



DECISION ON ADMISSIBILITY

Case no. CH/02/8706

Milan COLIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
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. INTRODUCTION

1. The application was introduced to the Chamber on 18 January 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to prevent his eviction from the apartment in question until the proceedings are completed. On 4 February 2002, the Second Panel decided not to order the provisional measure requested.

2. The application concerns the applicant's attempts to transfer the occupancy right of an apartment located at Obalni Bulevar no. 20/XI-46, in Zenica from his deceased father to himself.

II. FACTS

3. The applicant's father was the occupancy right holder of the apartment in question from 1971 until the date of his death on 30 May 1998. The applicant lived in his father's family household from 1971 through 1993. He left Zenica in 1994 due to war activities and moved to Bijeljina.

4. After his father's death, the applicant addressed the apartment owner, the Municipality of Zenica, requesting the permission to transfer the occupancy right from his deceased father to himself. On 8 November 1999, the owner of the apartment, the Municipality of Zenica, issued a conclusion refusing the applicant's request, finding that there was no permanent living and housing union between the applicant and his father.

5. On 14 July 1998, the applicant applied to the Municipality of Zenica General Administration and Housing Affairs Service ("Service") to obtain the transfer of the occupancy right of the apartment in question.

6. On 2 August 2001, the Service issued a procedural decision refusing the applicant's request as ill-founded. The procedural decision orders the applicant to vacate the apartment within 15 days as of the reception of the procedural decision and place it at the disposal of the Municipality Zenica.

7. On 25 October 2001, the applicant appealed against the procedural decision of the Service to the Ministry of Spatial Organization, Traffic, Communications and Environment Protection of the Zenica-Doboj Canton ("the Ministry").

8. On 12 February 2002, the Ministry issued a procedural decision annulling the first instance procedural decision of 2 August 2001 and returning the case to the first instance body for renewed proceedings.

9. On 29 April 2002, the Service confirmed that the applicant, as member of his father's family household, possesses the right of permanent and uninterrupted use of the apartment in question.

10. The Cantonal Attorney's Office in Zenica appealed against the procedural decision of 29 April 2002.

11. On 31 January 2003, the Ministry annulled the procedural decision of 29 April 2002 and returned the case to the first instance body for renewed proceedings.

III. 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...."

13. The Chamber finds that the Ministry annulled the first instance procedural decision of 29 April 2002 and returned the case to the first instance body for renewed proceedings. It notes that the first

instance proceeding is still pending. Therefore, the Chamber finds that the domestic remedies have not been exhausted, as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

IV. CONCLUSION

14. 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