



DECISION ON ADMISSIBILITY

Case no. CH/02/8914

Zihad ZEČEVIĆ, Refik ŽILIĆ, Rabija ZEČEVIĆ, Haifa ZEČEVIĆ, Mustafa ZEČEVIĆ, Hava ZEČEVIĆ, Muharem ZEČEVIĆ, Hamid ZEČEVIĆ, Mesud ZEČEVIĆ, Zada SIVRO, Hilmo ZEČEVIĆ, Ejub ZEČEVIĆ, Nevreza ODOBAŠIĆ, Ševko ODOBAŠIĆ, Asim ĐUHERIĆ, Mujo ŽILIĆ, Fahir ŽILIĆ, Zijad ŽILIĆ, Rasema HUSKIĆ, Zijad HUSKIĆ, ISLAMIC COMMUNITY KOTORSKO, Ševko SIVČEVIĆ, Razija OMERAGIĆ, Selim ŽILIĆ, Aziz OMIČEVIĆ, Husein BEČIĆ, Azrudin ZEČEVIĆ, Hazim MRKONJIĆ, Hanifa SIVČEVIĆ, Ramiz GLIBOVIĆ, ISLAMIC COMMUNITY BOARD KOTORSKO, Rasim ZEČEVIĆ, Husnija KREMIĆ, Šerifa KOVAČEVIĆ, Halim HADŽIĆ and Atif KOTORIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. PROCEEDINGS BEFORE THE CHAMBER

1. The application was introduced on 15 February 2002. The applicants are all represented by the lawyer Zijad Mehmedagić.

2. The applicants requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent the further exploitation of sand and gravel on the applicants' property. On 5 March 2002, the Chamber ordered the provisional measure requested.

3. On 11 March 2002 the Chamber transmitted the case to the respondent Party in relation to Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention, Article II(2)(b) of the Agreement and Article 5(e)(i) of the Convention on the Elimination of All Forms of Racial Discrimination. On 5 April 2002 the Chamber received the respondent Party's observations. On 13 May 2002 the Chamber received the applicant's observations in response to the respondent Party's observations.

II. FACTS AND SUBMISSIONS

4. The applicants, who are of Bosniak origin, allegedly own one or several plots of land near Kotorско, the Municipality Doboj, the Republika Srpska, which they used for agriculture before they left during the armed conflict. The applicants are currently not in possession of those plots of land. They claim that sometimes after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina on 14 December 1995 the Municipality Doboj issued permits for the exploitation of gravel and sand on those plots of land to several natural and legal persons. They also claim that decisions of the municipality are final and enforceable and that the law does not provide for a remedy against them. They claim that the plots of land are in fact exploited and that this exploitation leads to the destruction of their property. This fact allegedly prevents the applicants from returning to their land, which can no longer be used for agriculture.

5. The respondent Party claims that the applicants have failed to prove their ownership over the plots of land in question. The respondent Party also claims that its authorities issued water management approvals for the exploitation of gravel and sand only for areas in the Bosna riverbed but never issued permits to exploit the land the applicants allege to own. Any exploitation of the applicants' alleged property is therefore illegal. The respondent Party is of the opinion that therefore the applicants could have addressed the water resources management inspection for the protection of their alleged property. According to the respondent Party, they failed to do so. In addition the applicants could have initiated court proceedings in accordance with Articles 42, 77 and 78 of the Law on Basic Property Relations for the protection against disturbance of their possessions. As the applicants failed to do so, the respondent Party is of the opinion that the case is inadmissible for non-exhaustion of domestic remedies.

6. On 1 April 2000 the applicants addressed in writing the Inspection for Water Resource Management and Forestry Doboj Municipality. They have not received any response. On 22 August 2000 they addressed in writing the Doboj Municipality Land Property Inspection, also with no success.

7. A report of the Inspector for Water Resource Management and Forestry for the period from 1 January 2001 to 30 June 2001, submitted by the respondent Party, established that in fact exploitation of the land in question took place. The Inspector for Water Resource Management and Forestry ordered to stop any further exploitation. However, according to the submissions of the applicants, this order did not prevent the exploitation from continuing.

III. RELEVANT DOMESTIC LAW

Law on Basic Property Relations (“Official Gazette SFRY” nos. 6/80 and 36/90)

8. Article 42 provides:

“If an owner or a presumed owner is disturbed by a third person for no reason and the disturbance does not consist of a misappropriation of movable property, the owner or the supposed owner may request that such disturbance shall be stopped.

When the disturbance referred to in paragraph 1 of this Article causes a damage, the owner is entitled to claim compensation for damages pursuant to the general rules on compensation for damages.

The right to file an action under paragraph 1 of this Article is not subject to any statute of limitation.”

9. Article 77 provides:

“ Court protection from disturbance of possessions or from seizure of possessions may be sought within 30 days of the acknowledgement of the disturbance and the identity of the perpetrator and not later than one year after the disturbance started.”

10. Article 78 provides:

“The court shall offer protection which reflects the last state of the possessions and taking into account the disturbance occurred. The right to possessions, the legal basis of the possessions or *bona fide* of the possessor shall have no influence on the court protection.

Any possessor who acquired the possessions by force, surreptitiously or by abuse of trust also has the right to protection except against the person from whom he acquired the possessions in such a manner, unless the time limits under Article 77 of this Law have expired since the disturbance occurred.”

IV. OPINION OF THE CHAMBER

11. 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”

12. The Chamber notes that the applicants unsuccessfully addressed the Inspector for Water Resource Management and Forestry, Dobož Municipality, and the Dobož Municipality Land Property Inspection. The Chamber further notes that the applicants could not initiate court proceedings in accordance with Articles 77 and 78 of the Law on Basic Property Relations as they are not in possession of the plots of land in question.

13. However, the Chamber also notes that the applicants, who allege to be owners of the land in question, failed to initiate court proceedings to protect their property against the alleged destruction and exploitation in accordance with Article 42 of the Law on Basic Property Relations. Article 42 of the Law on Basic Property Relations protects the rights of owners against disturbances. The applicants have not shown that this remedy would have been ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicants have not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

14. The Chamber will withdraw its order for a provisional measure with immediate effect.

V. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE and

WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE WITH IMMEDIATE EFFECT.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel