



DECISION ON ADMISSIBILITY

Case no. CH/01/8408

Selim KEPEŠ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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)(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 9 November 2001.
2. The applicant claims to be the owner of 250m² of land located at ulica Orlovačka 140, Sarajevo. However, it appears from the case file that the applicant's prior ownership of this land was removed by a decision of the Municipality Novo Sarajevo in accordance with the Law on Building Land (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, nos. 34/86, 1/90 and 29/90) and that he was given a right to use the land in question. The Chamber notes that the applicant submitted to the Chamber a certificate from the Land Registry, verified by the Municipal Court I in Sarajevo, that the land in question was socially owned and that the applicant had a right of use over that land. The Chamber has no information as to when the Municipality's decision was issued, but notes that this formed part of the government's urban plan expanding the boundaries of the city limits. Additionally, during 1987 a regulatory plan was passed for the area of Pofalići in Sarajevo, where the disputed land is situated, by which it was proposed that at some stage in the future a road would be constructed that would cross the applicant's land.
3. At some stage the applicant applied for planning permission to construct a residential building on the land. On 26 June 1998 the Department for Physical Planning, Utility Affairs and Environmental Protection of the Municipality Novo Sarajevo issued a decision refusing the applicant's request for planning permission due to the 1987 regulatory plan for Pofalići.
4. On 3 August 1998 the applicant submitted an appeal to the Ministry for Physical Planning and Utility Affairs of Canton Sarajevo (the "Ministry") against the procedural decision of 26 June 1998. On 6 January 1999 the Ministry rejected his appeal stating that the first instance body correctly rejected his request as the proposed residential building would be located on land anticipated for "communications"¹ and that construction of a residential building would be contrary to the Law on Physical Planning ("Official Gazette of Socialist Republic of Bosnia and Herzegovina" no.9/87).
5. The applicant initiated an administrative dispute requesting that the procedural decision of 6 January 1999 be quashed and requesting an adequate alternative site for construction of the proposed residential building. He also submitted a claim for compensation for the expropriation of his land in light of the Ministry's refusal to grant planning permission. On 7 June 2000 the Cantonal Court in Sarajevo issued a judgment rejecting the applicant's requests on the basis that that court was not competent to consider allocation of alternative land or compensation as the issue would be decided by future expropriation proceedings. On 6 September 2001 the Supreme Court of the Federation of Bosnia and Herzegovina issued a judgment, confirming the previous judgment of the Cantonal Court.
6. At some stage, the precise details of which are unknown, the applicant was offered an amount of compensation for the taking over possession of his land by the Municipality Novo Sarajevo. The applicant rejected this compensation as insufficient to fully compensate him for his loss.
7. The applicant alleges that his rights under Article 6 of the Convention and Article 1 Protocol No. 1 to the Convention have been violated

II. OPINION OF THE CHAMBER

8. 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: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."
9. The Chamber notes that the applicant claims that the courts wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general

¹ According to Article 29 of the Law on Urban Planning the term "communications' infrastructure" refers to the construction of transport infrastructure such as roads, railways and airports.

competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the court failed to act fairly as required by Article 6 of the Convention. It follows that the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application in this respect inadmissible.

10. In relation to the applicant's complaint of a violation of his right to possessions as guaranteed under Article 1 of Protocol No. 1 to the Convention, the Chamber notes, firstly, that due to the urban plan the land had become socially owned, and the applicant merely possesses a right to use it. Secondly, according to the 1987 regulatory plan in Pofalići, the applicant could not be granted planning permission for the construction of a residential building. However, this does not prevent him from continuing to use the land in question in the same way as he has continued to use it up until the request for planning permission. He may continue to use it until the competent organ issues a decision taking over possession of the land in question. Moreover, the applicant claims that the Municipality Novo Sarajevo offered him compensation for the land but he refused it, as the offered amount was too low. The Chamber notes that the applicant has not substantiated his claim concerning the amount offered and, even if the amount offered was considered insufficient to fully compensate him, that is an issue to be determined by the domestic organs in accordance with the Law on Expropriation after the Municipality issues a decision on the taking over possession of the land for the purpose of constructing a road.

11. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application in this respect inadmissible as well.

III. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

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