



DECISION ON ADMISSIBILITY

Case no. CH/02/8682

Zdravko KORDIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 April 2002 with the following members present:

Mr. Giovanni GRASSO, 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) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Croat origin. He is a distinguished writer and the President of the Association of Croat Writers of Herzeg-Bosnia. On the basis of a decision by the then Samoupravna Interesna Zajednica Kulture Bosna i Hercegovina, Osnovna Zajednica Kulture, Mostar (the Self-governing Community of Interest for Culture in Bosnia and Herzegovina, Main Community of Culture for Mostar, hereinafter the "SIZ for Culture of Bosnia and Herzegovina"), the applicant received a procedural decision on the allocation of an apartment located at Rudnik Lamela, Mostar, for use on 26 October 1990. Subsequent to this decision it was for the applicant to conclude a contract for the use of the apartment in question. The applicant claims that the apartment in question was not completed when expected, due to a delay in the finalisation of works on the building and the outbreak of hostilities. For these reasons he was not in a position to enter into possession and conclude the contract on use of the apartment.

2. The apartment was finished in 1999 and sold by Visokogradnja Hercegovina, a construction company, to a third party, although according to the applicant it was already sold prior to this to the SIZ for Culture of Bosnia and Herzegovina, which subsequently allocated it to the applicant. As proof, he alleges statements to this effect by certain witnesses before the Municipal Court I in Mostar. Under such circumstances the applicant states that he was unable to conclude the contract for use of the apartment.

3. The applicant further alleges that on, 16 June 2000, he submitted a complaint to the Municipal Court I in Mostar against the construction company, Visokogradnja Hercegovina, requesting to be reinstated into the disputed apartment. However, the Municipal Court I in Mostar issued a procedural decision on 5 January 2001 declaring itself not competent to decide on the matter. The reasoning of this procedural decision, in the sense of the Law on Housing Relations, was that no one may have an occupancy right without previously concluding a contract for its use. Since the applicant had not concluded the contract for use of the apartment and therefore had not obtained an occupancy right over the apartment, the court lacked sufficient competence to determine the matter. According to the court, the administrative organ was competent for the conduct and solution of this dispute. On 15 November 2001, the applicant submitted the appeal to the Second Instance Court. It seems that the procedure upon this appeal has not been finalised by enforceable decision.

4. The applicant further alleges, which is confirmed by appropriate copies of documents, that he submitted his request for repossession of the apartment to the construction company, Visokogradnja Hercegovina, the Head of the Municipality, the Governor of the Canton, a member of the Bosnia and Herzegovina Presidency, but with no effect. The applicant also emphasises that he does not know the identity of the third party that purchased the building where his apartment is located.

5. The applicant lives in the apartment in ulica Hrvatske mladeži no. 9/III, as temporary user. By conclusion permitting enforcement of the CRPC decision on behalf of the pre-war occupancy right holder over that apartment, issued by the Service for Construction, Property-Legal and Housing Affairs and Environment, Municipality Mostar, of 5 December 2000, his right of temporary user has been terminated with no obligation to secure an alternative accommodation for him, and he is obliged to vacate the apartment within 15 days under the threat of forcible eviction.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was submitted to the Chamber on 10 January 2002 and registered on 14 January 2002. In his application, the applicant requested the Chamber, as a provisional measure, to order the respondent Party to postpone enforcement of his eviction until the final decision of this case is reached by the second instance court. On 4 March 2002 the Chamber decided not to order the provisional measure requested.

III. COMPLAINTS

7. The applicant alleges a violation of his right to respect for his home as protected by Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

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 to petition.”

9. The Chamber notes that the applicant’s complaint in relation to the apartment located at Rudnik Lamela, is premature as the proceedings are still pending before the Cantonal Court in Mostar. 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.

10. In relation to the applicant’s temporary occupation of the apartment location at ulica Hrvatske mladeži no. 9/III, the Chamber notes that the decision on the applicant’s eviction was taken to allow the pre-war occupancy right holder to repossess the apartment and that the applicant has no right under domestic law to occupy the apartment. In these circumstances, 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 this part of the application inadmissible, too.

V. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel