



DECISION ON ADMISSIBILITY

Case no. CH/02/9796

Fata and Hakija DŽOZO

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 November 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. INTRODUCTION

1. The application was introduced on 27 March 2002. The applicants requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent the execution of the decision of the Municipal Court I Sarajevo of 27 April 2001 ordering that the applicants reconstruct part of a canal passing through their plot, thereby enabling Z.H. to be supplied with water in her house. On 6 May 2002, the President of the Second Panel decided not to order the provisional measure requested.

II. FACTS AND COMPLAINTS

2. The applicants are the owners of a plot, located at ulica Urijan Dedina no. 32 in Sarajevo. On 19 January 1998 the applicant's neighbor Z.H. built a water canal that passed through their plot. The applicants removed the part of the canal on their plot, arguing that it was illegal since they did not consent to it.

3. On 4 February 1998 Z.H. filed a lawsuit before the Municipal Court I in Sarajevo against the applicants based on the removal of part of the canal. On 27 April 2001 the Municipal Court issued its decision establishing that the applicants had disturbed Z.H.'s peaceful possession of the canal and ordered "*restitutio in integrum*" at their own expense. It ordered the applicants to reconstruct the part of the canal passing through their plot, thereby enabling Z.H. to be supplied with water in her house, and to compensate Z.H. for her expenses in the proceedings in the amount of KM 696. The applicants filed an appeal against the decision to the Cantonal Court in Sarajevo; however, this appeal was rejected on 17 August 2001.

4. On 15 October 2001 the Municipal Court I in Sarajevo, pursuant to its decision of 27 April 2001, issued a procedural decision on execution against the applicant (as the debtor). On 27 November 2001 the applicant filed an objection against that procedural decision. The Municipal Court I in Sarajevo, by its procedural decision of 11 February 2002, rejected that objection as ill-founded.

5. In their application to the Chamber, the applicants complain that their rights under Article 6 and Article 1 of Protocol No. 1 to the European Convention on Human Rights have been violated. They consider that Article 6 is applicable because the courts wrongfully interpreted basic civil law principles and failed to follow, in particular, Article 11 of the Decision on Water Supply and Sewage System ("Official Gazette of N. Grad" no. 8/84). As to the violation of Article 1 of Protocol No. 1 to the Convention, the applicants' representative states that the courts may allow a third person to connect to the water supply network only if there is no city network to connect to, but that in this case, a city network exists. He states that the right to peaceful enjoyment of possessions is a much stronger right than the right to utilise another person's water supply connection, even if it is much closer, because a city network exists and because the will of an individual should be respected.

III. OPINION OF THE CHAMBER

A. The applicable rule

6. 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."

B. Specific reasoning and conclusion

7. The Chamber notes that the applicants complain that both the Cantonal and Municipal Courts misapplied the law in their case. 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 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. 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 insofar as Article 6 of the Convention is concerned.

8. As to the alleged violation of Article 1 of Protocol No. 1, the Chamber notes that it appears that the authorities of the respondent Party were acting "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest", as allowed by paragraph 2 of Article 1 of Protocol No. 1. The applicants have failed to show that the authorities acted contrary to the law or contrary to the general interest. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under this provision. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement in this part. The Chamber therefore decides to declare the application inadmissible insofar as Article 1 of Protocol No. 1 to the Convention is concerned as well.

III. CONCLUSION

9. 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