



DECISION ON ADMISSIBILITY

Case no. CH/02/8820

Radojica TOMANIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 September 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. Vitomir POPOVIĆ
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. FACTS

1. This case concerns the termination of the contract on purchase of an apartment which was concluded, on 23 July 1991, between the applicant as purchaser and the joined stock company "Park" Gračanica as seller (hereinafter the "Company").
2. On 7 July 2000, the Company submitted to the Municipal Court in Gračanica an action for the termination of the purchase contract concluded with the applicant on 23 July 1991 because of non-fulfilment of contractual obligations on the side of the applicant.
3. On 14 May 2001, the Municipal Court in Gračanica issued the judgement rejecting the request of the plaintiff. However, it partly accepted the alternative claim of the plaintiff and ordered the applicant to pay the remainder of the purchase price due in accordance with the purchase contract.
4. The Company and the applicant submitted an appeal against the judgement of the Municipal Court to the Cantonal Court in Tuzla. On 24 October 2001, the Cantonal Court in Tuzla issued a judgement rejecting the appeal of the applicant. The appeal of the plaintiff was accepted and the contract of 23 July 1991 between the applicant and the Company was terminated. The same judgement obliged the applicant to pay costs of civil procedure amounting to 1,360 KM.
5. The applicant requested "revision" (revizija) of the judgement of the Cantonal Court. On 4 April 2002 the Supreme Court of the Federation of Bosnia and Herzegovina issued judgement rejecting the request for revision.
6. On 30 November 2001, the applicant received the Company's request to return the keys of the apartment in question within 8 days to the Director of the Company. By that letter the applicant was warned that the Company would address the court if he did not return the keys of the apartment within the deadline.
7. On 3 December 2001, the Company submitted to the Court of First Instance in Dobož a proposal for enforcement of payment of its claim for costs of civil procedure amounting to 1,360 KM by seizure of the applicant's movable property.
8. On 23 January 2002, the Company submitted a complaint to the Municipal Court in Gračanica against the applicant for repossession of the apartment in question.
9. On 29 May 2002 the Municipal Court in Gračanica issued a judgement ordering the applicant to hand over the apartment and to reimburse the expenses. By the same judgment the Company is ordered to pay back to the applicant the sum received as purchase price of the apartment.
10. The applicant states that he is not satisfied with the judgement of the Municipal Court of 29 May 2002, as he suffers damage not only on the ground of the cancelled contract on purchase of the apartment, but also on the ground that the money he paid for the apartment has lost its value due to the enormous inflation.

II. PROCEEDINGS BEFORE THE CHAMBER

11. The application was introduced on 6 February 2002.
12. The applicant requested the Chamber to issue an order for provisional measures to postpone enforcement of the Cantonal Court's judgement dated 24 October 2001.
13. On 4 March 2002 the Chamber decided to order the respondent Party to postpone the enforcement of the judgment. The duration of the order was limited to 12 April 2002. The Chamber

transmitted the case to the respondent Party for observations under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and discrimination in the enjoyment of the aforementioned rights.

14. On 20 March 2002 the respondent Party submitted its observations. It argues that the applicant has not exhausted available domestic remedies. As to the merits, it claims that the application does not evidence any violation of Article 6 of the Convention or Article 1 of Protocol No. 1 to the Convention.

15. On 3 April 2002 the Chamber received the applicant's response to the respondent Party's observations. The applicant alleges that he has exhausted all domestic remedies and that he has demonstrated before the Chamber that they all are inefficient. He states that he is satisfied with the judgment of the Municipal Court in Gračanica of 14 May 2001 except for the part on legal costs and expenses. With regard to the judgment of the Cantonal Court in Tuzla of 24 October 2001 the applicant states that the judgment in question is based on substantial violations of proceedings and on wrong application of the law.

16. The applicants alleges that the Company treated his case differently from the cases of other workers who in the same way concluded contracts on purchase of apartments with the Company.

17. At its session of 8 April 2002 the Chamber decided to extend the duration of the order for provisional measures to the completion of the revision proceedings before the Supreme Court of the Federation of BiH.

18. On 6 May 2002 the Chamber received a letter by the applicant informing it that on 4 May 2002 the Supreme Court issued a judgment refusing the request for revision as ill-founded.

19. On 10 May 2002 the Chamber decided to withdraw the order for provisional measures in the present case as the revision proceedings were completed.

20. On 2 July 2002 the Chamber received a letter by the applicant to which he attached the judgement of the Municipal Court in Gračanica of 29 May 2002. By the same letter the applicant asked the Chamber to issue an order for provisional measures ordering the postponement of the enforcement of the judgement of the Cantonal Court dated 24 October 2001 and the judgement of the Municipal Court dated 29 May 2002. On 5 June 2002 Chamber decided to refuse the applicant's request for provisional measures.

IV. OPINION OF THE CHAMBER

21. 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."

22. The Chamber notes that the applicant complains that the Cantonal Court in Tuzla wrongly assessed the facts pertaining to his case and misapplied the law. Thereby the Cantonal Court allegedly also caused economic damage to the applicant.

23. The Chamber notes that 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 courts failed to act fairly as required by Article 6 of the Convention. As a consequence, it is not the Chamber's competence to re-examine the solution of the economic dispute between the applicant and the Company, which has been settled by the

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domestic courts. It follows that the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement as it involves a private dispute. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

24. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel