DECISION ON ADMISSIBILITY

Case no. CH/02/11095

Spomenko JOVIĆ

against

THE FEDERATION OF BOSNIA AND HERCEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 February 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I.   INTRODUCTION

1.   This case concerns the applicant's attempts to obtain compensation for damage to his house.

II.   FACTS

2.   The applicant is the owner of the real estate registered as cadastral lot no. 776/5 under the old survey, corresponding to cadastral lot no. 724/2 under the new survey, entered in the land registry no. 780, Cadastre Municipality Smrdin, Maglaj. The real estate consists of a lot and house.

3.   In 1992 the applicant left his property due to the armed conflict. After the armed conflict ceased, he initiated proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") in order to repossess his property. On 25 July 2000, the CRPC issued a decision establishing the applicant's right to repossess his pre-war property.

4.   From 1995 until 2000, the applicant's house was used by special forces "El mudžehedin", under the control of Abu Hamza. In 2000, after an intervention by SFOR and the local police, these special forces vacated the applicant's house. The applicant complains that the special forces totally destroyed his house and that it will cost approximately 100,000 Convertible Marks (KM) to repair it.

5.   Based on the information in the case file, it appears that the applicant has not initiated any proceedings before the domestic courts to attempt to obtain compensation for the damage to his house.

III.   PROCEEDINGS BEFORE THE CHAMBER

6.   The application was introduced before the Chamber on 30 May 2002 and registered on the same day. The applicant is represented by Jezdimir Spasojević, a lawyer. The applicant requests the Chamber to issue a decision ordering the respondent Party to pay him compensation in the amount of 100,000 KM for the damage to his house, plus compensation for lawyer's fees.

IV.   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 applicant has failed to initiate any proceedings before the domestic courts in order to obtain compensation from the persons allegedly responsible for causing the damage to his house. The applicant states "that it is an illusion" to start such proceedings because some people have told him that his chances for success before the domestic courts are very small. This statement, without any supporting evidence, is insufficient to show that the remedy provided by the domestic courts is ineffective, within the meaning of Article VIII(2)(a) of the Agreement, and absent evidence to the contrary, it does not appear to be ineffective to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted effective remedies. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

9.   For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)   (signed)
Ulrich GARMS   Michèle PICARD
Registrar of the Chamber   President of the First Panel