



DECISION ON ADMISSIBILITY

Case no. CH/01/8578

Mladen ĐORĐIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This application concerns the applicant's attempts, on the one hand, to achieve the transfer of the occupancy right of his late grandmother to an apartment located on ulica Hamdije Kreševljakovića, or, on the other hand, to prevent his eviction from an apartment located on Prusačka ulica, which he purchased in 1998 after he was informed that according to Government regulations, he was not entitled to reside in the apartment on ulica Hamdije Kreševljakovića because it is too large for him as a single person. The applicant's eviction from his apartment on Prusačka ulica was scheduled after the pre-war occupancy right holder filed a claim for repossession of it.

II. STATEMENT OF FACTS

2. The applicant's grandmother, Zora Matić, was the occupancy right holder over an apartment on ulica Hamdije Kreševljakovića since 1985. In 1994 she concluded a contract on life support with the applicant. In 1997 the applicant's grandmother died. On 18 February 1997 the applicant, who is of Serb origin, requested the transfer of the occupancy right to himself. He based his request on the fact that he and his late grandmother had concluded the contract on life support and that he had lived in a common household with his late grandmother.

3. The applicant was informed by Ms. A.F., a government employee of Bosniak origin working in the field of apartment allocations, that he had to exchange the apartment on ulica Hamdije Kreševljakovića for a smaller apartment on Prusačka ulica. He was told that according to internal regulations of the Government of the Federation of Bosnia and Herzegovina, which is the owner of the apartment, the applicant, as a single person, was not entitled to reside in the apartment on ulica Hamdije Kreševljakovića as it is too large for a single occupant. The applicant then concluded a contract on use of the apartment on Prusačka ulica and moved there. He subsequently purchased the apartment on Prusačka ulica in November 1998. On 8 April 1999 the applicant registered as the owner of the apartment.

4. The applicant did not pursue his claim to achieve the transfer of his late grandmother's occupancy right over the apartment on ulica Hamdije Kreševljakovića any further, and no decision was issued on his claim.

5. After death of the applicant's grandmother, the Government of the Federation of Bosnia and Herzegovina allocated the apartment on ulica Hamdije Kreševljakovića to Ms. A.F., its employee (the same person mentioned in paragraph 3 above). It based its decision on the reason there were no members of the family household of the previous occupancy right holder of the apartment who could continue occupying the apartment in question after her death. Ms. A.F. subsequently purchased the apartment on ulica Hamdije Kreševljakovića. The applicant did not file a request for repossession of the apartment on ulica Hamdije Kreševljakovića.

6. The pre-war occupancy right holder of the apartment on Prusačka ulica filed a request for repossession of that apartment. During the proceedings before the competent second instance administrative organ, the applicant's appeal against the procedural decision terminating his right to use the apartment on Prusačka ulica was rejected and he was ordered to vacate the apartment within 15 days. On 23 July 2002 the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo. These proceedings are still pending.

7. On 4 December 2001 the applicant initiated proceedings before the Municipal Court I Sarajevo. In the proceedings he asks firstly for the invalidation of the contract on use of the apartment on ulica Hamdije Kreševljakovića concluded between Ms. A.F. and the Government of the Federation, and secondly to declare him as the occupancy right holder over the apartment on ulica Hamdije Kreševljakovića.

8. On 27 December 2001 the administrative organ issued a conclusion ordering the eviction of the applicant from the apartment on Prusačka ulica for 18 January 2002.

9. On 22 November 2001 the applicant filed criminal charges with the Municipal Public Prosecutor in Sarajevo against Ms. A.F. for abuse of office. He claims that Ms. A.F. forced him to conclude a contract on use of the apartment on Prusačka ulica and to give up his rights to the apartment on ulica Hamdije Kreševljakovića by using pressure, threats and misleading him. These proceedings are still pending before the criminal courts.

III. PROCEEDINGS BEFORE THE CHAMBER

10. The application was introduced to the Chamber on 14 December 2001. The applicant is represented by Danijela Seller Osenk, a lawyer. The applicant requested the Chamber to order the respondent Parties, as a provisional measure, to stop his eviction from the apartment on Prusačka ulica until the end of the proceedings before the Municipal Court I Sarajevo regarding the question of whether he is entitled to use the apartment on ulica Hamdije Kreševljakovića.

11. On 11 January 2002 the Chamber issued a provisional measure ordering the respondent Party, the Federation of Bosnia and Herzegovina, to stop the applicant's eviction from the apartment located at Prusačka ulica no. 1/IV. The provisional measure was ordered to remain in force until the Chamber issues its final decision in the case.

12. On 14 January 2002 the case was transmitted to Bosnia and Herzegovina in relation to possible violations of Article 1 of Protocol No. 1 to the Convention, Articles 6 and 8 of the Convention, as well as discrimination in relation to those rights.

13. On 14 January 2002 the case was also transmitted to the Federation of Bosnia and Herzegovina, without referring to any possible violations arising from the application.

14. On 15 February 2002 the Federation of Bosnia and Herzegovina submitted written observations. On 22 February 2002 these observations were transmitted to the applicant.

15. Bosnia and Herzegovina did not submit any written observations on the case.

16. On 11 March 2002 the applicant submitted his reply to the written observations of the Federation of Bosnia and Herzegovina.

17. On 14 May 2002 the Chamber sent a letter to the Federation of Bosnia and Herzegovina requesting further observations on the merits of the case and in particular observations in relation to possible violations of Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, as well as discrimination in relation to those rights.

18. On 14 June 2002 the Federation of Bosnia and Herzegovina submitted further written observations on the merits of the case, which were transmitted to the applicant on 28 June 2002.

19. On 22 July 2002 the applicant submitted his reply to the further observations of the Federation of Bosnia and Herzegovina.

20. On 17 September 2002 the applicant submitted documents to the Chamber in reference to the proceedings conducted before the domestic organs. These documents were transmitted to the respondent Parties on 3 October 2002.

IV. COMPLAINTS

21. The applicant complains of a violation of his rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, as well as discrimination in relation to those Articles. The applicant considers it unjust that in the end he might neither be able to maintain his rights to the apartment on ulica Hamdije Kreševljakovića nor to the apartment on Prusačka ulica. On

22 July 2002 the applicant supplemented his application to include a claim under Article 13 of the Convention that there is no effective legal remedy to resolve his problem.

22. The applicant further claims that the criminal proceedings he initiated with the Municipal Public Prosecutor against Ms. A.F. for abuse of office have been pending for an unreasonably long period of time. In addition, without specifying any further, he claims that there are some indications that these proceeding will not be resolved in a fair manner. Therefore, he has filed a complaint with to the Independent Judicial Commission in this respect.

V. OPINION OF THE CHAMBER

23. 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 (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. Admissibility as against Bosnia and Herzegovina

24. The applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the Chamber on its own motion find any such evidence. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina, and the Chamber decides to declare it inadmissible as against Bosnia and Herzegovina.

B. Admissibility as against the Federation of Bosnia and Herzegovina

25. The Chamber notes that the applicant's complaints regarding his rights over the apartment on ulica Hamdije Kreševljakovića and his rights as the registered owner of the apartment on Prusačka ulica are premature as civil proceedings are still pending before the domestic courts. In those proceedings the domestic courts will establish whether the applicant has a right over either apartment. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible in this respect.

26. With regard to the applicant's complaint against the decision of 27 December 2001 ordering his eviction from the apartment on Prusačka ulica, the Chamber notes that the decision was taken to allow the pre-war occupancy right holder to repossess the apartment. Although the eviction order against the applicant constitutes an interference with the applicant's rights, it appears to be in accordance with the law. In these circumstances, 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. The Chamber therefore decides to declare this part of the application inadmissible. Moreover, the Chamber withdraws its order for a provisional measure with immediate effect.

27. Finally, as to the applicant's claim that the criminal proceedings against Ms. A.F. for abuse of office have been pending for an unreasonably long period of time and may not be resolved in a fair manner, the Chamber notes that the only Article under which this claim could fall is Article 6 of the Convention which protects the right of everyone to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” and guarantees to everyone charged with a criminal offence certain minimum rights. However, the Chamber recognises that the exact text of Article 6 does not indicate that the applicant, as an injured party to the criminal proceedings, has a viable claim under the protections applicable to criminal proceedings contained in that Article. The applicant has not been charged with a criminal offence. Domestic law provides the applicant with the right to participate in criminal proceedings as an injured party because he is “a person injured or

threatened in some personal or property right or by a crime” (Article 139(1)(6) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (OG FBiH no. 43/98). However, this right under domestic law falls outside the scope of the protections of Article 6 applicable to criminal proceedings (see case no. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraphs 93-94, Decisions January—June 2002). It follows that the applicant’s claim under Article 6 in this respect is incompatible *ratione materiae* with the Agreement, and the Chamber, therefore, decides to declare it inadmissible.

VI. CONCLUSION

28. 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)
Mato TADIĆ
President of the SECOND Panel