



DECISION ON ADMISSIBILITY

Case no. CH/03/13019

Berislav ĐUKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant complains of being ordered, by a procedural decision of the competent body, to move out of the apartment he was allocated.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 19 February 2002 and registered the same day.

3. The applicant requested the Chamber to issue a provisional measure postponing his eviction from the apartment until the procedure for review of a CRPC decision concluded. On 4 March 2003 the Chamber decided not to order provisional measure requested.

4. On 28 March 2003 the applicant submitted additional information.

5. The Chamber considered the admissibility of the case on 4 March, 9 May and 2 July 2003. The Chamber adopted the present decision on the latter date.

III. FACTS

6. In 1984 the applicant's employer allocated him an apartment at Ulica Ratomira Perendije no.3 in Zenica. He alleges that that apartment was small and unfit for his four-member family. According to the rules he was entitled to a bigger apartment.

7. In 1995 his employer allocated the applicant another apartment in Ulica Juraja Najtharta no.9 in Zenica, and he "returned his old apartment to the employer". The applicant alleged that a person M.B. lived in the apartment in Ulica Juraja Najtharta no. 9 until she died in 1995.

8. According to regulations, the applicant filed a request for revalidation of the contract on use of the apartment to the Service for Administration and Housing Affairs of the Zenica Municipality ("the administrative organ"). The administrative organ accepted the request and checked if the request for reinstatement into the mentioned apartment had been filed. Allegedly, it was established that there was no such request evidenced, but the procedure for revalidation was slow. The applicant has never received a decision revalidating his contract on use.

9. In June 2001 the competent organ informed the applicant that a person B.I. had filed a request for reinstatement into possession of the apartment in question. The applicant alleges that it was not possible to establish this earlier, because the administration failed to record that fact in the computer evidence. He also alleges that he did not file a request for reinstatement into his pre-war apartment, because he thought it was not necessary due to the fact that the administrative organ informed him that no request for the apartment in question has been filed. Thus, he missed the deadline, and can not claim to be reinstated into his pre-war apartment.

10. On 9 July 2002 the CRPC issued a decision confirming the occupancy right of B.I. over the mentioned apartment, allowing him to repossess it. On 7 August 2002 B.I. filed a request for enforcement of CRPC decision to the administrative organ.

11. On 31 January 2003 the administrative organ issued a conclusion allowing the enforcement of the CRPC decision ordering the applicant to leave the apartment and hand it over to B.I. within 15 days from the day the conclusion was delivered to him.

IV. COMPLAINTS

12. The applicant considers his right to respect of his home, private and family life under Article 8 of the Convention has been violated, because he lost the occupancy right over the apartment in question, and he can not return to his pre-war apartment. he also complains of being misled by the Municipality organs who told him that there was no request for reinstatement into the apartment in question.

V. OPINION OF THE CHAMBER

13. 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 of petition.”

14. The Chamber notes that the applicant was ordered to vacate the apartment at ulica Juraja Najtharta no.9 in Zenica pursuant to a lawful decision terminating a right of temporary use. 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 this part of 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.

15. As to the applicant’s complaint of being misled by the municipality organs the Chamber notes the applicant failed to initiate civil proceedings before the domestic courts requesting compensation for the damage allegedly caused to him by the Municipality. The applicant has not shown that this remedy was ineffective 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 this part of the application inadmissible, as well.

VI. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel