



DECISION ON ADMISSIBILITY

Case no. CH/00/4740

Zorka and Slobodan VASILJEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 June 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 and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicants are a married couple and they are the co-owners of a family house at Matrakčjina St. No. 2 in Visoko. Their neighbour, Z.H., has been constructing a house near the applicants' house. The applicants allege that in the process of constructing his house Z.H. has interfered with the possession of their home by disabling the function of one window. Further, Z.H.'s second floor has surpassed the roof of the applicants' home disabling the chimney.

2. In May 1999 the applicants appealed to the Municipal Secretariat for Urbanism, Construction and Housing Affairs requesting the Secretariat to order Z.H. to comply with prescribed urban planning regulations during the construction of his house. On 17 May 1999 the Secretariat ordered Z.H. to suspend the construction of the house and to submit, within three days, additional requests for approval for additional construction changes. Z.H. submitted additional requests that have not yet been approved by the Secretariat. However, he continued the disturbance of the applicants' possession. They appealed again to the Secretariat on 6 March and 11 April 2000 requesting that the Secretariat order Z.H. to suspend additional illegal construction of his house and return it to its previous state. The applicants have not received a response from the Secretariat.

3. On 17 April 2000 the applicants also requested that the Municipal Prosecutor Office in Visoko bring criminal charges against some officials who work in the Secretariat on the ground that they have abused their official duties. The applicants also submitted an application to the Federal Ombudsmen Office on 13 April 2000.

II. COMPLAINT

4. The applicants allege a violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 25 April 2000 and registered on 26 April 2000. The applicant requested that the Chamber issue a provisional measure ordering suspension of further construction of Z.H.'s house. The Chamber rejected that request on 8 May 2000.

IV. OPINION OF THE CHAMBER

6. 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)(c), the Chamber shall dismiss any application, which it considers manifestly ill-founded.

7. Cases involving the impairment of the enjoyment of one's property may give rise to a violation under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. If the impairment is caused by a private entity, the appropriate public authorities may have a positive obligation to secure the rights of the affected individuals. A fair balance between the interests involved has to be struck and the authorities have a certain margin of appreciation. The European Court of Human Rights has found violations under Article 8 in cases where individuals were effected by environmental hazards such as noise pollution and toxic waste (see, e.g., the *Powell and Rayner v. the United Kingdom* judgment of 21 February 1990, Series A no. 172; and the *López Ostra v. Spain* judgment of 9 December 1994, Series A no. 303-C).

8. The present case involves a dispute between private individuals concerning certain construction work that allegedly disturbs the applicants' enjoyment of their property. The impact of the construction work clearly does not rise to the level of the disturbance in the above-mentioned cases decided by the European Court of Human Rights. The Chamber further notes that the Municipal Court has intervened in the applicants' case by ordering their neighbour to suspend the construction

work and to request approval of additional construction changes. In these circumstances, the Chamber cannot find that the authorities have failed take appropriate action. Thus, the facts of the case fail to disclose any violation of the applicants' rights under the Agreement.

9. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

10. 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