# DECISION ON ADMISSIBILITY

**Case no. CH/02/9302**

**Hasan SMOLO**

**against**

**BOSNIA AND HERZEGOVINA**
**and**
**THE FEDERATION BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## I. INTRODUCTION

1. The case concerns the applicant's attempts to prevent his eviction from an apartment that he occupies, and to obtain alternative accommodation.

2. The applicant claims that his rights to respect for home and private and family life have been violated and that the Cantonal Court in Zenica wrongly assessed the facts pertaining to his case and misapplied the law. He further requests that the Chamber consider the applicability of Articles 10 and 11 of the Law Amending the Law on Cessation of the Application of the Law on Abandoned Apartments. The applicant complains that the Cantonal Court in Zenica wrongly assessed the facts pertaining to his case and misapplied the law.

## II. FACTS

3. On 1 July 1996, the applicant obtained a procedural decision allocating to him an apartment located at 11 Ive Lole Ribara St., Kakanj, Federation of Bosnia and Herzegovina. He signed the contract on use of the apartment with "Rudstan" ltd. Kakanj—the company where he was employed. At that time, D. H., who occupied the apartment but did not possess an occupancy right, moved out of the apartment in question.

4. On 16 October 2000, the applicant received a procedural decision issued by the Department for General Administration and Housing Affairs of the Municipality Kakanj (the "Municipal Department"), ordering him to vacate the apartment in question. This procedural decision confirmed the occupancy right of D.H. and gave the applicant 15 days to vacate the apartment with no entitlement to alternative accommodation. On 20 November 2000, the applicant moved out of the apartment.

5. The applicant appealed to the Ministry for Physical Planning, Urbanism and Protection of Environment of Zenica – Doboj Canton (the "Ministry"). On 30 November 2000, the Ministry issued a procedural decision partly quashing the procedural decision of the Municipal Department with respect to the contested occupancy right of D.H. and partly refusing the applicant's request for alternative accommodation.

6. The applicant initiated an administrative dispute before the competent Cantonal Court in Zenica, challenging the Ministry's decision of 30 November 2000. The Cantonal Court accepted the applicant's lawsuit by its judgement of 15 March 2001. However, neither the Municipal Department nor the Ministry complied with the judgement of the Cantonal Court in Zenica. The applicant initiated a second administrative dispute before the Cantonal Court in Zenica challenging the inactions of the Municipal Department and the Ministry. On 16 August 2001 (five months after its earlier judgement on the same issue), the Court issued a judgement refusing the second lawsuit as ill-founded.

7. In the meantime, the applicant requested the Construction Inspector of the Municipality Kakanj to establish the condition of the building in which he lived before the armed conflict. On 26 December 2000, a court expert visited the site and confirmed that the building was uninhabitable, opining that the owners of the building should seek alternative solutions to their housing issues.

8. The applicant states that he did everything possible to prove that he is entitled to alternative accommodation. He points out that he did not appeal against the judgement of the Cantonal Court in Zenica to the Supreme Court of the Federation of Bosnia and Herzegovina because he has no financial means to do so nor any confidence in a fair outcome of such proceedings.

## III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was submitted to the Chamber on 25 February 2002.

10. The applicant requested the Chamber to order the respondent Parties, as a provisional measure, to take all necessary steps to provide him with alternative accommodation until a final decision is reached in his case. On 4 September 2002, the Chamber decided not to order the provisional measure requested.

## IV. OPINION OF THE CHAMBER

11. 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: ... (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."

12. With regard to the two respondent Parties, the Chamber notes that the Cantonal Court in Zenica, responsible for the final decision in the domestic proceedings against which the applicant complains, is an organ of the Canton, the conduct of which engages the responsibility of the Federation of Bosnia and Herzegovina (but not of Bosnia and Herzegovina), for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

13. The Chamber notes that the applicant complains that the Cantonal Court in Zenica wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. The Chamber has stated on several occasions, however, that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the court failed to act fairly as required by Article 6 of the Convention. It follows that 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.

14. In addition, with respect to the applicant's claim that he has been denied the right to alternative accommodation, the Chamber notes that the European Convention on Human Rights does not contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to housing, which is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the 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)
Viktor MASENKO-MAVI
Acting President of the Second Panel