



DECISION ON ADMISSIBILITY

Case no. CH/02/12213

Vaso ANDRIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

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) and (c) and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced to the Chamber on 5 September 2002 and registered on the same day. The applicant requested the Chamber, as provisional measure, to order the respondent Party to stop further construction on his property and to prohibit the further use of his property situated in Canton Sarajevo. On 7 February 2003 the Chamber decided to reject the request for provisional measure.

II. FACTS

2. On 1 April 2002 the Municipal Service for Property, Legal, Geodetic Affairs and Cadastre (hereinafter the Service), accepting a proposal of the Canton Sarajevo Development Institute issued a procedural decision in which it determines that, for the purpose of construction of a road, the applicant's property consisting of a residential facility, a garage and a fence around the house should be expropriated in whole. The procedural decision further states that the applicant as the former owner has the right to compensation for expropriated property. The compensation shall be determined in a separate procedure when this procedural decision becomes enforceable.

3. On 12 April 2002 the applicant submitted an appeal against this procedural decision which is still pending before the competent body.

4. On the same day, 12 April 2002, the Government of the Federation of Bosnia and Herzegovina passed the procedural decision in accordance with Article 31 paragraph 3 of the Law on Expropriation allowing the beneficiary of the expropriation to enter into possession of the expropriated real estate. This procedural decision is final without the possibility of initiating an administrative dispute against it.

5. On 22 April 2002, the Municipal Service for Property Law Affairs, referring to the procedural decision of the Government of 12 April 2002, issued a conclusion on expropriation by which the decision of 1 April 2002 becomes executive. The Conclusion determines that the beneficiary of expropriation shall be put into possession of the applicant's land, except for a part of land on which no constructions exist, which shall remain in possession of the applicant.

6. It appears that the applicant was offered the amount of 136,000 KM, for compensation and that he thinks that this is not equivalent to the market value of his property which he estimates to 260.000 Euros. It appears that the applicant is still in possession of his house and that heavy construction works are carried out on his land.

III. COMPLAINTS AND ALLEGED VIOLATIONS OF HUMAN RIGHTS

7. The applicant complains that his right to fair compensation for the expropriated property has been violated. He further complains of a violation of his right to "security of life" because of the heavy trucks constantly transferring loads in the area in which he lives. He also claims that although the expropriation of his property was performed in the general interest of the construction of a road, his property was in fact allocated to a private company for construction of new residential units.

IV. 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: (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, manifestly ill-founded, or an abuse of the right of petition."

9. The Chamber notes that the applicant's main complaint regarding a fair compensation is premature as the applicant can initiate proceedings for compensation before the competent administrative organ once the procedural decision on expropriation becomes enforceable, i.e. after the applicant's appeal of 12 April 2002 against the procedural decision of 1 April 2002 is decided. This appeal is still pending. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement.

10. In addition, the Chamber notes that the applicant fails to substantiate his claim that the ongoing construction works violate his rights under the Agreement and the Chamber on its own motion cannot find such a violation. Therefore, the Chamber finds that this part of 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.

V. CONCLUSION

11. 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