



DECISION ON ADMISSIBILITY

Case no. CH/98/1294

R.R.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 February 2000 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. Anders MÅNSSON, 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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent practising as a lawyer in Trebinje, Republika Srpska. He is displaced from the Federation of Bosnia and Herzegovina.
2. Upon his arrival in Trebinje in 1992, he entered into an agreement with a lawyer of Bosniak origin, originally from Trebinje, under which the applicant was entitled to use that lawyer's office and telephone. In January 1998, the telephone was disconnected. The applicant was requested by Telekom Srpske, the telecommunications service provider in the Republika Srpska, to pay a significant sum of money to have the telephone line to the office transferred into his own name and to have it reconnected. After a period of time he entered into a contract with Telekom and paid the amount requested. Subsequently the applicant's telephone was again disconnected and he was requested to pay another, larger, sum of money for it to be reconnected.
3. In February 1998 the applicant agreed with Telekom that he would pay the latter amount in three installments. One of the terms of this agreement was that if he was late in making any of these payments, Telekom would have the right to terminate the agreement and should reimburse any previous payments made to it by the applicant.
4. On 26 June 1998, due to the fact that the applicant was one day late in paying the final installment, the telephone was again disconnected and on 1 July 1998 he was informed by Telekom that, due to his failure to comply with the agreement, it had been terminated.
5. On 22 April 1998 the applicant initiated proceedings before the Court of First Instance ("*Osnovni Sud*") in Trebinje, seeking that it order Telekom to reconnect his telephone. On 31 July 1998 the court ordered Telekom as a provisional measure to reconnect the applicant's telephone within 24 hours. It did not comply with this order and on 28 August 1998 an official of Telekom informed the court that it was not able to comply with the order due to insufficient capacity. On 23 September 1998 the court ordered Telekom to "within ten days initiate proceedings before it against the provisional order issued in the applicant's proceedings on 31 July 1998". According to the information available to the Chamber, Telekom has not yet complied with this order.
6. On 30 October 1998 the court issued its decision on the merits in the applicant's proceedings. It ordered the invalidation of the agreements between the applicant and Telekom and ordered Telekom to reimburse the applicant all sums he had paid under those agreements. It refused the applicant's request that Telekom be ordered to allow him enjoy uninterrupted use of a telephone line. On 3 March 1999 the applicant appealed against this decision to the Regional Court. This appeal is still pending.
7. On 21 September 1999, in separate proceedings initiated by the applicant, the Court of First Instance refused the applicant's request that criminal proceedings be initiated against the director of Telekom.
8. On 13 May 1999 the applicant's telephone was reconnected and he currently enjoys the use of a telephone.

II. COMPLAINTS

9. The applicant alleges that his right to respect for his correspondence, as guaranteed by Article 8 of the European Convention on Human Rights, has been violated. In addition, he claims that his right to freedom of expression, as guaranteed by Article 10 of the Convention, has been violated. He also claims that he has been discriminated against on the basis of the fact that he is a displaced person.

III. PROCEEDINGS BEFORE THE CHAMBER

10. The application was introduced on 4 November 1998 and registered on the same day.

11. On 10 September 1999 the Chamber considered the application and decided to request certain further information from the applicant, which was received on 15 October 1999. On 9 December 1999 the Chamber considered this further information and considered the admissibility of the application.

IV. OPINION OF THE CHAMBER

12. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall take into account whether effective remedies exist at the domestic level and whether the applicant has demonstrated that they have been exhausted. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers to be manifestly ill-founded.

13. The Chamber notes that the applicant's claims essentially relate to his use of a telephone line. On 22 April 1998 the applicant initiated proceedings before the Court of First Instance against Telekom and, on 30 October 1998, the court issued a decision in these proceedings, which the applicant appealed against. His appeal is still pending. The decision of the court found in favour of the applicant on a number of points (see paragraph 6 above). It ordered Telekom to repay him all sums he had paid under the agreements they had concluded. The Chamber also notes that the applicant currently enjoys the use of a telephone. It therefore appears that there are effective remedies available to the applicant against the matters he complains of. In these circumstances a particular burden lies on the applicant to demonstrate that he should not be obliged to exhaust the remedies. The Chamber finds that the applicant has not shown any reason for relieving him of that obligation.

14. The Chamber further notes that the applicant has claimed that he is being discriminated against on the basis of the fact that he is a displaced person. Although the Chamber is aware of the difficulties for an applicant of proving an allegation of discrimination on the ground that he is a displaced person, the applicant has not provided any evidence to support this allegation. Therefore, this allegation must be rejected as being manifestly ill-founded.

15. Accordingly, the Chamber decides not to accept the application, partly because the applicant has not demonstrated that he has exhausted the domestic remedies available to him, nor that they are ineffective, and partly because one complaint is manifestly ill-founded.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel