



DECISION ON ADMISSIBILITY

Case No. CH/01/7527

A.K.

against

FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 2003 with the following members present:

Mr. 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. The application was introduced to the Chamber on 23 May 2001 and registered on 24 May 2001. The applicant complains of the proceedings pending before domestic organs in relation to a building license for construction of an additional floor and change of attic space into residential area in the building located at Ulica Safvet-bega Bašagića br. 94, Sarajevo, Federation of Bosnia and Herzegovina ("the building"). The applicant is the owner of one apartment in the building and uses common premises together with five other tenants of the building. The applicant requested the Chamber to order the respondent Party, as a provisional measure to take all necessary steps to prevent any works on construction of apartments in the building until a new decision on the right to build additional floor on the building is issued or until the Chamber issues its decision in the merits of her case. At its session of 3 March 2003 the Chamber decided to reject the request for provisional measures.

2. On 11 April 2000 the Municipality of Stari Grad Sarajevo ("the Municipality") issued a procedural decision establishing that the Fund of the Sarajevo Canton for Construction of Apartments for Members of Families of Šehids and Fallen Fighters, War Veterans, Demobilised Soldiers and Exiled Persons ("the Fund") has a priority right to construct additional floor on the building and change the attic space into two attic apartments. On 14 March 2001 the Municipality supplemented its procedural decision of 11 April 2000 as to the right of owners/occupancy right holders to compensation for lost useful space of the building. According to the Municipality, they are not entitled to compensation for lost useful space of the building because the lost value should be compensated by construction of new attic space, with modern and more quality construction material, which increases the value of the building.

3. On 11 May 2001 the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo against the procedural decision of 14 March 2001. The Cantonal Court rejected the applicant's complaint of 17 January 2002. The applicant filed an appeal to the Supreme Court of the Federation of Bosnia and Herzegovina against the judgement of the Cantonal Court of 4 March 2002. The proceeding before the Supreme Court is still pending.

4. The applicant alleged violations of her rights guaranteed under Articles 6 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention. She submits that the Law on Construction of Additional Floor on the Building, Construction of Attic Apartment and Apartments in Common Premises of Residential and Business-Residential Buildings (Official Gazette of Sarajevo Canton, no. 17/99) is not in accordance with the mentioned provisions of the Convention and of Protocol No. 1 to the Convention.

II. OPINION OF THE CHAMBER

5. 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...".

6. The Chamber notes that the proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina, initiated by the applicant against the judgement of the Cantonal Court, are still pending. Accordingly, the Chamber finds the applicant has not exhausted all the remedies as required under Article VIII(2)(a) of the Agreement. Therefore, the Chamber decides to declare the application inadmissible.

III. CONCLUSION

7. 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