



DECISION ON ADMISSIBILITY

Case no. CH/02/12205

Bilal BAŠOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant is the director of the company "Hotes". "Hotes" concluded a contract on lease over a restaurant situated on the fourth floor of the department store "Sarajka" starting on 1 January 1996 for a period of five years and with the possibility of extension. The applicant's company continued to occupy the premises after the expiry of the contract on 1 January 2001. No new contract was signed.
2. Paragraph 10 of the lease contract states: "The Company "Hotes" shall perform at its own expense the complete reconstruction and adaptation of the premises in accordance with the design, and finalise it until 1 March 1996. The assets invested for the reconstruction and adaptation of the facility have the character of a personal investment, the final value of which shall be established by the expertise of the authorised court expert of the competent Court, and they are subject to the obligation of refund after the expiry of the contractual relation or cancellation of the contract on any grounds". The applicant claims that he made considerable investments into the reconstruction of the facilities that he uses in the "Sarajka" building.
3. In 20 October 1999 court proceedings were initiated against the company "Hotes" before the Municipal Court Sarajevo in order to end the lease contract because it did allegedly not pay the lease.
4. On 29 August 2002 a meeting was held in presence of the applicant in the Cantonal Ministry of Economy about the future of the department store "Sarajka". According to the records of this meeting, the minister concluded that "Hotes" and its two directors, the applicant and another person, should vacate the premises they use on the fourth floor of the department store "Sarajka" no later than 2 September 2001 at 3 p.m..
5. On 12 September 2001, the Municipal Court I Sarajevo issued a decision ordering the applicant to vacate the business premises and to hand them over to the lessor. With regard to the applicant's compensation claim for his investments in the premises, the applicant was instructed in the judgement to obtain his rights before the courts.
6. On 4 October 2002 the applicant submitted an appeal against this decision, which is still pending.

II. PROCEEDING BEFORE THE CHAMBER

7. The application was submitted to the Chamber on 3 September 2002. The applicant requested the Chamber, as the provisional measure, to forbid the respondent Party to evict him until the rights and obligations, based on the contract, are lawfully decided on, and he is compensated for his investment.
8. On 19 September 2002, the President of the First Panel order the respondent Party, as a provisional measures, not to evict the Business Company "Hotes", whose director is the applicant, from a part of the Department store "Sarajka". The order stated that it should remain in force until 14 October 2002. On 16 October 2002, the President extended the order for provisional measures until 11 November 2002. On 8 November 2002 the Panel decided not to prolong the provisional measure so that it expired on 11 November 2002.
9. The case was transmitted to the respondent Party for its observations on Articles 6, 13 and 14 of the Convention, and Article 1 of Protocol no. 1 to the Convention.
10. On 21 October 2002, the respondent Party submitted its written observations.
11. On 22 October 2002, the Chamber transmitted the respondent Party's observations to the applicant.
12. On 15 November 2002 the applicant's observations were received.

III. ALLEGED VIOLATIONS

13. The applicant alleges that his right to property guaranteed with Article 1 of Protocol No. 1 to the Convention, his right to an efficient remedy under Article 13 of the Convention and his right guaranteed under Article 6 of the Convention have been violated.

IV. OPINION OF THE CHAMBER

14. 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) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

15. The Chamber notes that the applicant's appeal against the judgement of 12 September 2001 ordering his eviction is still pending. In addition the applicant failed to address a court with respect to his compensation claim for the investments made. The applicant has not shown that these remedies are ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

16. 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