



DECISION ON ADMISSIBILITY

Case no. CH/02/12394

Ljubomir BARIŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 July 2003 with the following members present:

Mr. Miodrag PAJIĆ, Acting President
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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. On 8 August 1994, the applicant entered an exchange contract involving his private property located in Zenica, Ulica Prašnice 22 and that of Ms. Meliha Družić, situated in Slavonski Brod, Republic of Croatia. Both parties entered into possession of their respective properties. The exchange contract was verified by the First Instance Court in Zenica on 22 September 1994.

2. On 22 January 2002, the Commission for Real Property Claims (the "CRPC") issued a decision confirming the applicant's property right over the house in Zenica as of April 1992. Upon the applicant's request, the Housing Administration of the Municipality of Zenica ("the Administration") on 15 July 2002 permitted the enforcement of the CRPC decision. Ms. Družić's eviction was scheduled to take place on 12 September 2002.

3. On 14 August 2002, Ms. Družić initiated a civil lawsuit before the Municipal Court in Zenica against the applicant with a view to establish the validity of the exchange contract. On 4 September 2002, the Chamber ordered the respondent Party to refrain from further steps in order to evict Ms. Družić from the house in Zenica. On 5 September 2002, the Municipal Court in Zenica ordered the Administration to suspend the enforcement of the CRPC decision and not to evict Ms. Družić until the pending civil proceedings are concluded.

II. COMPLAINTS

4. The applicant complains that the right to return and his right under Article 8 of the European Convention on Human Rights are violated.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 29 October 2002. On the same day when this decision was issued, the Chamber decided to withdraw its order for provisional measures of 4 September 2002.

IV. OPINION OF THE CHAMBER

6. 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 ...".

7. The Chamber observes that on 5 September 2002, the Municipal Court in Zenica ordered the Administration to suspend Ms. Družić's eviction until the validity of the exchange contract is determined by that Court in proceedings currently pending before it. The applicant has not shown that these court proceedings constitute an ineffective remedy and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

8. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Miodrag PAJIĆ
Acting President of the First Panel