



DECISION ON ADMISSIBILITY

Case No. CH/01/7558

Jasmina ZEKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 November 2001 with the following members present:

Mr. Jakob MÖLLER, Acting President
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
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 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 1 June 2001. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent her eviction from her business premises in Sarajevo, Alipašina no. 6. On 8 June 2001 the Chamber decided to order the provisional measure requested.

2. The applicant complains of a conclusion of the Municipality Centar Sarajevo ordering her eviction from the business premises. The legal ground for the conclusion is a decision of the Commission for Real Property Claims of Displaced Persons and Refugees, establishing that Mr. S.H. was, in 1992, a *bona fide* possessor of temporary business premises built on the same location as the applicant's business premises. The applicant built her business premises after previously obtaining a building approval for the permanent building, issued by the Municipality Centar Sarajevo in January 1996, and paying compensation to Mr. S.H. The applicant registered her ownership over the business premises with the Land Registry in the Municipal Court I Sarajevo.

3. On 26 April 2001 the applicant brought a civil action before the Municipal Court I Sarajevo. She requested the Municipal Court to issue a provisional measure suspending the forcible execution of the Municipality's conclusion. She also proposed to the court to establish her right of property over the business premises in question.

4. On 8 June 2001, acting upon the applicant's civil action, the Municipal Court I Sarajevo granted a provisional measure and suspended the applicant's eviction. It considered that the proposal for the issuance of a provisional measure was founded, and that the measure was necessary in order to prevent irreparable damage to the applicant, for the purpose of Article 433 of the Law on Civil Proceedings. This provisional measure stays in force until the court proceedings upon the claim of the applicant are finalised.

II OPINION OF THE CHAMBER

5. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept ... and shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted" The Chamber finds that the applicant's complaints are premature as the proceedings are still pending before the competent domestic authorities. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

6. Considering, that the Municipal Court has issued an analogous order, the Chamber will withdraw its order for a provisional measure with immediate effect.

III CONCLUSION

7. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE and

WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE WITH IMMEDIATE EFFECT.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President
of the Second Panel