the Chamber order the respondent Party, as a provisional measure, to postpone the enforcement of the procedural decision of the Goražde Cantonal Court dated 29 September 2000 until the proceedings before the Goražde Municipal Court are concluded. The applicant alleges that the decision of the Cantonal Court is unlawful and as a result he has sustained pecuniary and non-pecuniary damages.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced to the Chamber on 15 November 2001 and registered by the Chamber on 18 November 2001. On 4 February 2002 the Chamber decided not to order the provisional measure requested.

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 Cantonal Court wrongly assessed the facts pertaining to his case and misapplied the law. As a consequence of this, he further alleges that as a result he has sustained pecuniary and non-pecuniary loss. He alleges a violation of Article 1 of Protocol No. 1 to the Convention for the same reasons. 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. As a consequence, there is no indication that the interference with the applicant’s peaceful enjoyment of possessions is not in accordance with the law and fully justified. 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.

V. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Ulrich Garms
Registrar

(signed)
Giovanni GRASSO
President of the Second Panel