



DECISION ON ADMISSIBILITY

Case no. CH/02/8862

Mirsad SMAJIŠ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 February 2003 with the following members present:

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

I. INTRODUCTION

1. The application was introduced on 12 February 2002 and registered on the same day. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to prohibit the sale of apartments located at ulica Prve Zeničke Brigade br. 15/D in Zenica and ulica Petra Mečave br. 32/V in Novi Travnik. On 2 December 2002, the Chamber decided not to order the provisional measure requested.

2. In his application, the applicant alleges violations of Article 8 of the European Convention on Human Rights (“the Convention”) and Article 1 of Protocol No. 1 to the Convention.

II. FACTS AND ALLEGATIONS

3. Until some time in 1993, the applicant lived with his family in an apartment at ulica Petra Mečave br. 32/V in Novi Travnik, over which his father held an occupancy right. The applicant states that he left this apartment as a result of ethnic cleansing. In 1994 he began working for the company Metalno Zenica in Zenica, and on 30 November 1994, the company allocated an apartment at ulica Prve Zeničke Brigade br. 15/D in Zenica for his use. The contract for the Zenica apartment was executed on 9 May 1995.

4. The applicant did not initially file a request for repossession of the apartment in Novi Travnik. On 29 September 1999, he filed such a request with the Service for Urbanism and Housing Affairs of Novi Travnik Municipality. On 6 October 1999, that body issued a procedural decision refusing the applicant’s request as out of time.

5. The applicant alleges that he was legally entitled to renew the contract for the Zenica apartment. On 20 December 1999, he filed a request with the Service for General Administration and Housing Affairs of Zenica Municipality to renew the contract for the Zenica apartment. When he received no decision, he filed an appeal to the Ministry for Urbanism, Physical Planning, and Protection of Environment of Zenica-Doboj Canton on 16 July 2001. On 5 October 2001, after again receiving no decision, the applicant filed a lawsuit in the Zenica Cantonal Court charging silence of the administration. No decision has been issued in this lawsuit.

6. Following the passage of the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (Official Gazette of the Federation of Bosnia and Herzegovina no. 56/01 of 21 December 2001), the applicant believed that his contract with Metalno Zenica for use of the Zenica apartment ceased to be valid. Based on this belief, the applicant left the Zenica apartment on 3 January 2002.

7. On 28 May 2002, the Service for General Administration and Housing Affairs of Zenica Municipality issued a procedural decision refusing the applicant’s request for verification of the contract on his use of the Zenica apartment. A certificate from the Service for General Administration and Housing Affairs of Zenica Municipality dated 31 July 2001 indicates that the pre-war occupancy right holder of the Zenica apartment had not filed a request for repossession and that the apartment had not been declared abandoned.

III. OPINION OF THE CHAMBER

8. 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 ...” and “(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.”

9. The Chamber notes, with regard to the apartment in Novi Travnik, that the applicant failed to timely initiate domestic proceedings to obtain repossession of the apartment. 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 the application inadmissible with regard to the apartment in Novi Travnik.

10. With regard to the apartment in Zenica, the applicant has failed to substantiate his allegation that he is legally entitled to continue the contract on use of that apartment. 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, in this part, the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible with regard to the apartment in Zenica as well.

IV. CONCLUSION

11. 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