



DECISION ON ADMISSIBILITY

Case no. CH/98/910

Social Democratic Party of Bosnia and Herzegovina-Municipal Board of the SDP Zenica

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on July 2003 with the following members present:

3

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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 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. On 19 June 1991, the applicant and the Democratic Party of Socialists of Bosnia and Herzegovina – the Main Board of the Zenica Municipal Organisation (DSS Zenica) - concluded and certified a contract on transfer of the disposal right of the business premises of the DSS Zenica, located at Masarykova Street 48 in Zenica. On the basis of this contract, the First instance Court in Zenica issued a procedural decision on 14 August 1992 allowing registration in the Land Books of the disposal right in favour of the applicant.

2. However, on 12 May 1993, the Inter-Municipal Public Attorney's Office, as legal representative of the Zenica Municipality, submitted a complaint before the First Instance Court in Zenica requesting the contract to be quashed and the Land Book to be returned to its state before the contract was concluded.

3. During the court proceedings a number of decisions were issued by the First Instance Court in Zenica and the Higher Court in Zenica. On 15 September 1995, the First Instance Court in Zenica issued a judgment establishing that the contract of 19 June 1991 was null and void, and that in the Land Book entry no. 3488 of the Cadastral Municipality of Zenica, the situation before the enforcement of the procedural decision of the First Instance Court in Zenica of 14 August 1992 should be established. The reasoning of the judgment states that the parties concluding the contract in dispute had no capacity as legal persons (entities) and the contract was contrary to the provisions of the Law Amending the Law on Transfer of Real Estates (OG SR BiH nos. 22/91 and 21/92).

4. On 17 December 1997, the Cantonal Court in Zenica rejected the applicant's appeal and confirmed the first instance judgment of 15 September 1995. On 9 July 1998, the Supreme Court of the Federation of Bosnia and Herzegovina rejected the request for review (*revizija*) submitted by the applicant against the first instance judgment.

5. On 20 October 1998, the Inter-Municipal Public Attorney's Office in Zenica sent a letter to the Municipal Secretariat for General Administration in Zenica inviting it, as the competent Municipal organ, to issue a procedural decision on vacation of the business premises the SDP used or rented to third parties.

6. On 17 March 2003, the applicant's lawyer informed the Chamber that the factual situation regarding the use of the building in dispute remains unchanged for the period since the application was submitted. In other words, the applicant uses the building for its needs and rents part of it to third parties. However, the lawyer further stated that the problem of interference with the peaceful enjoyment of the applicant's possessions reflects in fact the deletion of its right of disposal in the Land Books and registration of this right in favour of the Zenica Municipality without valid grounds.

II. PROCEDURE BEFORE THE CHAMBER

7. The application was submitted to the Chamber on 31 August 1998, and registered on the same date.

8. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent its possible eviction from the building in question. On 14 October 1998, the Chamber decided not to order the provisional measure requested.

9. On 14 February 2003, the Chamber sent a letter to the applicant requesting it to inform the Chamber on developments in the case since 13 November 1998, when the Chamber received the applicant's previous letter. The applicant responded on 17 March 2003.

III. OPINION OF THE CHAMBER

10. 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.”

11. The Chamber notes that the applicant complains that the courts wrongly assessed the facts pertaining to its 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

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber