



DECISION ON ADMISSIBILITY

Case no. CH/02/10700

Milenko MARTINOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 April 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ

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) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant complains about construction work carried out by his neighbour, Milan GOJIĆ (M.G.), as well as actions his neighbour undertook before the administrative organs of the Republika Srpska and the Supreme Court of the Republika Srpska.

II. FACTS

2. On 27 September 1999, the Secretariat for Physical Planning, Communication and Communal Affairs of the Banja Luka City issued a procedural decision permitting M.G., as the investor, to commence construction work to temporarily change existing ground floor premises at Radoja Domanovića Street no. 23 into business premises, as set out in the urban approval.

3. On 5 September 2000, the Department for Physical Planning of the Banja Luka City (the "Department") issued a procedural decision granting urban approval to M.G. for reconstruction of the ground floor premises and construction of additional two floors at Radoja Domanovića Street no 23.

4. On 15 September 2000, the Department issued a procedural decision and permit to M.G. to use the temporary business premises as a buffet.

5. On 21 August 2001, the applicant lodged an appeal against the procedural decision of the Department of 5 September 2000 for wrongfully establishing the factual background and wrongfully applying the substantive law. On 12 September 2001, the Ministry for Urbanism, Housing and Communal Affairs, Construction and Ecology issued a procedural decision rejecting the applicant's appeal as out of time.

6. On 5 October 2001, the applicant initiated a lawsuit to the Supreme Court of the Republika Srpska for the annulment of the procedural decision of 12 September 2001.

7. On 5 October 2001, the applicant submitted a request for renewal of proceedings to the Department for Physical Planning of the Banja Luka City. It appears that no decision has been issued upon this request.

8. On 2 November 2001, the Department for Physical Planning of the Banja Luka City issued a procedural decision permitting M.G. to reconstruct the existing ground floor premises changing its purpose from housing to business; to construct an addition to the existing ground floor premises; and to construct two additional floors for housing on top of the existing ground floor premises, in accordance with the requirements of the urban permit.

9. The applicant lodged an appeal against this procedural decision of 2 November 2001. On 13 December 2001, the Department for Physical Planning of the Banja Luka City rejected the applicant's appeal as lodged by an unauthorised person.

10. On 27 December 2001 the applicant submitted a request to the Ministry for Urbanism, Housing, Communal Affairs, Construction and Ecology for annulment of the procedural decision of 2 November 2001, according to the right of supervision under Article 264 of the Law on Administrative Procedure.

11. On 25 January 2002, the applicant lodged an appeal against the procedural decision of 13 December 2001 to the Ministry for Urbanism, Housing, Communal Affairs, Construction and Ecology of the Republika Srpska in Banja Luka (the "Ministry"). On 15 February 2002, the Ministry issued a procedural decision rejecting the appeal as ill-founded.

12. On 20 February 2002, the applicant submitted a complaint against the "silence of the administration" in relation to his request for renewal of proceedings (see paragraph 7 above).

13. On 18 June 2002, the Supreme Court of the Republika Srpska issued a judgment in the administrative dispute, rejecting the applicant's lawsuit against the procedural decision of 12 September 2001 as ill-founded.

14. On 28 August 2002, the applicant submitted an appeal to the Constitutional Court of Bosnia and Herzegovina against the judgment of the Supreme Court of the Republika Srpska of 18 June 2002.

III. COMPLAINTS

15. The applicant complains that M.G.'s premises are situated only 1 meter away from his house and that he has been denied the right to participate in the proceedings for the issuance of M.G.'s urban approval. He complains that noise and unpleasant smells are emanating from the catering establishment, which interfere with his right to freely enjoy his home, family life and privacy.

16. The applicant alleges violations of Articles 6 and 8 of the European Convention on Human Rights (the "Convention"), as well as Article 1 of Protocol No. 1 to the Convention.

IV. PROCEEDINGS BEFORE THE CHAMBER

17. The application was submitted on 3 September 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to forbid the construction of M.G.'s facility and to demolish the construction performed according to the contested procedural decisions, since allegedly the construction was carried out without a regulatory plan. On 3 February 2003, the Chamber refused the provisional measure requested.

V. OPINION OF THE CHAMBER

18. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. The question arises in this regard whether it should accept an application concerning a matter that was brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber.

19. The Chamber recalls that pursuant to Article II.2 of the Constitution of Bosnia and Herzegovina, set forth in Annex 4 to the General Framework Agreement, the rights and freedoms enumerated in the Convention and its Protocols apply directly in Bosnia and Herzegovina.

20. Pursuant to Article VI.3.b of the Constitution, the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgment of any other court in Bosnia and Herzegovina. The "issues under this Constitution" in Article VI.3.b include alleged violations of human rights, as guaranteed by Article II of the Constitution, and the Constitutional Court has jurisdiction under Article VI.3.b to determine such issues upon appeal against the decisions of other courts.

21. The Chamber notes that in the specific circumstances of the present application, its jurisdiction overlaps with that of the Constitutional Court. The application to the Chamber concerns the same matter and involves the same parties as the case pending before the Constitutional Court. Neither the Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement, nor the Agreement in Annex 6 thereto, establish a hierarchy between the two judicial bodies or otherwise regulate the relationship between their respective jurisdictions. The Chamber recalls that the Constitutional Court has held that Article VI.3.b of the Constitution does not give it jurisdiction to review decisions of the Human Rights Chamber (see case no. U 11/98, Decision of the Constitutional Court of 26 February 1999, Decisions 1997-1999).

22. Under Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept and in what priority to address them. As the Chamber noted in the case of *Sijarić v. Federation of*

Bosnia and Herzegovina (case no. CH/00/4441, decision on admissibility of 6 June 2000, paragraph 13, Decisions January – June 2000), the wording of this provision does not exclude that the Chamber, in so doing, may rely on grounds other than those set forth in the criteria listed in subparagraphs (a) through (d) of Article VIII(2).

23. In the light of these considerations and recalling that the applicant brought the matter before the Constitutional Court before he lodged his application with the Chamber, the Chamber finds it appropriate in the present case to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept the application. The Chamber therefore decides to declare the application inadmissible.

VI. CONCLUSION

24. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel