



DECISION ON ADMISSIBILITY

Case no. CH/01/7486

Ostoja SIMANIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 November 2001 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice- President
Mr. Jakob MÖLLER
Mr. Manfred NOWAK
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 7 May 2001. It concerns a dispute before domestic administrative bodies regarding the outcome of the proceedings for regaining of the applicant's pre-war occupancy right over the apartment at Trg Zlatnih Ijljana (previously ul. Žikice Jovanovića- Španca) no. 6. (according to the Novi Grad Municipality the former ul. Žikice Jovanovića - Španca is current ul. Vahide Maglajlić no. 16). The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to forbid the disposal of the apartment in order to prevent the purchase of the apartment. On 12 October 2001 the Chamber decided not to order the provisional measure requested.

2. On 8 March 1999, the applicant submitted a claim for regaining the occupancy right to the Service for Labour, Social Affairs, Health, Displaced Persons and Refugees of the Novi Grad Sarajevo Municipality ("Service"). As the Service found that the applicant submitted a claim for voluntary return rather than request for reinstatement into the apartment, the applicant on 30 May 2000 submitted the claim to the Administration for Housing Affairs of the Canton Sarajevo ("Administration"), which is competent to decide the matter. However, on 18 September 2000 the claim was rejected as out of time, as the legal time limit had expired on 4 October 1999. Moreover, on 15 May 2001 the applicant's appeal against the procedural decision in question was refused by the Ministry of Housing Affairs of the Sarajevo Canton. Being dissatisfied with the outcome of the appeal proceeding, the applicant initiated an administrative dispute against the procedural decision before the Cantonal Court in Sarajevo. According to information provided by the applicant's representative on 8 October 2001, the administrative dispute is still pending.

3. The applicant emphasizes that the Service did not warn him on his wrongly submitted claim although, according to the Law on Administrative Procedure, the Service is obliged to do that. The applicant alleges that his rights to home and to a fair trial are violated.

II. OPINION OF THE CHAMBER

4. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept ... and shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...."

5. The Chamber finds that the applicant's complaint is premature as the administrative dispute before the Cantonal Court in Sarajevo is still pending. 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.

III. CONCLUSION

6. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO,
President of the Second Panel