



DECISION ON ADMISSIBILITY

Case no. CH/02/10770

Goran VUJIČIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 3 February 2003 with the following members present:

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

I. INTRODUCTION

1. The applicant complains of a decision of the Ministry for Refugees and Displaced Persons in Banja Luka (the "Ministry") ordering his eviction from an apartment which he occupies. The eviction was ordered because the widow of the pre-war occupant has obtained a decision entitling her to regain possession of the apartment and terminating the applicant's right to use it.
2. The applicant alleges a violation of his right protected under Article 8 of the European Convention on Human Rights (the "Convention").

II. STATEMENT OF FACTS

3. On 23 July 1993, the allocation right holder issued a procedural decision on allocation of an apartment in Banja Luka to the applicant. This procedural decision states that it was issued on the basis of an "exchange of apartments", without mentioning any further details of any contract on exchange.
4. On 26 July 1993, the applicant concluded a contract on use of the apartment in question. No contract on exchange of apartments was in fact concluded between the applicant and the pre-war occupant, M.A., or anyone else.
5. On 26 February 2001, the Ministry for Refugees and Displaced Persons, Department Banja Luka ("the Ministry"), issued a procedural decision recognising M.A. as a pre-war occupancy right holder over the apartment and terminating the applicant's right to use it. Based on information provided by the Ministry, it seems that the applicant appealed against this decision, and on a date unknown to the Chamber, the Ministry, acting in the second instance, upheld the first instance decision of 26 February 2001.
6. On 13 May 2002, the applicant initiated court proceedings requesting recognition of the validity of the contract on use of the apartment of 26 July 1993, which was concluded on the basis of the procedural decision on allocation of the apartment of 23 July 1993. These proceedings are still pending.
7. On 29 October 2002, the Ministry issued a conclusion on enforcement scheduling the applicant's eviction for 7 November 2002.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was submitted to the Chamber on 29 October 2002 and registered on the same day. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from the apartment in question. Based on a preliminary review of the facts, on 4 November 2002, the Chamber issued such an order for provisional measures preventing the applicant's eviction.
9. On 6 November 2002, the Chamber transmitted the application to the respondent Party for its observations.
10. On 6 December 2002, the respondent Party submitted its observations on the admissibility and merits of the application. The respondent Party explained that there was no "classic" exchange of apartments in this case, but rather, the applicant entered into the apartment in question on the basis of the so-called "Enactment on allocation for temporary use of housing, business and other spaces" (OG RS no. 12/92). Therefore, the respondent Party contends that Article 2(a) of the Law on Cessation of the Application of the Law on Abandoned Property, which pertains to contracts on exchange of apartments, is not applicable to this case (*i.e.*, there was no contract on exchange; consequently, the Ministry was not obliged to interrupt its proceedings on enforcement).

11. On 27 December 2002, the applicant submitted his observations in reply. The applicant does not dispute the respondent Party's information with respect to the lack of any contract on exchange. The applicant confirms that the apartment in question was allocated to him on the basis of the so-called rationalisation (*i.e.*, the pre-war occupant, who is of Croat origin, was obliged to move into a smaller apartment) and that no real exchange of apartments occurred.

IV. OPINION OF THE CHAMBER

12. 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."

13. The Chamber notes that the decision on the applicant's eviction was taken to allow the widow of the pre-war occupancy right holder to repossess the apartment in question. 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.

14. The Chamber further withdraws its order for a provisional measure with immediate effect.

V. CONCLUSION

15. 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