



DECISION ON ADMISSIBILITY

Case no. CH/ 02/8949

Sabit GOGIĆ, Zlata ĆERIMOVIĆ, Fadil VEHAB, Hamza VEHAB, Jusuf VEHAB and Nusret VEHAB

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

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 19 February 2002. The applicants Sabit Gogić, Zlata Čerimović, Fadil Vehab, Hamza Vehab, Nusret Vehab and Jusuf Vehab, are represented before the Chamber by Sabit Gogić. The applicants requested that the Chamber order the respondent Party, as a provisional measure, to enable the applicants to have access to their property which is allegedly made impossible by facilities of the company "Crni vrh" built approximately three years ago and the reconstruction of the Tešanj-Noví Šeher road and to order the respondent Party to remove the facilities of the company "Crni vrh". On 4 September 2002, the Chamber decided not to order the provisional measure requested.

2. The applicants allegedly own property which they used to access by way of a bridge which had been built in 1979 on socially owned property. On 6 May 1997 the Municipality Tešanj allocated undeveloped building land in state ownership to the company "Crni vrh", including the bridge. On 29 September 1997 the Tešanj Municipal Council gave its approval to construct a business facility on the land. It thereby changed an earlier approval which provided for different dimensions of the facility.

3. The applicants complain about their inability to access their alleged property due to the business facility of the company "Crni vrh" as well as the ongoing reconstruction of the Tešanj-Noví Šeher road without substantiating the allegations any further. The applicants claim that as a result they have suffered moral and material damage and in particular cannot conduct their business activities.

4. The applicants allege that during the course of the procedure preliminary to the construction of the facility and the reconstruction of the road, statements of approval were falsified and numerous procedural decisions issued and altered without the applicants' knowledge. The applicants also claim that the facility was not built in accordance with the issued procedural decisions.

5. The applicants allege to have unsuccessfully applied to the inspection services at municipal and cantonal level, the Cantonal Ministry of Traffic and Communications, the Cantonal Ministry of Interior and the Cantonal Government. On 8 August 2000 the applicants appealed against the silence of administration to the Ministry for Traffic and Communications. It appears, however, that the applicants failed to apply to the municipal organ for the establishment of the right of easement if their alleged property is indeed only accessible via the bridge allocated to the company "Crni vhr" or to initiate proceedings before a competent court, in case the municipal organ does not grant them the right to easement.

6. The applicants claim that throughout their endeavours to resolve their problem officials of the municipal and cantonal organs insulted them. Allegedly the director the "Crni vhr" company threatened to kill the applicants.

II. OPINION OF THE CHAMBER

7. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted"

8. The Chamber notes that the applicants made several applications to domestic organs to remedy the alleged violation of their rights. In particular, they allegedly applied to the inspection services at municipal and cantonal level, the Cantonal Ministry of Traffic and Communications, the Cantonal Ministry of Interior and the Cantonal Government. The Chamber further notes that the applicants on 8 August 2000 filed a request against the silence of administration to the Ministry for Traffic and Communications. The Chamber, however, notes that the applicants failed to apply to the municipal organ for a right to easement and, in case that this application was unsuccessful, to initiate an administrative dispute before the courts. The applicants have not shown that this remedy would have been ineffective and it does not appear so to the Chamber. Accordingly, the Chamber

finds that the applicants have not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel