



DECISION ON ADMISSIBILITY

Case no. CH/00/6654

Kemal MUJKANović

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER, Vice-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

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 introduced on 22 December 2000. It concerns the applicant's attempts to prevent his eviction from an apartment he temporarily occupied. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from the apartment in question. On 7 November 2002, the Chamber decided not to order the provisional measure requested.

II. FACTS

2. On 9 November 1993, the applicant was allocated an apartment located at Ul. Obalni bulevar (Bulevar Kulina bana) by the DOO "Željezara" Zenica (the "Steel Company").

3. The applicant tried to be allocated another apartment by the Steel Company. From 10 November 1999 to 25 December 2000, he submitted several requests to be placed on a waiting list and to have his case considered as a matter of priority. Finally, on 9 June 2000, the applicant was placed on the waiting list, which had already been established in 1997. He filed an objection against his placement on the list. On 21 November 2000, the Steel Company rejected his objection.

4. On 20 December 2000, the applicant initiated civil proceedings before the Municipal Court in Zenica. He requested the court to order the Steel Company to allocate him another apartment based on the list from 1993, and to annul the decision of 21 November 2000. On 18 May 2001, the Municipal Court rejected his petition, reasoning that the applicant was rated based on the fact that he was a temporary occupant of the apartment at that time. According to the judgment, he was given the status of a temporary occupant *ex lege*, based on the Law on Cessation of the Application of the Law on Abandoned Apartments, not on a decision of the Steel Company. It also reasoned that the court is not competent to order the allocation of apartments. The applicant appealed against this judgment. On 8 January 2002, the Cantonal Court in Zenica rejected his appeal and confirmed the first instance judgment. The applicant filed a request for review (*revizija*). On 7 May 2002, the Supreme Court of the Federation of Bosnia and Herzegovina rejected the request for review of the judgment of 8 January 2002. In March 2002, he filed an appeal to the Constitutional Court of Bosnia and Herzegovina. These proceedings are still pending.

5. Meanwhile, on 18 April 2001, the applicant submitted a request to the Municipal and Cantonal Courts in Zenica, seeking the exclusion of a judge appointed to his case. The applicant alleged that the judge intentionally prolonged the proceedings in his case. He further sought the exclusion of all judges of the Municipal Court in Zenica and the referral of his case to a court in Sarajevo Canton. On 23 April 2001, the request was rejected as ill-founded.

6. On 30 September 2002, the Zenica Municipality issued a procedural decision allowing S.F. to be reinstated into possession of the apartment in question, which was S.F.'s pre-war apartment. The applicant was evicted from the apartment in question on 14 January 2003.

III. COMPLAINTS

7. The applicant complains that the management of the Steel Company and the courts wrongly established the facts in his case and misapplied the legal provisions, thereby preventing him from realising his right to be allocated an apartment. He also complains that the courts in Zenica are biased. He seeks review of the proceedings of the Steel Company related to the allocation of apartments.

8. The applicant alleges violations of his rights guaranteed by Articles 6, 8 and 13 of the European Convention on Human Rights. He claims compensation for pecuniary and non-pecuniary damages.

IV. OPINION OF THE CHAMBER

9. 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.”

A. Complaints concerning allocation of an apartment

10. The Chamber notes that the decision on the applicant's eviction was taken to allow the pre-war occupancy right holder to repossess the apartment. In these circumstances, 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 this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement.

11. The Chamber further notes that the applicant complains that there has been an interference with his right to be allocated a certain apartment. However, the Chamber notes that the European Convention on Human Rights does not contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to housing, which is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

B. Complaints concerning the proceedings

12. Additionally, the applicant complains that there has been an interference with his right to fair trial by an impartial and independent tribunal as protected by Article 6 of the Convention. However, from the facts and documents in case file, the Chamber cannot find any such violation because the applicant has failed to substantiate any of his allegations. Therefore, the Chamber finds that this part of the application does 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.

13. Lastly, the Chamber notes that the applicant complains that the competent courts 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 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 this part of application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

14. 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