



DECISION ON ADMISSIBILITY

Case no. CH/02/9319

Sead ČOLAKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 November 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

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 application was introduced on 26 February 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to restore an occupancy right to him as well as to recognise his right to use the apartment in question. On 4 September 2002, the Chamber decided not to order the provisional measure requested.

2. The applicant complains that his occupancy right and right of use over the apartment located at 3-a Uzunovića put in Zenica has been cancelled illegally, since he claims he obtained those rights in accordance with the procedures provided for by law. He submits that his right to a fair hearing and his rights to property have been violated.

II. STATEMENT OF FACTS

3. The applicant obtained the occupancy right over the apartment in question during the armed conflict. The allocation right holder is Željezara Zenica d.o.o. (hereinafter "Željezara"). The pre-war occupancy right holder was T.S and subsequently his son G.S. On 25 September 1991, T.S. transferred his occupancy right to his son G.S. as a member of his family household. After the death of his father, on 11 December 1991, G.S. concluded a contract on use of the apartment concerned. On 29 October 1993, G.S. asked Željezara to cancel the contract on use of the apartment. The applicant alleges that G.S. freely signed such cancellation statement and returned the apartment to Željezara, intending to leave Zenica permanently. On 5 November 1993 Željezara issued a procedural decision allocating the apartment in question to the applicant. On 7 December 1993, the applicant concluded a contract on use of the apartment and moved into it on the same day.

4. On 16 August 1999, G.S. submitted a request to regain possession of the apartment to the Department for General Administration and Housing Affairs of the Municipality Zenica (the "Department"). On 3 July 2000, the Department confirmed that G.S. was the occupancy right holder of the apartment in question. According to the procedural decision, the applicant's right to temporarily use the apartment in question ceased, he was entitled to alternative accommodation, and he was given a time limit of 90 days to vacate the apartment. On 31 July 2000, the applicant appealed against the decision before the Ministry for Urbanism, Physical Planning and Protection of Environment of ZE-DO Canton (the "Ministry").

5. On 28 July 2000, Željezara brought an action before the Municipal Court in Zenica against G.S. to establish the legal validity of the statement dated 29 October 1993, by which G.S. had cancelled his contract with Željezara on use of the apartment. On 13 August 2001 Željezara extended its lawsuit so as to include a petition to declare null and void the statement dated 25 September 1991, the decision approving the transfer of the occupancy right dated 29 October 1991, and the contract on use of the apartment dated 11 December 1991. Željezara further requested the court to issue a provisional measure to prohibit G.S. from moving into the apartment in question until the end of the proceedings. On 8 November 2001 the Municipal Court in Zenica granted the provisional measure requested. The proceedings are still pending.

6. On 16 October 2001, the Department issued *ex officio* a procedural decision renewing the proceedings and declaring null and void the procedural decision dated 3 July 2000 in its parts relating to the entitlement to alternative accommodation and to the 90-day deadline to vacate the apartment and establishing a new 15-day deadline on the basis that the applicant lived as a sub-tenant before the armed conflict. The applicant filed an appeal against the decision to the Ministry.

7. On 12 June 2001, the Commission for Property Claims of Refugees and Displaced Persons ("CRPC") issued a decision confirming that on 1 April 1992 G.S. was the holder of the occupancy right over the apartment in question. On 3 January 2002, the applicant submitted a request to initiate proceedings for reconsideration of the CRPC decision.

8. On 28 January 2002, the Department issued a conclusion on enforcement of the decision of the Department dated 16 October 2001. By the same conclusion the applicant's eviction was scheduled for 7 February 2002, the date upon which he was evicted from the apartment in question.

III. OPINION OF THE CHAMBER

A. Applicable rule

9. 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.”

B. Specific reasoning and conclusion

10. The Chamber notes that the applicant was ordered to vacate the apartment in question pursuant to a lawful decision terminating a right of temporary use. In these circumstances, the Chamber finds that the facts complained of do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. 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 this part of the application inadmissible.

11. The Chamber further notes that the applicant’s main complaint in the present case relates to the validity of a dispute over the occupancy right of the aforementioned apartment, which he acquired during the armed conflict, and that civil proceedings are still pending before the Municipal Court in Zenica on this issue. However, the Chamber notes that the applicant is not a party to any court proceedings (the court proceedings are between Željezara and G.S.). 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 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.

IV. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel