



DECISION ON ADMISSIBILITY

Case no. CH/02/12533

Nedžad ŠEHAGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
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 applications 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) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant complains of being ordered by a procedural decision of the competent organ to vacate the real estate which he obtained by a contract on exchange of real estate concluded in 1996.
2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone his eviction from the property until the proceedings before the court are finished. On 25 December 2002 the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS AND PROCEEDINGS

3. The application was introduced on 23 December 2002 and registered the same day. In 1996 the applicant, who is of Bosniak origin, concluded with J.G., who is of Serb origin, a contract on exchange of real estate. The applicant exchanged his property (a house and surrounding land) in Vlasenica, Republika Srpska, with property (a house and surrounding land) owned by J.G. in Sarajevo. Both contracting parties entered into possession of property acquired by the exchange. The signatures of the contracting parties were not verified in the way prescribed by the relevant law.
4. In 1997 the applicant initiated court proceedings requesting the establishment of the validity of the contract concluded in 1996. However, J.G. lodged a counterclaim requesting the applicant to hand him over the possession of the house located in Sarajevo, claiming that he was misled and that he had already moved out from the house located in Vlasenica.
5. On 21 February 2001 the Municipal Court II in Sarajevo issued a judgement rejecting the applicant's request. The same judgement ordered the applicant to hand over the house located in Sarajevo to J.G.
6. The applicant lodged an appeal against this judgement. On 7 August 2001 the Cantonal Court in Sarajevo rejected the applicant's appeal and confirmed the first instance judgement as far as it concerns the applicant's request to establish the validity of the contract on exchange. At the same time the Cantonal Court annulled the first instance judgement in the part ordering the applicant to hand the real estate over to J.G. In that part the case was sent back to the first instance court for renewal of proceedings. The applicant filed an extraordinary legal remedy against the part of the judgement of the Cantonal Court confirming the first instance decision. The review proceedings are pending before the Supreme Court of the Federation of Bosnia and Herzegovina.
7. J.G. also submitted his request for reinstatement into possession to the Commission for Real Property Claims of Displaced Persons and Refugees (the CRPC). On 5 December 2000 the CRPC issued a decision confirming the right of J.G. to the real estate located in Sarajevo and allowing his reinstatement into the property. After that J.G. submitted a request to the competent administrative organ for enforcement of the CRPC decision, and the competent organ issued a decision on the enforcement of the CRPC decision.
8. The applicant complains that the decision of the CRPC has never been delivered to him. He also alleges that he learned about the decision when the competent administrative organ notified him about the scheduled eviction. On 6 November 2002 the applicant filed a request for reconsideration of the CRPC decision. The CRPC has not decided upon his request up to date.
9. On 29 November 2002 the competent administrative organ informed the applicant that a forcible eviction from the real estate at issue was scheduled for 27 December 2002.

III. COMPLAINTS

10. The applicant complains of violation that his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention has been violated. The applicant claims that he could not be evicted because the court annulled the first instance judgement in part ordering him to hand over the real estate to J.G. The applicant is also of the opinion there is no valid decision of the competent organ.

11. The applicant alternatively submitted a compensation claim for pecuniary damage, i.e. reimbursement for the means he invested in the reconstruction of the property, which was severely damaged.

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: ... (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.”

13. The Chamber notes that the applicant’s claim to establish the validity of the exchange contract was rejected by a valid court decision. The Chamber, further, notes that the applicant was ordered to vacate the real property concerned on the ground that he had no right under domestic law to occupy it. In these circumstances, the Chamber finds that the facts complained of do 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.

14. As to the applicant’s claim to be reimbursed for the means he invested in the reconstruction of the property, the Chamber notes that, according to the domestic law, the applicant has the right to file an action before the competent domestic court, requesting compensation. The Chamber, further, notes that the applicant failed to file such a request for compensation before the competent domestic court. The applicant has not shown that this remedy was ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare this part of application inadmissible, as well.

V. CONCLUSION

15. 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