



DECISION ON ADMISSIBILITY

Case no. CH/02/10843

Božo ĐUKIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 February 2003 with the following members present:

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

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 application was introduced on 17 December 2002. The applicant complains of a decision of the Ministry for Refugees and Displaced Persons in Banja Luka (the "Ministry"), ordering him to vacate an apartment which he occupies without the right to alternative accommodation. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from the apartment he occupies. On 7 January 2002, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

2. In his application, the applicant states that until the beginning of the armed conflict in Bosnia and Herzegovina, he was a subtenant. After the beginning of the hostilities, he moved into an apartment (garsonijera) located at Cara Dušana Str. no. 1, which was empty. He states that before the armed conflict, the occupancy right holder over that apartment, Svjetlana Mažar, lived in Rijeka, Republic of Croatia, and she rented out the apartment.

3. On 1 August 1994, "INCEL" d.d. Banja Luka, the owner of the apartment in question, issued a procedural decision by which it allocated the apartment at Cara Dušana Str. no. 1 in Banja Luka to the applicant for his use. Thereafter, on 8 August 1995, the applicant entered into a contract on temporary use of the apartment with the Housing Cooperative "INDOM" Banja Luka.

4. On 7 May 1997, the applicant concluded a contract on exchange of apartments with Žarko Bundalo, by which he exchanged the apartment at Cara Dušana no. 1 in Banja Luka for an apartment at Kordunska Str. 14/XIII in Banja Luka. The owner of both apartments ("INCEL" d.d. Banja Luka) gave its consent for the exchange.

5. On 24 May 2002, upon the applicant's request, the Ministry issued a certificate confirming that Svjetlana Mažar had not submitted a claim for repossession of the apartment at Cara Dušana Str. 1 in Banja Luka.

6. On 2 December 2002, upon Žarko Bundalo's request, the Ministry issued a procedural decision establishing that Žarko Bundalo was the pre-war occupancy right holder over the apartment at Kordunska no. 14/XIII in Banja Luka and terminating the applicant's right to use that apartment. The applicant was obliged to vacate that apartment within 15 days from the date of receipt of the procedural decision. The procedural decision reasons that the contract on use of the apartment in question was concluded within the period from 1 April 1992 to 19 December 1998; therefore, it is null and void pursuant to the Law on Cessation of the Application of the Law on Abandoned Property and the applicant is considered a temporary occupant. Furthermore, the reasoning states that the applicant is not entitled to alternative accommodation within the meaning of Articles 34 and 35 of the Law on Cessation of the Application of the Law on the Use of Abandoned Property, as he is a domiciled person.

7. The applicant has not initiated court proceedings concerning the validity of the contract on exchange.

8. On 23 December 2002, the applicant submitted a letter to the Chamber informing it that his eviction from the apartment at Kordunska Str. 14/XIII in Banja Luka was scheduled for 22 January 2003, but he did not submit the conclusion on enforcement.

III. RELEVANT LEGAL PROVISIONS

9. Under Articles 32 to 34 of the Law on Housing Relations (OG RS nos. 19/93, 22/93, 12/99 and 31/99), two conditions are required for a valid exchange of occupancy rights: it shall be performed through a contract in writing and with the agreement of the flat owner or allocation right holder.

10. Article 2 of the Law on Cessation of the Application of the Law on Abandoned Property states:

“Any occupancy right or contract on use made between 1 April 1992 and 19 December 1998 is cancelled. A person who occupies an apartment on the basis of an occupancy right which is cancelled under this Article shall be considered a temporary user for the purposes of this Law.”

11. Article 2a of the Law on Cessation of the Application of the Law on Abandoned Property states:

“The provisions of this Law shall also apply to contracts on exchange of apartments, where the exchange took place between 1 April 1992 and 19 December 1998 in accordance with the Law on Housing Relations (RS OG nos. 19/93, 22/93, 12/99 and 31/99).”

12. The Instruction on the Application of the *Law on Further Amendments to the Law on Cessation of Application of the Law on the Use of Abandoned Property* and the *Law on the Cessation of Application of the Law on the Use of Abandoned Property* in its amended form (OG RS nos. 38/98 and 12/99), which came into force on 28 October 1999, as imposed by the Decision of the High Representative of 27 October 1999, states in its relevant parts:

“14. Individuals whose contract on use of apartment is cancelled according to Article 2, paragraph 3 of the *Law* are considered to be temporary users of the apartment, and are not occupancy right holders unless their occupancy right is restored to them in accordance with the Law. Temporary users under this paragraph shall have the right to the use of the apartment until such time as the final legal status of the apartment is determined. If a claim is made for the apartment by the occupancy right holder, the competent authority shall issue a decision in accordance with Article 11 of the Law on repossession of the apartment by the occupancy right holder, and shall determine whether the temporary user has a right to alternative accommodation in accordance with Article 34 of the Law, as explained in this Instruction.

“15. In respect of apartments referred to in the previous paragraph, where a claim for the apartment is not filed in accordance with the applicable deadline, and where the occupancy right terminates under Article 16 of the Law, or where a claim for the apartment is rejected (for material reasons - *odbio*) and all possibilities for appeal against the decision have been exhausted, the current user may make a claim to the responsible authority for revalidation of his/her contract on use of apartment in accordance with Article 2, paragraph 3 of the Law. The responsible authority shall also commence a proceeding *ex officio* to determine the status of the current user.

“16. In a proceeding under the previous paragraph, if the current user obtained an occupancy right in any of the following circumstances: (...)

iv. the current user obtained the occupancy right through a valid contract on exchange of apartments, in accordance with the Law on Housing Relations; (...)

the responsible authority shall revalidate his/her contract on use of apartment in accordance with paragraphs 18 and 19 of this Instruction.”

IV. OPINION OF THE CHAMBER

13. 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.”

14. The Chamber notes that pursuant to Article 2 of the Law on Cessation of the Application of the Law on Abandoned Property (see paragraph 10 above), both the procedural decision on the allocation of the apartment at Cara Dušana Str. no. 1 in Banja Luka to the applicant issued by INCEL d.d. Banja Luka on 1 August 1994 and the applicant's subsequent contract on temporary use of the apartment with the Housing Cooperative "INDOM" Banja Luka on 8 August 1994, were cancelled upon the entry into force of the Law on Cessation of the Application of the Law on Abandoned Property because both were concluded between 1 April 1992 and 19 December 1998.

15. Moreover, whilst the subsequent contract on exchange concluded between the applicant and Žarko Bundalo on 7 May 1997 is in accordance with the Law on Housing Relations (see paragraph 9 above), in that it was a written contract and the owner of both subject apartments gave its consent for the exchange, it has no legal basis as the applicant's contract on temporary use of the apartment at Cara Dušana Str. no. 1 was cancelled upon the entry into force of Article 2 of the Law on Cessation of the Application of the Law on Abandoned Property.

16. In addition, the Chamber notes that on 2 December 2002, the Ministry issued a procedural decision confirming that Žarko Bundalo is the pre-war occupancy right holder of the apartment at Kordunska Str. 14/XIII in Banja Luka. Therefore, the Chamber finds that the applicant has no legal right to the apartment at Kordunska Str. 14/XIII in Banja Luka that he acquired through the contract on exchange of 7 May 1997.

17. Given that the decision on the applicant's eviction from the apartment at Kordunska Str. 14/XIII in Banja Luka was taken to allow the pre-war occupancy right holder to repossess the apartment and that the applicant has no legal basis to occupy the apartment because his contract on exchange has no legal basis, 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 in this respect 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.

18. As to the applicant's claim that he has been denied the right to alternative accommodation, the Chamber notes that the European Convention on Human Rights does not contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to housing, which is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible as well.

V. CONCLUSION

19. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel