



DECISION ON ADMISSIBILITY

Case no. CH/00/4064

**Duda OMERAŠEVIĆ, Mehmed OMERAŠEVIĆ, Ago OMERAŠEVIĆ,
Rasim KALESIĆ, Meliha MUJEZINOVIĆ and Jasminka RUSITI**

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 April 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, 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)(c) of the Agreement as well as Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The six applicants are joint owners with equal shares of a house located in Tuzla and are citizens of Bosnia and Herzegovina. Of them, only Ms. Duda Omerašević and her son Mr. Mehmed Omerašević were residing in the apartment. In October 1998 the Catholic School Centre “Sveti Franjo” submitted an expropriation request to the Department of Geodetic and Property Rights Affairs of the Tuzla Municipality (“the Municipality”) for the applicants’ property.
2. On 14 September 1999 the Municipality issued a decision expropriating the property for purposes of building a Catholic school on the premises. This decision only decided the expropriation, while a separate proceeding was to be commenced to determine compensation for the applicants. There is no information in the record regarding any compensation proceedings.
3. The applicants appealed this decision to the Federal Administration for Geodetic and Property Rights Affairs and on 31 January 2000 that body confirmed the Municipality’s decision.
4. On 24 September 1999 “Sveti Franjo” requested the government of the Federation of Bosnia and Herzegovina to help them gain possession of the property. The government agreed with the request on 14 October 1999. Because of this, the Municipality issued a decision on 3 November 1999 allowing the enforcement of the decision of 14 September 1999. On 24 February 2000 the applicants’ representative informed the Chamber that “Sveti Franjo” had entered into possession of the property. Mr. Mehmed Omerašević was allocated another apartment by the Department for Housing and Utility Affairs and Local Community Affairs of the Tuzla Municipality. Ms. Duda Omerašević is currently residing with her daughter.

II. COMPLAINTS

5. The applicants complain that their right to property has been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 11 February 2000 and registered on 12 February 2000. The applicants are represented by Ms. Amila Farizović-Kunosić from Tuzla.
7. With their application, the applicants asked that for a provisional measure to stop any construction on the premises in question until all the relevant proceedings had been concluded. On 7 March 2000 the Chamber refused the applicants’ request for provisional measures.

IV. OPINION OF THE CHAMBER

8. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted.
9. In this case, the very nature of the applicants’ request for a provisional measure shows that there are still remedies they intend to pursue. More specifically, the applicants may file a claim to the courts under the Law on Administrative Disputes or under the Law on Civil Proceedings. In addition, as the applicants asked that the provisional measure be in force until such time as the domestic proceedings were concluded, they would seem to believe that the remedies are worth pursuing and therefore effective. The Chamber sees no reason to find otherwise.
10. Accordingly, the Chamber decides not to accept the application pursuant to Article VIII(2)(a) of the Agreement, as the applicants have not demonstrated that the effective domestic remedies have been exhausted.

V. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel