



DECISION ON ADMISSIBILITY

Case no. CH/02/10648

Zoran OPAČIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 March 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Giovanni GRASSO
Mr. Mehmed DEKOVIĆ

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 Articles VIII(2) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was registered on 8 August 2002. The applicant is a lawyer and complains of the fact that he was removed from the Lawyers register by a procedural decision of the Bar Association of the Republika Srpska.

2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone the execution of the procedural decision of the Bar Association on deleting him from the Lawyers' Register. On 7 January 2003 the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

3. On 13 May 1996 the Bar Association of Republika Srpska (hereinafter: "the Bar Association") issued a procedural decision erasing the applicant from the Lawyers' Register. The same procedural decision appointed S.K. as estate administrator of his Lawyer's Office. The procedural decision in question cannot be appealed, but an administrative dispute may be initiated against it.

4. The applicant claims that the procedural decision was not delivered to him until some point in the year 2001. On 10 October 2001 the applicant initiated administrative dispute before the District Court in Banja Luka and requested annulment of the procedural decision.

5. On 5 February 2002 the District Court in Banja Luka issued a procedural decision rejecting the applicant's action as out of time. The applicant filed an extraordinary remedy, the request for extraordinary reconsideration of the procedural decision, to the Supreme Court of Republika Srpska against the concerned procedural decision of the District Court.

6. On 11 July 2002 the Supreme Court issued a judgement rejecting the applicant's request as ill-founded.

7. On 6 August 2002 the applicant filed an application to the Constitutional Court of Bosnia and Herzegovina for the protection of his rights, which is substantially the same as the matter that has been submitted to the Chamber.

III. COMPLAINTS

8. The applicant complains that he has been denied the right to work as well as the right to access to the court. He considers that his right to a fair hearing guaranteed under Article 6 of the European Convention on Human Rights (the "Convention") has been violated.

IV. OPINION OF THE CHAMBER

9. 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 was brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber.

10. 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.

11. Pursuant to Article VI.3.b of the Constitution, the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgement 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.

12. 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 that is already pending before 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).

13. 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).

14. In the light of these considerations and recalling that the applicant brought the 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.

V. CONCLUSION

15. 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