



DECISION ON ADMISSIBILITY

Case no. CH/02/8162

Branko ĆIRIĆ

against

THE REPUBLIKA SRPSKA

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

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

I. FACTS

1. On 25 January 1995, the applicant concluded a contract with Mr. Ivo Ćorković on exchange of their apartments, both located in Banja Luka (Ulica Stojana Jankovića no. 76 and Ulica Save Ljuboje no. 10, respectively). On the following day, the owner of these apartments – the company MP PSC “TAM” d.d. Banja Luka – approved the exchange.

2. On 25 July 2000, the Commission for Real Property Claims of Refugees and Displaced Persons (“CRPC”) issued a decision confirming that Mr. Ivo Ćorković was the occupancy right holder over the apartment at Ulica Save Ljuboje no. 10 as of 1 April 1992. On 24 December 2001, the Ministry for Refugees and Displaced Persons of the Republika Srpska, Department Banja Luka, issued a conclusion on enforcement of the CRPC decision of 25 July 2000. The applicant filed an appeal against this decision. On 4 January 2002, the applicant requested the First Instance Court in Banja Luka to order, as a provisional measure, that the enforcement of the CRPC decision be suspended. However, he did not initiate a dispute as to the validity of the exchange contract. On 8 April 2003, the Court rejected the applicant’s request.

II. COMPLAINTS

3. The applicant alleges violations of his right to a fair trial and of his rights protected by Article 8 of the European Convention on Human Rights (the “Convention”) and Article 1 of Protocol No. 1 to the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 8 January 2002. On the following day, the President of the Second Panel ordered the respondent Party, as a provisional measure, to carry out no further steps in order to evict the applicant from the apartment at Ulica Save Ljuboje no. 10 in Banja Luka. On 5 June 2003, the Chamber decided to revoke the order for a provisional measure.

5. In its written observations of 11 February 2002, the respondent Party suggests to declare the application inadmissible since the applicant has not initiated court proceedings regarding the validity of the exchange contract and that therefore, he has not availed himself of all domestic legal remedies at his disposal.

IV. OPINION OF THE CHAMBER

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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

7. The Chamber notes that the applicant has not initiated civil proceedings as to the validity of the exchange contract in question. However, paragraph 5 of Article 2a of the Republika Srpska Law on Cessation of Application of the Law on the Use of Abandoned Property provides for the suspension of eviction proceedings only in case court proceedings are pending as to the validity of an exchange contract. The applicant has not shown that this remedy would be 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 the application inadmissible.

V. CONCLUSION

8. For these reasons, the Chamber, unanimously,
DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel