



DECISION ON ADMISSIBILITY

Case no. CH/02/10733

Edin TABAKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 2003 with the following members present:

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

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 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 application was introduced before the Chamber on 30 September 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to prevent construction on the cadaster lot no. 830/5 of Cadaster Municipality Banja Luka until the conclusion of the proceedings before the Chamber. On 3 March 2003 the Chamber decided not to order the provisional measure requested.

2. The subject matter of the application is the applicant's complaint against the decisions of the administrative bodies and the Supreme Court of Republika Srpska in the case of establishment of priority right to use certain urban building land in Banja Luka which the applicant co-owns. The applicant further complains that the proceedings in this case have not been fair and that he has been deprived of his property.

II. FACTS

3. The urban building land in question is designated as cadaster lot no. 830/5, with the area of 292 m², registered in Land Book Entry no. 4812, Cadaster Municipality Banja Luka, state-owned, with the applicant's right to use 3/12, the right of Milan Perduv to use 6/12, the right of Rizvah Gradašćević to use 2/12.

4. On 18 January 2002, the Administration for Geodetic and Property-Legal Affairs, Field Unit Banja Luka, Department for Property-Legal Affairs ("the Administration") issued the procedural decision establishing that Milan Perduv ("M.P.") has a priority right to use the urban building land in question for the purposes of construction of residential building. The motivation of the procedural decision states that the land in question encompasses only one building plot while none of the former co-owners fulfils the general conditions for obtaining the priority right for use nor could this right be established under the agreement of all former co-owners.

5. The applicant and R.G. filed an appeal against the procedural decision of the Administration, alleging incorrect and insufficiently establishment of the factual background.

6. On 18 February 2002, the Administration for Geodetic and Property-Legal Affairs of Republika Srpska issued the procedural decision rejecting the applicant's and R.G.'s appeal.

7. The applicant filed an administrative dispute against the procedural decision of 18 February 2002 before the Supreme Court of the Republika Srpska ("the Supreme Court").

8. On 16 August 2002, the Supreme Court issued a judgement rejecting the lawsuit as ill founded. The Supreme Court found that M.P. used to own the greatest share, *i.e.* 6/12, of the plot in question until the Law on Nationalisation of Buildings for Rent and Building Land was passed, when that land became socially owned (presently state-owned). After that, M.P. became the co-user with the greatest co-user's share while other co-user obtained smaller co-user's shares.

III. OPINION OF THE CHAMBER

9. 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."

10. The Chamber notes that the applicant complains that the relevant bodies wrongly assessed the facts pertaining to his case. Article 6 of the Convention guarantees the right to a fair hearing. The Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts 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 relevant bodies failed to act fairly as required by 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

11. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel