



DECISION ON ADMISSIBILITY

Case no. CH/01/8321

Besim AVDAGIĆ

against

FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

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 FACTS

1. The applicant states that he is the holder of the occupancy right over an apartment located in Sarajevo, Musala street 1/III. He concluded a contract on use of the apartment on 7 May 1997.
2. In 1997 the pre-war holder of the occupancy right, J. M., surrendered the apartment to the owner. In exchange for that apartment she received another apartment in Sarajevo, at Kranjčevićeva street 9/I.
3. The applicant submitted a request to purchase the apartment, but he learned that J.M. had filed a request for repossession of the apartment. The applicant applied to the Administration for Housing Affairs with a submission in which he requested the request of J. M. to be refused as ill-founded, because she does not fulfil the conditions to exercise the right to return under Article 1 of the Law on Cessation of the Application of the Law on Abandoned Apartments. He argued that J.M. exchanged the apartment voluntarily and concluded a contract on use for the other apartment, which she uses now, in the Kranjčevićeva street.
4. On 27 March 2001, the Administration for Housing Affairs issued a decision by which J. M. was reinstated into possession of the apartment in the street Musala 1/III and the applicant was ordered to vacate the apartment in a period of 15 days.
5. The applicant filed an appeal against the decision of 27 March 2001. This appeal does not have suspensive effect and to date the decision upon his appeal has not been rendered. On 1 October 2001, the Administration issued a conclusion for the enforcement of the decision, ordering the eviction of the applicant (the conclusion does not state the exact date of eviction).

II ALLEGED VIOLATIONS

6. The applicant states that his right to his home guaranteed under Article 8 of the Convention has been violated. He argues that the administrative body acted irregularly by issuing the decision of 27 March 2001, because in this particular case the matter concerns the voluntary surrender of an apartment to the owner, i. e. administrative body acted in accordance with the Article 5 of the Law on Housing Relations.

III PROCEEDINGS BEFORE THE CHAMBER

7. The application was submitted on 26 October 2001 and registered on the same day. The applicant is represented by Ekrem Galijatović, a lawyer in Sarajevo. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to withdraw the decision, which the Administration for Housing Affairs had issued and which refers to the suspension of the applicant's right to use the apartment.
8. On 7 November 2001 the Chamber rejected the request for provisional measures.

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."
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 and that the applicant has no right to occupy 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

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.

V CONCLUSION

11. For this reason, the Chamber, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(Signed)
Ulrich GARMS
Registrar of the Chamber

(Signed)
Michèle PICARD
President of the First Panel