



## **DECISION ON ADMISSIBILITY**

**Case no. CH/01/7560**

**Gordana MOLDOVAN and other tenants of the building located at  
Ulica Avde Jabučice no.5 in Sarajevo**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 March 2003 with the following members present:

Mr. Mato TADIĆ, President  
Mr. Jakob MÖLLER  
Mr. Giovanni GRASSO  
Mr. Mehmed DEKOVIĆ  
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 Articles VIII(2) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. The applicants complain of the fact that an administrative organ of Municipality Centar-Sarajevo issued a decision establishing the right to convert the common premises (an attic) of the residential building, where they live, into an apartment (or apartments).
2. The applicants requested the Chamber to order the respondent Party, as a provisional measure, to prevent the issuing of the urban consent and building license. On 7 January 2003 the Chamber decided not to order the provisional measure requested.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

3. The application was introduced on 4 June 2001 and registered on the same day.
4. On 7 January, 17 and 18 October 2002 and 21 February 2003 the applicants submitted further information in their case.

## **III. FACTS**

5. On 11 January 2000, the Municipal Service for Administration and Property Affairs of the Centar Municipality issued a procedural decision establishing the right to build an additional floor on the building, and at the same time use the common premises (attic) in the construction of the new floor on the residential building located at ulica Avde Jabučice no. 5 in Sarajevo, in favour of "Željeznica BiH - Željezničko stambene preduzeće Sarajevo".
6. On 24 August 2000, in the daily newspapers "Dnevni Avaz", the results of the tender for obtaining the right to construct an additional floor on the building and construction of attic apartments and apartments in common parts of residential and business-residential buildings were published, in which the building in question was also mentioned. The tenants of the building (the owners of the apartments and occupancy right holders), were not informed of the intention to construct the additional floor on the building.
7. On 24 August 2000, the applicants and other tenants filed an objection to the Head of the Centar Municipality and the Service which published the tender, arguing that there exist objective circumstances which exclude the possibility of construction of apartments through construction of the additional floor, due to the state of disrepair of the building and structural instability. They supported their claims through the finding and opinion of an authorized expert they had engaged at their own expense.
8. On 8 January 2001, the Head of the Municipality, through the Service for Administration for Physical Planning and Utility Affairs of the Centar Municipality (hereinafter: the administrative organ), issued its procedural decision establishing the right to construct the apartment in question, in favour of company "Željeznice BiH", for employee T.S. By the same procedural decision the investor was obliged to pay the tenants monetary compensation in the amount of KM 1,819.80. This procedural decision could not be appealed, but an administrative dispute before the Cantonal Court could be initiated within 30 days.
9. On 21 January 2001, E.H., a full-time court expert for civil engineering, upon the proposal of the Building Council in question, gave his expert opinion on the possibility of constructing an additional floor on the building in dispute. The expert pointed out that it was necessary to take certain measures to strengthen the bearing construction of the building, and construction of the drainage system, in order to reach a certain degree of security and bearing capacity. In his finding the expert concluded that there were no real possibilities to carry out the construction of the additional floor.

10. On 23 January 2001, the Building Council in question, referring to the mentioned expert finding, warned the Administrative organ of the non-existence of the technical and structural conditions for construction of an additional floor on the building.
11. On 7 February 2001, "Željeznice BiH - Željezničko stambeno preduzeće Sarajevo" applied to the Administrative organ requesting it to issue a procedural decision on urban consent for construction of the additional floor in favour of T.S.
12. On 9 February 2001, tenants of the building filed an action to the Cantonal Court in Sarajevo against the Administrative organ requesting annulment of the procedural decision of 8 January 2001.
13. On 24 April 2001, the Administrative organ sent an invitation to the tenants of the building to participate in the procedure of issuance of urban consent to "Željezničko stambeno preduzeće Sarajevo", as an interested party in the proceedings. The finding and opinion of the engineer in civil engineering R.H. was taken as relevant in this procedure, and not the opinion of the court expert for civil engineering E.H. Those two opinions do not match in the part which is important.
14. On 11 May 2001, the Administrative organ by its procedural decision granted urban consent to "Željeznice BiH" for construction of additional floor on the building in question. Tenants of the building filed an appeal against this procedural decision.
15. On 9 August 2001, the Cantonal Court in Sarajevo issued a judgement accepting the action and annulling the procedural decision of 8 January 2001 (see paragraph 8 above).
16. On 10 October 2001, the Ministry of Physical Planning and Protection of Environment of Sarajevo Canton (hereinafter: the Ministry) annulled the procedural decision of the Administrative organ of 11 May 2001 by which urban consent was granted (see paragraph 14 above), and returned the case to the first instance organ for reconsideration.
17. On 12 December 2001, following the instructions set out in the procedural decision of the Ministry, the authorized experts (E.H. and R.H.) who made the reports on the structural stability of the building were invited to appear. On 24 December 2001, the Administrative organ again issued a procedural decision granting urban consent to "Željeznice BiH"
18. On 6 May 2002, the Ministry annulled the procedural decision of the Administrative organ of 24 December 2001 and the case was returned for reconsideration with the instruction that it is necessary to resolve the priority right to construct the apartment before the urban consent is issued.
19. On 10 October 2002, the Administrative organ by its procedural decision established the priority right to convert the attic space into residential space in the building in question, in favour of "Željeznice BiH". It was established in the procedural decision that the investor is obliged to pay monetary compensation in total amount of KM 1,819.90. This procedural decision cannot be appealed against, but an administrative dispute may be initiated.
20. On 11 October 2002, the Administrative organ issued a procedural decision granting urban consent to "Željeznice BiH" to convert the attic space into an apartment (or apartments). The applicants filed an appeal against this decision
21. On 30 December 2002, the Ministry issued a decision rejecting the applicants' appeal as ill-founded.
22. On 31 January 2003, the applicants filed an action and initiated an administrative dispute before the Cantonal Court in Sarajevo, requesting the annulment of the Ministry's decision of 30 December 2002. The proceedings before the Cantonal Court are still pending.

### III. COMPLAINTS

23. The applicants complain that their right to security, the right to property, the right to peaceful enjoyment of possessions, the right to dignified life, the right to protection from administrative terror and obstructions of municipal organs have been violated. It appears that the application raises issues under Article 8 of the European Convention on Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 1 to the Convention.

24. The applicants request the Chamber to prevent the respondent Party from issuing the urban and construction approval. They also request the Chamber to examine the validity and constitutionality of the Law on Construction of Additional Floor on the Buildings in Canton Sarajevo.

### IV. OPINION OF THE CHAMBER

25. 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 ...(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement,...”.

26. The Chamber notes that the applicants’ complaint is premature as the proceedings are still pending before the Cantonal Court in Sarajevo. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

27. As to the applicants’ request the Chamber to examine the validity and constitutionality of the Law on Construction of Additional Floor on the Buildings of Canton Sarajevo, the Chamber recalls that, pursuant Article II(2)(a) in conjunction with Article VIII of the Agreement, it has only the competence to consider violations of human rights protected by the European Convention and the Protocols thereto. Furthermore, the Chamber notes that the assessment of the constitutionality of the laws falls into the competence of the Constitutional Court. Pursuant the Article 10(2)(b) of the Constitution of the Federation of Bosnia and Herzegovina the Constitutional Court of the Federation of Bosnia and Herzegovina establishes “if ...the [cantonal] Law...is in accordance with...constitution”. It follows that this part of application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII (2)(c). The Chamber, therefore, decides to declare this part of application inadmissible, as well.

### V. CONCLUSION

28. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Mato TADIĆ  
President of the Second Panel