



DECISION ON ADMISSIBILITY

Case no. CH/02/12283

Amir HUJDUR

against

THE 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:

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. The application was submitted to the Chamber on 25 September 2002.
2. The subject matter of the application is the applicant's complaint pertaining to the actions of the competent administrative bodies in resolving property relations with regard to the cadastral lot no. 373/1 tilled field "Ada" registered in P.L. 590 KO Miljanovci Donji, Jelah, Tešanj Municipality.

II. FACTS

3. The applicant alleges that he inherited from his late father the ownership right of the lot in question. He states that the lot bordered with the Usora river and it did not lean at any point against the land in social ownership. During a long period the Usora river accumulated earth on his lot, which caused a substantial increase of the surface of the lot concerned. When he realised that the surfaces of his land as reflected in the original and the new survey did not match, he requested from the competent bodies that the surfaces be harmonised and the ownership right to the part of land created by the river detritus be registered in his favour.
4. On 27 September 2001 the Department for Geodetic, Property-Legal Affairs and Cadastar ("the Department") issued a procedural decision accepting the applicant's request and made the correction of the error of the new cadastral survey of the lot no. 373/1 tilled field "Ada" of 1913 m², entered into P.L. 590 KO Miljanovci Donji. The correction was made by changing the shape and the surface of the lot concerned thus increasing its surface of 420 m², at the expense of the cadastral lots nos. 372 and 378 entered into PL 173 KO Miljanovci Donji, which are owned by the Public Farm Waters and Roads Tešanj.
5. On 12 October 2001 the applicant filed an appeal against the procedural decision of 27 September 2001. He stated that his lot was moved from the Usora river bed and that a strip of 1214 m² was drawn along the riverbed, which is considered state property. He considers that his lot was illicitly decreased of 1214 m².
6. On 31 December 2001 the Federal Administration for Geodetic and Property-Legal Affairs issued a procedural decision refusing the applicant's appeal. The procedural decision states that no appeal may be filed against this second instance procedural decision, but an administrative dispute may be initiated by lodging an action with the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court").
7. The applicant alleges that he needed 500 KM in order to submit a lawsuit to the Supreme Court. He alleges that he did not lodge the lawsuit because the amount of 500 KM would be an enormous expense for his family.
8. 26 November 2002 the Municipal Council of Tešanj Municipality issued a procedural decision establishing that the reconstruction of the existing water supply system on the Usora river in Jelah was of general interest. Accordingly, an incomplete expropriation, i.e. the establishment of a right of way across part of the real estate in private property, i.e. on the cadastral lot no. 373/1 "Ada", may be initiated to the benefit of Tešanj Municipality.
9. On 9 January 2003 the Administration for Geodetic and Property-Legal Affairs of Tešanj Municipality issued a procedural decision on expropriation, adopting the proposal of the Tešanj Municipality.
10. It seems that the applicant has not appealed the procedural decision on expropriation of 9 January 2003.

III. PROCEEDINGS BEFORE THE CHAMBER

11. In his application the applicant requested that the Chamber orders the respondent Party, as a provisional measure, to forbid the registration of the ownership right to the land to the benefit of the state, i.e. the Tešanj Municipality, which is, according to his allegation, separated from his land and adjoined to “*them*”. On 5 December 2002 the Chamber decided not to order the provisional measure requested and to send the applicant a letter requesting information as to whether he tried to obtain a free legal assistance, and if so, to submit relevant evidence.

12. The applicant replied that he once obtained free legal assistance in Jelah, where a lawyer filled out his application addressed to the Chamber.

13. On 25 December 2002 the applicant sent the Chamber a letter requesting the Chamber to order the Tešanj Municipality bodies to issue a provisional measure stopping all actions of expropriation, i.e. construction and expansion of existing water management system on the river of Usora in Jelah. On 7 February 2002 the Chamber decided again not to order the provisional measure requested.

14. On 26 February 2003 the applicant sent a letter asking the Chamber to issue a final decision adopting his request to join a disputable part of land of 1214 m² to his cadastral lot no. k.č. 373/1, and then to register ownership in his favour. The procedural decision on expropriation of 9 January 2003 was attached to this letter.

IV. OPINION OF THE CHAMBER

15. 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....”

A. Regarding the applicant’s complaints on decrease of his land

16. The Chamber notes that the applicant has not initiated an administrative dispute against the procedural decision of 31 December 2001. Although the applicant states that he could not secure assets in the amount of 500 KM to lodge the lawsuit before the Supreme Court, the Chamber finds that he had a possibility to seek legal assistance. However, from the applicant’s letter it appears that he has not sought legal assistance in this proceeding. Therefore, the Chamber finds that the effective remedies have not been exhausted, as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible in this part.

B. Regarding the expropriation

17. The Chamber notes that on 9 January 2003 the Administration for Geodetic and Property-Legal Affairs of Tešanj Municipality issued a procedural decision on expropriation of the lot concerned. It appears that the applicant has not appealed against this decision. Therefore, the Chamber finds that, also in this respect, the effective remedies have not been exhausted, as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible, too.

V. CONCLUSION

18. 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