



DECISION ON ADMISSIBILITY

Case no. CH/02/11291

Mujo KUKA

against

THE FEDERATION BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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)(a) and VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The applicant is a temporary occupant of an apartment in Sarajevo located at ulica Sarajevskih ilegalaca 12/1. The pre-war occupancy right holder initiated proceedings before the Administration for Housing Affairs in Sarajevo (the "Administration"). On 15 March 2001 the Administration issued a decision allowing the pre-war occupancy right holder to return into possession of the apartment and ordering the applicant to leave the apartment.

2. The eviction of the applicant from the apartment in question was scheduled for 19 July 2002. The applicant filed an appeal against the conclusion ordering his eviction, which does not have suspensive effect.

3. The applicant submitted a request to return to his pre-war apartment located at ulica Safeta Zajke on 30 September 1999. The Chamber has no information on whether the Administration has decided upon this request.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted to the Chamber on 12 July 2002 and registered on the same day. The applicant requested the Chamber to order the respondent Party, as provisional measure, to take all necessary action to prevent his eviction from the apartment in question. On 16 July 2002 the Acting President of the First Panel decided to reject the provisional measure requested.

5. The applicant complains that the Administration should postpone his eviction until he obtains possession of his pre-war apartment. The applicant alleges that his right to return into possession of his pre-war apartment has been violated.

III. OPINION OF THE CHAMBER

A. Claim against eviction

6. 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."

7. 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 under domestic law to occupy the apartment. 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 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.

B. Claim for repossession

8. 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"

9. The Chamber notes that the applicant's complaint with respect to his request to repossess his pre-war apartment appears to still be pending before the Administration. In the alternative, the applicant has failed to show that he has pursued an appeal against a decision of the Administration on his request, or that he has filed a complaint against the silence of the administration. The applicant has not shown that this remedy would have been ineffective and it does not appear so to

the Chamber. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

10. 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