



DECISION ON ADMISSIBILITY

Case no. CH/00/6560

Nermina RAHMANOVIĆ

against

REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 May 2003 with the following members present:

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

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 introduced on 7 December 2000. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to stop building construction and to remove a structure that has been built on a public road and which blocks the entrance to the applicant's courtyard. On 6 February 2001, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF THE FACTS

2. The applicant is the owner of a house located in Zvornik on Drinska Street. The applicant states that in 2000, at the former location of a library, which is opposite to her house, construction and excavation commenced, and the excavation continues all the way to the wall of her house. Consequently, the access to her yard and house is rendered impossible.

3. On 25 September 2000, the applicant addressed the Office of the High Representative ("OHR"), complaining about the construction works on the aforementioned location. On 28 September 2000, the OHR addressed the Head of the Zvornik Municipality requesting a reply to the applicant's complaint about the new building construction located on a public road which blocks the access to the applicant's property.

4. On 16 November 2000, the Head of the Zvornik Municipality sent a reply to the OHR. In his response, the Head of the Zvornik Municipality states that the company "Stari grad", as the investor, started construction of an apartment - office building at the aforementioned location and that the paperwork is in order. The reply letter states that the applicant has enough space to enter her courtyard from the Southeast side.

5. On 29 November 2000, the OHR sent another letter to the Head of the Zvornik Municipality and the President of the Municipal Assembly of the Zvornik Municipality pointing out that there are indications that the construction of the apartment – office building is being performed at a location of the Local Community Begusija, which is public property. Furthermore, the letter points out that if the structure is built on publicly-owned land, then this construction is contrary to the decision of the High Representative of 27 April 2000, which forbids the allocation of public land unless allowed by the OHR. By this letter, the OHR requested suspension of the aforementioned building construction.

6. The Chamber sent a letter to the applicant on 23 February 2001, asking her for information on whether she had taken any action to protect her property before the competent domestic authorities. By a submission of 4 April 2001, the applicant informed the Chamber that she did not address the domestic authorities in order to protect her rights and that the aforementioned building construction continued, despite the ban by OHR.

III. OPINION OF THE CHAMBER

7. 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"

8. The Chamber notes that the applicant addressed the OHR with a request for suspension of the building construction on the contested location which makes access to her property impossible, but she has failed to address the domestic authorities in order to protect her rights. The applicant has not shown that the domestic remedies were ineffective, nor do they appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted effective domestic remedies. The Chamber therefore decides to declare the application inadmissible.

IV. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President of the Second Panel