



DECISION ON ADMISSIBILITY

Case no. CH/02/9026

Đuro SUVAJAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
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 to Article VIII(2)(c) of the Agreement and Rule 49(2) of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 4 March 2002.
2. The applicant complains of a decision of the Administration for Housing Affairs of the Zenica Municipality ("Administration") ("Služba") refusing his request for repossession of an apartment located at Ulica Šerbin sokak 19 in Zenica.

II. FACTS

3. The former Yugoslav National Army ("JNA") issued a decision allocating the apartment to the applicant on 10 January 1992. The applicant and his family moved into the apartment and used it until 27 April 1994 on the basis of this decision of 10 January 1992. However, the applicant never concluded a contract on use of the apartment with the JNA Housing Fund.
4. On 1 September 1998, the applicant requested the Administration to reinstate him into possession of the the apartment. On 17 January 2002, the Administration refused the applicant's request because he never acquired the occupancy right to the apartment. On 6 February 2002, the applicant appealed to the Ministry for Physical Planning, Transport, Communications and Environmental Protection of the Zenica-Doboj Canton. The case is still pending.

III. RELEVANT DOMESTIC LAW

A. Law on Cessation of the Application of the Law on Abandoned Apartments (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01 and 56/01)

5. Article 3 paragraph 1 reads:

"The occupancy right holder of an apartment declared abandoned or a member of his/her household ... (hereinafter the "occupancy right holder") shall have the right to return in accordance with Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina."

6. Article 4 paragraph 1 reads:

"The occupancy right holder, as defined in Article 3 paragraph 1 of this Law, shall be entitled to claim repossession of an apartment."

B. Law on Housing Relations (OG SRBIH nos. 14/84, 12/87 and 36/89; OG FBiH nos. 11/98, 38/98, 12/99 and 19/99)

7. Article 11 reads:

"A citizen obtains an occupancy right on the date of legal entry into an apartment.

Legal entry into an apartment is considered to be entry performed on the basis of a contract on use of an apartment concluded on the basis of an appropriate act or other act determined under this Law that represents valid grounds for entry into the apartment.

It is forbidden to sell or to purchase or to in any other way contrary to the provisions of this Law transfer or acquire the occupancy right.

Acquisition of an occupancy right that is contrary to the provisions of this Law has no legal effect."

IV. OPINION OF THE CHAMBER

A. The applicable rule

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.”

B. Specific reasoning and conclusion

9. The applicant complains that the Administration violated his right to the peaceful enjoyment of his possessions, to respect for his home and to a fair trial by refusing his request to be reinstated into possession of the apartment at Ulica Šerbin sokak 19 in Zenica. However, the Chamber notes that the domestic law does not give the applicant the right to be reinstated into possession of the apartment in question because he never acquired the occupancy right to it. In these circumstances, the Chamber finds that the facts complained of do 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 inadmissible.

V. CONCLUSION

10. 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