



DECISION ON ADMISSIBILITY

Case no. CH/01/8118

Ljubo MARIČIĆ

against

THE REPUBLIKA SRPSKA

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
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 15 August 1995, the applicant entered into a contract on exchange of his apartment in Zenica with Mr. Namik Čekić, who lived in an apartment in Banja Luka (Ulica Od Zmijanja Rajka no. 41). On 17 October 2001, the Republika Srpska Ministry for Refugees and Displaced Persons, Department Banja Luka (hereinafter: "the Ministry") issued a decision confirming Mr. Čekić's occupancy right over the apartment in Banja Luka. The applicant's eviction was scheduled to take place on 18 December 2001.

2. On 12 November 2001, the applicant initiated civil proceedings before the Court of First Instance in Banja Luka with a view to establishing the validity of the exchange contract. He also requested the court to issue a provisional measure to prevent his eviction from the apartment in Banja Luka. On 29 January 2002, the Court of First Instance in Banja Luka ordered the Ministry to suspend the applicant's eviction until the pending civil proceedings are completed.

II. COMPLAINT

3. The applicant alleges a violation of his right to a home pursuant to Article 8 of the European Convention on Human Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 10 December 2001.

5. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary steps to prevent his eviction from the apartment at Ulica Od Zmijanja Rajka no. 41 in Banja Luka. On 17 December 2001, the Chamber ordered a provisional measure to that effect.

6. In its observations submitted on 23 January 2002, the Republika Srpska proposes to declare the application inadmissible since the proceedings before the Court of First Instance in Banja Luka are still pending. The applicant, in his reply of 12 April 2002, maintains his complaints.

IV. OPINION OF THE CHAMBER

7. 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..."

8. The Chamber notes that the civil proceedings initiated by the applicant before the Court of First Instance in Banja Luka to determine the validity of the exchange contract are still pending. The Chamber further notes that on 29 January 2002, that Court ordered the Ministry, as a provisional measure, to suspend the applicant's eviction as long as the civil proceedings before the Court concerning the validity of the exchange contract are pending. Accordingly, the domestic remedies seem to be effective and there is no threat of eviction until the validity of the contract will be determined. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

9. For these reasons, the Chamber, unanimously,

**WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE WITH IMMEDIATE EFFECT and
DECLARES THE APPLICATION INADMISSIBLE.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel