



DECISION ON ADMISSIBILITY

Case no. CH/01/7786

Salih GOSIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

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. INTRODUCTION

1. The application was introduced 9 August 2001. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from an apartment located at ul. Albina Herljevića 14 in Lukavac until the court proceedings in his case are concluded. On 6 September 2001 the Chamber decided not to order the provisional measure requested.

2. The applicant complains, in relevant part, of a procedural decision of the Lukavac Municipality (Općina Lukavac) dated 18 June 2001 by which the occupancy right over the apartment at ul. Albina Herljevića 14 in Lukavac was confirmed in favour of its pre-war occupancy right holder, allegedly based on out of time request of the pre-war occupant of 8 August 2000, although the applicant, on 26 January 2000, had already purchased that apartment. On 17 July 2001 the applicant's appeal against the procedural decision in question was refused by the Ministry of Environmental Planning and Protection of Environment of Tuzla Canton and the procedural decision became final, thereby ending the possibilities of appeal before the administration. The applicant, however, had the possibility to initiate an administrative dispute against this procedural decision before the Cantonal Court in Tuzla. From the submissions to the Chamber it remains unclear whether the applicant has initiated such an administrative dispute. Considering that the final procedural decision by the administration was only passed on 17 July 2001, it can be assumed that, even in case the applicant has in the meantime initiated such proceedings before the Cantonal Court in Tuzla, there has not been a decision by the court yet. The applicant alleges that his rights to property and equality before the law are violated.

II. OPINION OF THE CHAMBER

3. In accordance with Article VIII(2) of the Agreement, " the Chamber shall decide which applications to accept ... and shall take into account the following criteria: ... (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ... "

4. The Chamber notes that the applicant has not specified any respondent Party/Parties in the application form. As the responsible authority for the decision complained of is an authority of the Federation of Bosnia and Herzegovina the Chamber will consider the application as directed against the Federation of Bosnia and Herzegovina.

5. The Chamber finds that the applicant failed to show that he has exhausted all possible domestic remedies. Namely, although the applicant informed the Chamber about his intention of initiating an administrative dispute against the procedural decision of 17 July 2001 before the Cantonal Court in Tuzla, the applicant in his submissions to the Chamber does not inform it whether he has done so and whether the Cantonal Court in Tuzla has passed any decision in the case. The Chamber notes, however, that whether the applicant has failed to initiate an administrative dispute, or whether he has done so and the dispute is still pending, the applicant has not, as required by the Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

6. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel