



DECISION ON ADMISSIBILITY

CASE No. CH/00/5098

M.S.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 14 June 2000 and registered on the same day. The applicant requested the Chamber to issue a provisional measure ordering the respondent Party to forbid any further construction on his land and to restore the land to its former state. On 4 July 2000 Panel II ordered a provisional measure prohibiting any further construction on the part of the applicant's lot signed k.č. (cadastral lot) 2623/2, k.o. (cadastral municipality) Bijeljina, for two months pending the outcome of proceedings initiated by the applicant on 29 May 2000 before the Department for Urban Planning. The provisional measure expired on 4 September 2000.

2. The applicant complains of a decision of 5 May 2000 issued by the Department for Housing and Communal Affairs, Urban Planning and Construction in Bijeljina approving the building of a residential and business building affecting his plot no. 2623/2 at Majevička ulica broj 98 in Bijeljina in the width of approximately 2 meters. The applicant alleges that this decision was based on a decision of the Cadastral Office of Bijeljina which without his approval and therefore illegally changed the boundary line between his plot and plots 2621/2622 to his disadvantage. The applicant states that the building, now constructed, occupies approximately 1 meter on his plot.

II. OPINION OF THE CHAMBER

3. The Chamber has examined the application and finds that the applicant failed to use domestic legal remedies available to him. The applicant could have, among other things, submitted a request for defining the boundary line to the First Instance Court in Bijeljina pursuant to Articles 169, 172 of the Law on Extrajudiciary Procedure (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, no. 10/89). The applicant could also have filed a law suit in the First Instance Court requesting provisional measures pursuant to Article 77 of the Law on Fundamental Property Rights Relations (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 6/80 and 36/90) in combination with Article 442 of the Law on Civil Procedure (Official Gazette of Republica Srpska, no. 17/93 and 32/94). The Office of the High Representative in Bijeljina on 19 June 2000 advised the applicant to bring his case to the court if no agreement with the competent local authorities could be reached. The applicant has therefore not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement. It follows that the application must be rejected.

III. CONCLUSION

4. For the above reasons, the Chamber unanimously

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel