



DECISION ON ADMISSIBILITY

Case no. CH/02/8652

Suad ROŽAJAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 February 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Manfred NOWAK
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application, in which no respondent Party was specified, was introduced to the Chamber on 7 January 2002. It concerns a dispute before the authorities of the Federation of Bosnia and Herzegovina relating to an apartment located at ul. Nova no.7 in Sarajevo, the Federation of Bosnia and Herzegovina ("the apartment"), over which the applicant has the right to temporary use, which was cancelled by a procedural decision of the Administration of Housing Affairs of the Sarajevo Canton ("the Administration") of 2 July 1999. In addition, he was ordered to vacate the apartment in 90 days, with a right to alternative accommodation. According to the Administration, the applicant before moving into this apartment, was a subtenant in his previous apartment.

2. According to the applicant, he moved into the apartment with the consent of the pre-war occupant's spouse, both now deceased, as he concluded a "contract on ceding", that is, a gratuitous transfer, with her on 12 July 1994. The applicant alleges he paid rent for the apartment.

3. The applicant complains that the procedural decision issued by the Administration on 2 July 1999 ordering him to vacate the apartment was neither delivered to him nor to the owner of the apartment. The applicant also complains that the procedural decision lacked formal correctness as the original copy was not verified by the Administration or signed by the Head of the Administration. Accordingly, the applicant complains that given such technical and procedural irregularities, the procedural decision cannot be enforceable. The applicant appealed the conclusion on enforcement of the Administration of 10 December 2001 (which enforced the decision of 2 July 1999) to the Ministry of Housing Affairs of the Sarajevo Canton. This appeal has not been decided yet.

4. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to prevent his eviction from the apartment in question, which was scheduled for 15 January 2002, in accordance with a procedural decision of the Administration and its conclusion on enforcement of 10 December 2001, by which the procedural decision became enforceable. On 11 January 2002 the Chamber decided not to order the provisional measure requested.

5. The applicant asks the Chamber to annul the procedural decision of 2 July 1999 and the conclusion on enforcement of 10 December 2001, both issued by the Administration.

II. 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 specified a respondent Party in his application form. The competent authority responsible for the proceedings complained of by the applicant, however, is an organ of the Federation of Bosnia and Herzegovina. Accordingly, the Chamber considers the application as being properly directed against the Federation of Bosnia and Herzegovina.

8. As to the applicant's complaints related to the lawfulness of the procedural decision and the conclusion on enforcement issued by the Administration for Housing Affairs of the Canton of Sarajevo, the Chamber notes that the appeal proceedings against both decisions are still pending before the Ministry of Housing Affairs of the Sarajevo Canton. The Chamber therefore finds the applicant's complaints in that respect are premature. As to the applicant's complaints that he entered into the apartment based on a "contract on ceding" of 12 July 1994 and the paid rent, the Chamber notes that this is a private dispute concerning a "contract on ceding" of an occupancy right concluded during the war. In order to protect his alleged contractual rights, the applicant could have initiated civil proceedings before the court pursuant to the Law on Civil Proceedings (O.G. FBiH No. 42/98) and/or pursuant to Article 2a. of the Law on Amendments of the Law of Cessation of the Application of the Law on the Abandoned Apartments (O.G. FBiH No. 56/01) which came into force on 29 December 2001. According to the application and enclosed documents, such civil proceedings have not been

initiated. Therefore, domestic remedies have not been exhausted for any of the applicant's complaints as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO,
President of the Second Panel