



DECISION ON ADMISSIBILITY

Case no. CH/03/13033

Mara JURIĆ

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 21 February 2003 and registered on the same day. The application concerns the applicant's request to terminate an easement right that has been established in favour of another person.

1. 2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to forbid the Government of the Brčko District, the Department for Public Register, to perform any survey or ordinance-survey on the plot at issue. On 31 March 2003, the Chamber decided not to order the provisional measure requested. On 28 April 2003, the applicant again requested the Chamber to issue an order for a provisional measure. On 5 May 2003, the Chamber decided not to order the second provisional measure requested.

II. FACTS

3. The applicant initiated court proceedings to terminate the easement right that has been established in favour of J.P., the owner of a neighbouring plot of land, to use a dirt road and a passageway through her real property. On 8 November 2001, the First Instance Court of the Brčko District of Bosnia and Herzegovina ("the Court"), issued a judgment refusing the statement of claim in its entirety as ill-founded.

4. On 6 February 2002, the applicant appealed to the Appellate Court in the Brčko District against the First Instance Court's judgment of 8 November 2001. In the aforementioned appeal, the applicant points out that "the first instance court established the factual state in the direction of whether the plaintiffs were using the road at issue for a long time period", which was undisputed among the parties. According to the applicant, among the parties, it was disputed whether the easement right became unnecessary and whether there was another road available to access the plaintiffs' plots.

5. On 20 March 2002, the Appellate Court in the Brčko District issued a judgment refusing the applicant's appeal as ill-founded and confirming the Court's judgment of 8 November 2001.

III. OPINION OF THE CHAMBER

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."

7. The Chamber notes that the applicant complains that the domestic courts wrongly assessed the facts pertaining to her case and misapplied the law. 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. 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

8. 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