



DECISION ON ADMISSIBILITY

Case no. CH/01/8128

Milan KEPČIJA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 January 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
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)(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 14 December 2001. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from an apartment which he occupies in Banja Luka. On 17 December 2001 the President of the Second Panel ordered the provisional measure requested.

2. The applicant complains of a decision of the Ministry for Refugees and Displaced Persons in Banja Luka ordering his eviction. On 13 February 1995 the applicant had concluded a contract on exchange, thereby exchanging his apartment in Croatia for the apartment in question in Banja Luka. The prior occupant of the apartment, with whom the applicant concluded the contract on exchange, was allocated the occupancy right by the holder of the allocation right in June 1994. The eviction was ordered because the pre-war occupant has obtained a decision entitling him to regain possession of the apartment and terminating the applicant's right to use it.

II. OPINION OF THE CHAMBER

3. 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."

4. 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. It appears that the applicant had concluded an exchange contract to purportedly obtain the occupancy right over the apartment. In addition, it appears that the person from whom he obtained the occupancy right did himself have the right to occupy the apartment at the time the contract was executed. However, the right of the second party to the contract to occupy the apartment was cancelled by the subsequent Law on the Cessation of the Application of the Law on Abandoned Property. Therefore, as the second contracting party's legal capacity to transfer his occupancy right had been cancelled, the applicant's right to occupy the apartment had also been cancelled, notwithstanding the existence of the contract on exchange. 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 the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

5. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE, and

WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE WITH IMMEDIATE EFFECT.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel