



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/9973**

**Slavko BENCUN**

**against**

**THE FEDERATION 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## **I. FACTS AND COMPLAINTS**

1. The applicant lived in a joint household with his father in Gojakovac. In 1986 the applicant's father was allocated an apartment in Zenica. The applicant states that he moved in the apartment in Zenica in 1986. Due to formal mistakes, the applicant never registered his new address but remained registered at his previous address. In 1997 the applicant's father died.
2. On 12 June 1997 the applicant applied to the Department for General Administration and Housing Affairs of the Zenica Municipality to issue a procedural decision as a substitute for a contract on the use of the apartment. On 21 September 1999 the Department for General Administration and Housing Affairs of the Zenica Municipality issued a procedural decision rejecting the applicant's request.
3. On an unknown date, the applicant filed an appeal against this decision. On 24 December 1999 the Ministry for Urbanism, Physical Planning and Environment rejected the applicant's appeal. The Ministry found that the applicant had not lived with his father in a permanent household and until his father's death he was registered at a different address.
4. On 9 February 2000 the applicant initiated an administrative dispute before the Cantonal Court in Zenica against the Ministry for Urbanism, Physical Planning and Environment. On 26 June 2000 the Cantonal Court in Zenica issued a judgment rejecting the applicant's complaint as ill-founded.
5. The applicant also filed an appeal against this judgment to the Supreme Court of the Federation of Bosnia and Herzegovina. On 4 October 2001 the Supreme Court issued a judgment by which the applicant's appeal was rejected. The judgment of the Supreme Court states that the applicant was working in Nigeria at the time his father died.
6. The applicant argues that the Supreme Court wrongly established the facts in his case. The applicant complains that his rights guaranteed under Article 6 and Article 8 to the European Convention on Human Rights have been violated.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

7. The application was introduced to the Chamber on 16 April 2002 and registered on the same day. The applicant is represented by Suno Kovačević, a lawyer.
8. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to forbid the allocation on permanent use or the sale of the apartment in question until a final decision is reached in this case. On 4 September 2002, the Chamber decided to reject the provisional measure requested.

## **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 Supreme Court wrongly assessed the facts pertaining to his 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 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 court 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.

**IV. CONCLUSION**

11. 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