



DECISION ON ADMISSIBILITY

Case No. CH/00/4863

ISLAMIC COMMUNITY IN BOSNIA AND HERZEGOVINA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 June 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Peter KEMPEES, 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. INTRODUCTION

1. The application was introduced on 11 May 2000. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to suspend construction work on the real estate registered at present as cadastral lots nos. 6/123 and 6/392 in the Municipality Modriča (hereinafter “the site”). On 18 May 2000, the President of the First Panel decided not to order the provisional measure requested.

The applicant repeated its request on 26 May 2000 and 13 June 2000. The Chamber rejected both requests.

2. The applicant complains that the respondent Party has violated Article 1 of Protocol No. 1 to the European Convention on Human Rights by allowing construction to take place on the site. The site was nationalised from the applicant in the nineteen-fifties and it claims that the construction will interfere with restitution. Furthermore the applicant complains of violation of its rights protected under Articles 10 and 13 of the European Convention, since it alleges that it has been denied certain excerpts from the Land Registry Office and that the respondent Party does not provide any legal remedy against said construction.

II. OPINION OF THE CHAMBER

3. The Chamber recalls that, according to the case-law of the European Court of Human Rights, the “possession” protected under Article 1 of Protocol No. 1 to the Convention can only be “an existing possession” (see Eur. Court H.R., *Van der Mussele*, judgment of 23 November 1983, Series A no. 70, paragraph 48) or, at least, an asset which the applicant has a “legitimate expectation” to obtain (see Eur. Court H.R., *Pine Valley Developments Ltd and Others*, judgment of 29 November 1991, Series A no. 332, paragraph 31).

4. The Chamber notes that it has previously decided that in order to be a “legitimate expectation” constituting a protected possession, the applicant’s prospect would have to be based on legislation in force or on a valid administrative act (see case no. CH/98/1040, *Živojnović*, decision on admissibility of 9 October 1999, paragraph 21, decisions on admissibility and merits August – December 1999). The applicant’s claim to the site is based on its expectation that a law on restitution will be enacted in the Republika Srpska and that, under this future law, it will be entitled to restitution of the site. However, this expectation cannot constitute a “legitimate expectation” protected by article 1 of Protocol No. 1 to the Convention (see *Živojnović*, paragraph 21). It therefore follows that the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII (2) (c).

5. In light of the opinion of the Chamber as stated above, it must follow that the applicant’s complaints under Articles 10 and 13 of the Convention are manifestly ill-founded.

6. It follows that the application must be rejected in its entirety.

III. CONCLUSION

7. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel