



DECISION ON ADMISSIBILITY

Case no. CH/01/7502

Zlatko MUŠANOVIĆ

against

BOSNIA AND HERZEGOVINA and THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 June 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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was submitted on 14 May 2002. The applicant is represented by Hidajet Hadžiahmetović, a lawyer in Sarajevo.
2. On 12 March 2003, the applicant requested that the Chamber order the respondent Parties, as a provisional measure, to suspend the purchase of an apartment located at Jovana Skerlića bb in Brčko for B.K. until the Chamber issues its decision in this case. On 5 May 2003, the Chamber decided not to order the provisional measure requested.

II. FACTS

A. Proceedings concerning the apartment at Jovana Skerlića bb

3. On 18 February 1992, DD "Grafam" Brčko issued a decision on purchase of a two-and-a-half-room apartment to be located at Jovana Skerlića bb in order to resolve the housing problem of the applicant, the director of the company. The decision states that the applicant will hand over the apartment he was currently occupying located at Naste Nakića St. no. 3 to DD "Grafam" Brčko for further allocation to other employees of the company. On 24 February 1992, DD "Grafam" Brčko issued a decision purchasing the apartment to be located at Jovana Skerlića bb from DGP "Izgradnja" Brčko and allocating it to the applicant, as the director of the company, with the obligation to hand over his current apartment to DD "Grafam" Brčko.
4. On 25 February 1992, IIC "Izgradnja" and DD "Grafam" Brčko concluded a contract on joining funds for the construction of a residential facility in Brčko. Such residential facility would contain the apartment in question to be located at Jovana Skerlića bb. The deadline for construction of the mentioned facility was 30 June 1992. However, due to the armed conflict, the facility was completed and the technical inspection performed in 2000.
5. On 30 April 1992, the applicant stopped working for DD "Grafam" Brčko and left Brčko.
6. On 1 December 1999, the management board of ODP "Grafam" Brčko issued a decision allocating a three-room apartment at Jovana Skerlića bb for use to B.K., who then held the position of director. The mentioned decision rendered ineffective the decision of 24 February 1992, which had allocated the apartment to the applicant as the then director of the company. The applicant filed an objection against the decision. On 6 March 2000, the management board of ODP "Grafam" Brčko issued a decision refusing the applicant's objection as ill-founded.
7. Based on the decision of 1 December 1999, on 18 January 2000, OJDP "Stambeno" Brčko concluded a contract on use of the apartment at Jovana Skerlića bb with B.K. The applicant filed an objection to OJDP "Stambeno" Brčko against the conclusion of the contract, pointing out that a dispute concerning the lawfulness of the decision of 1 December 1999 was pending before the competent court. He requested the annulment of the contract on use until the competent court issued its decision. On 6 March 2000, OJDP "Stambeno" Brčko informed the applicant that the contract on use of the apartment concluded with B.K. was based upon the decision on allocation of the apartment issued by ODP "Grafam" Brčko.
8. On 22 March 2000, the applicant filed an action before the First Instance Court in Brčko against ODP "Grafam" Brčko, B.K., and OJDP "Stambeno" Brčko. The applicant requested that the court establish that the decisions issued by ODP "Grafam" Brčko of 1 December 1999 and 6 March 2000 have no legal effect, that the contract on use of the apartment concluded between OJDP "Stambeno" Brčko and B.K. is null and void, that B.K. is obliged to vacate the apartment at Jovana Skerlića bb and hand it over to the applicant within 15 days, and that OJDP "Stambeno" Brčko is obliged to conclude a contract on use of the apartment with the applicant. On 8 September 2000, the First Instance Court in Brčko issued a judgment refusing the applicant's action.

9. The applicant filed an appeal against the judgment of 8 September 2000 to the District Court in Bijeljina. On 15 March 2001, the District Court in Bijeljina issued a judgment refusing the applicant's appeal and upholding the judgment of 8 September 2000.

10. The applicant filed a request for review against the judgement of the District Court in Bijeljina of 15 March 2001 to the Supreme Court of the Republika Srpska. On 19 October 2001, the Appellate Court of the Brčko District of Bosnia and Herzegovina issued a judgment refusing the applicant's request for review.

11. On 9 May 2002, the Department for Displaced Persons, Refugees and Housing Affairs of the Government of the Brčko District of Bosnia and Herzegovina issued a procedural decision refusing the applicant's request for repossession of the apartment at Jovana Skerlića bb. On 7 June 2002, the applicant filed an appeal to the Appellate Commission of District Brčko.

12. The applicant also addressed the Office of the High Representative (OHR) in Sarajevo concerning the apartment at Jovana Skerlića bb. He alleges that B.K.'s wife, M.K., who is an employee of OHR in Brčko, entered into possession of the apartment at Jovana Skerlića bb, even though she still remains the occupancy right holder over her pre-war apartment at Alekse Šantića no. 1 in Brčko.

B. Proceedings concerning the apartment at Naste Nakića St. no. 3

13. In his application, the applicant states that he filed a request for repossession of his pre-war apartment located at Naste Nakića no. 3, with the intention of complying with the decisions issued by DD "Grafam" Brčko (see paragraph 3 above) and not with the intention of being the occupancy right holder over two apartments. In his letter of 19 December 2001, the applicant informed the Chamber that his wife, as the occupancy right holder, was reinstated into possession of the apartment at Naste Nakića St. no. 3.

14. The applicant considers that by entering into possession of the apartment at Naste Nakića St. no. 3, he has fully complied with the decision of DD "Grafam" of 18 February 1992 and he is now ready to hand over this apartment to the company as soon as it enters into possession of the apartment at Jovana Skerlića bb.

III. COMPLAINTS

15. The applicant complains that the courts have issued unlawful decisions which have prevented him from obtaining the right to possession of the apartment at Jovana Skerlića bb. He claims that the courts have violated the applicable substantive law and that the reasoning of the decisions is contradictory and ill-founded. He further states that the court showed partiality in the mentioned proceedings and discriminated against him on the basis of his national origin. Also, he alleges that his rights derived from his working relations have been cancelled.

16. In his submission of 19 December 2001, the applicant specifically argues that his case has not been resolved due to his reinstatement into possession of the apartment at Naste Nakića St. no. 3, and he maintains his claims before the Chamber.

IV. OPINION OF THE CHAMBER

17. 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."

18. The Chamber notes that the applicant complains that the courts wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the European Convention on Human Rights ("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 court failed to act fairly as required by Article 6 of the Convention.

19. The applicant also complains about discrimination and the loss of rights derived from his work. However, he has failed to substantiate these allegations.

20. 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 inadmissible.

V. CONCLUSION

21. 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