



DECISION ON ADMISSIBILITY

Case no. CH/02/12267

Ifeta BRKIĆ

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 January 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 20 September 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent the pulling down of facilities she constructed to replace her destroyed apartment. On 8 October 2002, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

2. The applicant is the occupancy right holder over an apartment formerly situated at Bratstva Jedinstva no. 62 in Brčko (today: R.Dž. Čauševića Str. Bb). During the armed conflict the building in which the applicant's apartment was located was completely destroyed.

3. On 2 April 1999 the applicant submitted a request for repossession of the above-mentioned apartment. On 4 November 1999 the Ministry for Refugees and Displaced Persons of the Republika Srpska, Brčko Section, issued a procedural decision confirming that the applicant was the occupancy right holder over the apartment in question and that she was allowed to repossess it.

4. On 2 May 2000 the Commission for Real Property Claims of Refugees and Displaced Persons (CRPC) issued a decision confirming the applicant's occupancy right over the apartment in question.

5. On 19 September 2001 the applicant submitted a request to the Department for Urbanism, Property Relations and Economic Development of the Brčko District seeking urban plan approval for construction of a residential facility as a substitution, *i.e.* a replacement apartment on the site of the apartment destroyed during the armed conflict.

6. On 25 February 2002 the Department for Urbanism, Property Relations and Economic Development of the Brčko District issued a conclusion rejecting the applicant's request. The reasoning of the procedural decision states that, pursuant to the Brčko District Statute, the owner of the destroyed facility is the Department for Public Affairs of the Brčko District Government of Bosnia and Herzegovina, which is now responsible for maintenance of the public housing fund, and as such, it may file a request for the issuance of urban plan approval for construction of the housing facility in question.

7. The applicant filed an appeal against the mentioned conclusion with the Appellate Commission of the Brčko District Government of Bosnia and Herzegovina.

8. On 12 March 2002, pursuant to an oral request to the Brčko District housing authority, the applicant filed another appeal with the Appellate Commission of the Brčko District Government of Bosnia and Herzegovina against the silence of the administration stating that the housing authority of the Brčko District has failed to take measures to ensure the urban plan approval for the reconstruction of her apartment. In her appeal, she stated that she had made an oral request to the Brčko District housing authority, but had received no response in more than 30 days. The applicant requested the Appellate Commission to issue a decision obliging the housing authority to ensure the documentation for the purpose of reconstruction of the building in which her apartment was located before the armed conflict. She further states that she would be willing to construct the mentioned apartment with her own funds, but she needs the necessary "documentation requested".

9. On 20 August 2002 the Inspector for Urbanism and Construction of the Brčko District of Bosnia and Herzegovina, having inspected the construction of buildings, issued a procedural decision ordering the applicant to immediately suspend her construction activities as she has no approval for the construction. The procedural decision further states that the construction activities are only temporarily suspended until the building licence is provided. The procedural decision reasons that the applicant started the construction without having previously obtained a building license.

10. The applicant states that she has not filed any appeal against the procedural decision of 20 August 2002 because an appeal has no suspensive effect on the procedural decision.

11. On 9 September 2002 the Urban-Building Inspector, having inspected the construction of buildings, issued a procedural decision ordering the applicant to remove the constructed parts of the facility which were built after the suspension of the construction activities. The procedural decision established a 7-day deadline upon receipt of the procedural decision to remove the constructed items. An appeal against the decision has no suspensive effect.

III. COMPLAINTS

12. The applicant alleges a violation of Articles 6 and 14 of the European Convention on Human Rights, as well as a violation of Article 1 of Protocol No. 1 to the Convention. The applicant also alleges a violation of her right to return under Annex 7 of the General Framework Agreement.

IV. OPINION OF THE CHAMBER

13. 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 (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right to petition. ...”

14. The Chamber notes that the applicant’s complaints are premature as the proceedings are still pending before the Appellate Commission of the Brčko District Government of Bosnia and Herzegovina. Moreover, the applicant has not filed any appeals against the procedural decisions of the Inspector for Urbanism and Construction or the Urban-Building Inspector. The applicant has not shown that this remedy is ineffective and it does not appear so to the Chamber. 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.

15. To the extent the applicant complains that she has been ordered to pull down her construction to replace her destroyed apartment, the Chamber notes that the procedural decision of the Inspector for Urbanism and Construction of the Brčko District of Bosnia and Herzegovina, dated 20 August 2002, ordered the temporary suspension of the construction activities, pending the issuance of the building licence because the applicant has no right under domestic law to construct a replacement building prior to the issuance of urban plan approval and a building license. None the less, the applicant started the construction without having previously obtained urban plan approval and a building license. In these circumstances, the Chamber finds that the facts complained of do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application in this respect is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible on this ground.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

President of the First Panel

(signed)
Michèle PICARD