



DECISION ON ADMISSIBILITY

Case no. CH/01/7508

Miloš TRIFKOVIĆ and 6 others

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 October 2001 with the following members present:

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

Mr. Ulrich GARMS, 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. Six of the applicants are the owners of apartments in a residential building located in Sarajevo Centre, Ulica Patriotske lige no. 18. The seventh applicant is in the process of purchasing his apartment in the same building.
2. On 4 May 2000 the Head of the Municipality of Sarajevo Centre (hereinafter: "the Head of the Municipality"), issued a procedural decision establishing that the Sarajevo Canton Fund for the Construction of Apartments for Members of Families of Fallen Fighters/Šehids, Disabled Veterans, Demobilised Fighters and Displaced Persons (hereinafter: "the Fund") had the priority right for the construction of apartments at Ulica Patriotske lige no. 18. On 6 July 2000, the Head of the Municipality issued a procedural decision granting the Fund urban approval for the construction of the apartments concerned. The applicants have not received these procedural decisions. On 29 September 2000 they were informed for the first time about the proceedings concerning the construction of apartments at Ulica Patriotske lige no. 18, and they were given a procedural decision by which they were deprived of their right to compensation.
3. On 23 October 2000, the applicants submitted a request to the Head of the Municipality asking for the renewal of the proceedings because they were not given an opportunity to take part in the proceedings. The request of the applicants was refused by a procedural decision issued by the Head of the Municipality on 31 October 2000.
4. The applicants initiated an administrative dispute on 2 November 2000 before the Cantonal Court in Sarajevo by filing an action in which they stated that they had not been given the opportunity to take part in the proceedings.
5. On 30 November 2000 the Head of the Municipality issued a procedural decision granting the Fund a construction permit for the construction of apartments at Ulica Patriotske lige no. 18. The applicants have not received that procedural decision.
6. On 8 August 2001 the applicants informed the Chamber that in the administrative dispute initiated by them, the Cantonal Court issued a judgment granting the action and annulling the procedural decision of the Department for Administration of Property-Law Affairs of the Municipality of Sarajevo Centre and the procedural decision of the Head of the Municipality. However, the applicants requested the extension of the provisional measure because that decision is not final.

II. COMPLAINTS

7. The applicants complain that their right to respect for home (Article 8 of the European Convention on Human Rights), the right to a fair hearing (Article 6 of the Convention) and the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the Convention) have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The case was introduced on 17 May 2001 and registered on the same day. The applicants are represented by Mrs. Zlata Misirlić Trifković from Sarajevo.
9. In their application, the applicants requested that the Chamber order the respondent Party, as a provisional measure, to stop the construction works on the residential building concerned until the conclusion of the proceedings.
10. On 5 June 2001, the Chamber granted the request for provisional measures for the time period until 15 September 2001.
11. The application was sent to the respondent Party for its observations on 6 June 2001.

12. The Chamber received the observations of the respondent Party on 16 July 2001. The respondent Party, in its observations, pointed out that the application was inadmissible because the applicants had not exhausted all domestic remedies. Further, the respondent Party stated that if the Chamber considered the application admissible, the application would still be ill-founded, as the provisions of Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention had not been violated.

IV. OPINION OF THE CHAMBER

13. Before considering the merits of the case, the Chamber must decide whether to accept it. 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”

14. In the present case, the Cantonal Court annulled the procedural decision of the Municipal Department for Administration of Property-Law Affairs and the procedural decision of the Head of the Municipality. However, this decision is not yet final and proceedings may still continue before the local authorities. The Chamber, therefore, considers that domestic remedies exist and that the applicants may continue using them in order to protect their rights and interests.

15. Accordingly, the Chamber decides not to accept the application under Article VIII(2)(a) of the Agreement since there are effective domestic remedies that the applicants have not exhausted.

V. CONCLUSION

16. For these reasons, the Chamber, by 4 votes to 2,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel

Annex I Dissenting opinion of Messrs. Manfred Nowak and Mehmed Deković

ANNEX I

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Messrs. Manfred Nowak and Mehmed Deković.

DISSENTING OPINION OF MESSRS. MANFRED NOWAK AND MEHMED DEKOVIĆ

1. We disagree with the decision of our colleagues in the present case for the following reasons:
2. The Chamber is in general very careful in deciding whether or not to order provisional measures. When the Chamber grants a request to this effect, as it did in the present case on 5 June 2001, it is because the Chamber is of the opinion that the domestic authorities are not effective enough to prevent irreparable harm to the applicant. Although we fully recognise that the Cantonal Court issued a judgment along the lines of the Chamber's order for provisional measures in the present case, we cannot agree with the finding of the Chamber that effective remedies existed in this case because such a finding, in our opinion, contradicts the very reason for having ordered the provisional measures.

(signed)
Manfred Nowak

(signed)
Mehmed Deković