



DECISION ON ADMISSIBILITY

Case no. CH/02/12275

S. Š.

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 July 2003 with the following members present:

Mr. Miodrag PAJIĆ, Acting President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The application was introduced on 24 September 2002. The applicant is represented by Ms. Danijela Saller-Osenk, a lawyer practicing in Sarajevo. The case concerns the applicant's efforts to repossess his apartment located in the Dobrinja settlement of Sarajevo, Ulica Banović Strahinje no. 2. During the conflict, the applicant left Bosnia and Herzegovina and now resides in Australia.

2. On 13 August 1998, the applicant requested the Administration for Housing Affairs of the Sarajevo Canton (hereinafter: "the Administration") through the embassy of Bosnia and Herzegovina in Australia to enable him to return to his apartment. On 13 May 2002, the Administration referred the case to the Ministry for Refugees and Displaced Persons of the Republika Srpska, Department Srpska Ilidža (hereinafter: "the Ministry") because the applicant's apartment is located in a part of the Dobrinja settlement under jurisdiction of the Republika Srpska. On 13 March 2003, the Ministry issued a decision confirming the applicant's right to return to the above-mentioned apartment. The decision obliged the current users of the apartment to vacate it within 90 days. On 17 March 2003, the applicant requested the execution of the Ministry's decision and, at the same time, lodged a complaint against the deadline for the vacation of 90 days.

3. The applicant initially requested that the Chamber issue an order for provisional measures to vacate and seal the apartment in order to prevent its re-allocation. On 8 October 2002, the Chamber rejected the applicant's request. The case was transmitted to the Republika Srpska which replied on 13 January 2003. In its written observations, the respondent Party suggests to declare the application inadmissible due to non-exhaustion of domestic legal remedies.

II. COMPLAINTS

4. The applicant complains that his rights under Articles 6 of the Convention and under Article 1 of Protocol no. 1 to the Convention have been violated. Subsequent to the issuance of the decision of 13 March 2003, he submits that the Ministry should have obliged the current users to vacate the apartment within 15 days instead of 90 days.

III. OPINION OF THE CHAMBER

5. 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".

6. The Chamber notes that the applicant's complaint as regards the eviction deadline of 90 days is premature as the appellate proceedings against the Ministry's decision of 13 March 2003 are still pending before the Ministry for Refugees and Displaced Persons of the Republika Srpska in Banja Luka. 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.

7. With regard to the two respondent Parties, the Chamber notes that the part of the Dobrinja settlement where the applicant's apartment is located, is under jurisdiction of the Republika Srpska. Accordingly, as directed against the Federation of Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against the Federation of Bosnia and Herzegovina.

8. Finally, the Chamber notes that the Ministry on 13 March 2003 issued a decision confirming the applicant's right to return to the apartment in question. Therefore, 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 this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement.

IV. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Miodrag PAJIĆ
Acting President of the First Panel