



DECISION ON ADMISSIBILITY

Case no. CH/02/10484

Dževad SKENDERAGIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 May 2003 with the following members present:

Mr. Jakob MÖLLER, Acting President
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The applicant is a temporary user of the apartment in Sarajevo at Himze Polovine Street no. 27, for which he concluded a contract on use on 19 December 1996.
2. On 30 March 2000, the Administration for Housing Issues issued a conclusion refusing the request for repossession filed by D.R., who alleges to be the pre-war occupancy right holder over the apartment in question. D.R. filed an appeal against this procedural decision. On 12 December 2000, the Ministry for Housing Affairs annulled the first instance procedural decision and returned the case for renewed proceedings.
3. On 16 February 2001, the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo seeking annulment of the procedural decision of the Ministry for Housing Affairs. The Chamber does not have any information as to whether the Cantonal Court has issued a decision.
4. On 8 November 2001, in the enforcement procedure for a decision of the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), the Department for Housing Issues issued a conclusion allowing D.R. to repossess the apartment in question, and ordering the applicant to leave the apartment within 15 days, without the right to alternative accommodation. On 5 December 2001, the applicant filed an appeal against the conclusion in question.
5. At the same time, the owner of the apartment, "Energoinvest" d.d. Sarajevo, initiated proceedings before the Municipal Court Sarajevo against D.R. for termination of the contract on use of the apartment concluded by him in 1990. On 22 September 2000, the Municipal Court Sarajevo issued a judgment refusing the plaintiff's lawsuit. The applicant filed an appeal against the Municipal Court judgment, which the Cantonal Court refused on 20 June 2001, and it upheld the first instance judgment. On 30 September 2001, the applicant filed a request for review to the Supreme Court of the Federation of Bosnia and Herzegovina against the Cantonal Court judgment.
6. The applicant alleges a violation of his right guaranteed under Article 6 of the European Convention on Human Rights. He complains that the factual background was incorrectly established in the domestic proceedings. According to the applicant, D.R. is not entitled to repossess the apartment in question because she never acquired the occupancy right over the apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced to the Chamber on 10 May 2002 and registered on the same day. The applicant is represented by Jakša Mitrović, a lawyer. The applicant requested the Chamber to order the Federation of Bosnia and Herzegovina, as a provisional measure, to take all necessary steps to suspend his eviction from the apartment he occupies. On 3 February 2003, the Chamber decided to reject the provisional measure requested.

III. 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. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton and the Cantonal Court responsible for the proceedings complained of by the applicant are organs of the Federation, the conduct of which engages the responsibility of the Federation, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The

Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

10. The Chamber further notes that the applicant complains that the Municipal Court and the Cantonal Court 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 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 Courts 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 inadmissible as against the Federation of Bosnia and Herzegovina as well.

IV. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President of the Second Panel