



DECISION ON ADMISSIBILITY

Case no. CH/01/7176

Slavko KOVAČEVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 July 2001 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. Peter KEMPEES, 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. INTRODUCTION

1. The application was introduced on 23 May 2001 and registered on the same date. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent the enforcement on the applicant's property. On 8 June 2001, the Chamber decided not to order the provisional measure requested.
2. The applicant complains of a decision of the Supreme Court of the Republika Srpska, dated 22 December 2000, challenging his standing to be sued.

II. OPINION OF THE CHAMBER

3. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. In the present case the Chamber has considered whether it should accept an application concerning a matter which has been brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber and is pending before that Court.

4. 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 European Convention and its Protocols apply directly in Bosnia and Herzegovina.

5. Pursuant to Article VI.3.b of the Constitution the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgement of any other court in Bosnia and Herzegovina. These "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.

6. 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 pending before the Constitutional Court.

7. Under Article VIII(2) of the Agreement:

"The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:
(a)..."

As the Chamber noted in the case of *Sjarić v. Federation of Bosnia and Herzegovina* (Case No. CH/00/4441, decision on admissibility of 6 June 2000, Decisions January-June 2000, paragraph 13), "the wording of this provision clearly implies that the admissibility criteria in sub-paragraphs (a) to (d) of Article VIII(2), i.e. exhaustion of domestic remedies, the six-month rule, *res judicata*, incompatibility with the Agreement, manifestly ill-founded and *lis alibi pendens*, are not the only criteria it may apply in deciding whether to accept a case. Accordingly, under Article VIII(2) the Chamber enjoys a certain discretion not to accept cases on grounds other than those expressly spelled out in that provision."

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

III. CONCLUSION

9. For these reasons, the Chamber, unanimously,
DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel