



DECISION ON ADMISSIBILITY

Case no. CH/99/2327

Momčilo KNEŽEVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in Plenary session on 11 October 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
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 Articles VIII(2) and XI of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant, who is of Serb ethnic origin and lives in Banja Luka in the Republika Srpska, purchased business premises in Banja Luka, ulica Njegoševa in 1991. In the business premises, soon after the sale, dampness appeared on all the walls. The applicant requested that the seller, the “Banja Luka” Housing Cooperative from Banja Luka, and the constructor, the Company “Vrbas” from Laktaši, eliminate the dampness from the business premises, but they refused to do that.

2. On 13 January 1992 the applicant initiated proceedings before the Municipal Court in Banja Luka against the seller and the constructor. On 6 April 1995 the Municipal Court issued a decision in favour of the applicant and against the Company “Vrbas”, but rejected in its entirety the claim against the “Banja Luka” Housing Cooperative.

3. On an unspecified date the applicant lodged an appeal against the first instance judgment. On appeal, the Higher Court of Banja Luka, by judgment of 25 January 1996, found in favour of the applicant against both defendants and ordered the Housing Cooperative and the constructor jointly to pay damages to the applicant for the defective business premises.

4. By a judgment dated 30 June 1998, the Supreme Court of the Republika Srpska accepted the appeal of the “Banja Luka” Housing Cooperative and altered the judgment of the Higher Court. The Supreme Court confirmed the judgment of the Municipal Court insofar as the claim against the “Banja Luka” Housing Cooperative had been rejected. The Supreme Court did not accept Mr. Knežević’s argument that the two defendants had equal status and responsibility.

5. On 14 July 1999 the applicant filed an appeal to the Constitutional Court of Bosnia and Herzegovina against the judgment of the Supreme Court of the Republika Srpska dated 30 June 1998 insofar as it concerned the “Banja Luka” Housing Cooperative. On 19 August 2000 the Constitutional Court of Bosnia and Herzegovina issued a decision rejecting the appeal. It reasoned that the Supreme Court correctly applied the applicable legal provisions in the case, and it also found no indication that the proceedings were conducted in an unfair manner. The Constitutional Court, therefore, found no violation of Article 6 of the European Convention on Human Rights in that case. With regard to Article 1 of Protocol No. 1 to the Convention, which protects the right to peaceful enjoyment of property, the Constitutional Court noted that the case concerned proceedings between private parties concerning the rights of the buyer and the seller under a contract of sale and that it was decided by the domestic courts on the basis of the rules of civil law. The Constitutional Court found no element in those proceedings that would indicate that the right to property, as protected by Article 1 of Protocol No. 1 to the Convention, had been violated in the proceedings.

II. COMPLAINTS

6. The applicant complains that his right to a fair hearing, as protected by Article 6 of the Convention, and his right to property, as protected by Article 1 Protocol No. 1 to the Convention, have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was lodged with the Chamber on 12 August 1999 and registered on the same day. The applicant is represented by Mr. Milorad Đukić, an attorney practising in Banja Luka. On 20 September 1999, the applicant submitted a compensation claim in amount of 266,352 DM.

IV. OPINION OF THE CHAMBER

8. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. The question arises in this regard whether it should accept an application concerning a

matter which had been brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber and which was decided by the Constitutional Court on 19 August 2000.

9. The Chamber recalls that pursuant to Article II.2 of the Constitution of Bosnia and Herzegovina, set forth in Annex 4 to the General Framework Agreement, the rights and freedoms enumerated in the Convention and its Protocols apply directly in Bosnia and Herzegovina.

10. Pursuant to Article VI.3.b of the Constitution, the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgment of any other court in Bosnia and Herzegovina. The “issues under this Constitution” in Article VI.3.b include alleged violations of human rights, as guaranteed by Article II of the Constitution, and the Constitutional Court has jurisdiction under Article VI.3.b to determine such issues upon appeal against the decisions of other courts.

11. The Chamber notes that in the specific circumstances of the present application its jurisdiction overlaps with that of the Constitutional Court. The application to the Chamber concerns the same matter and involves the same parties as the case already decided by the Constitutional Court. Neither the Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement nor the Agreement in Annex 6 thereto establish a hierarchy between the two judicial bodies or otherwise regulate the relationship between their respective jurisdictions. The Chamber recalls that the Constitutional Court has held that Article VI.3.b of the Constitution does not give it jurisdiction to review decisions of the Human Rights Chamber (see case no. U 11/98, Decision of the Constitutional Court of 26 February 1999, Decisions 1997-1999).

12. Under Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept and in what priority to address them. As the Chamber noted in the case of *Sijarić v. Federation of Bosnia and Herzegovina* (case no. CH/00/4441, decision on admissibility of 6 June 2000, paragraph 13, Decisions January – June 2000), the wording of this provision does not exclude that the Chamber, in so doing, may rely on grounds other than those set forth in the criteria listed in subparagraphs (a) through (d) of Article VIII(2).

13. In the light of these considerations and recalling that the applicant brought the matter before the Constitutional Court before he lodged his application with the Chamber, the Chamber finds it appropriate in the present case to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept the application.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber