



DECISION ON ADMISSIBILITY

Case no. CH/02/9817

Omer HODŽIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 July 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. FACTS

1. The applicant and his family live in an apartment located at Džemala Bijedića St. no. 11 in Sarajevo. The apartment in question was allocated to him by the procedural decision of 27 July 1996 by Energoinvest d.d. Sarajevo, the owner of the apartment and the allocation right holder.

2. The Commission for Real Property Claims of Refugees and Displaced Persons ("CRPC") on 12 September 2000 issued a decision in favour of V.E., a member of the pre-war occupancy right holder's household. On the basis of the decision issued by CRPC, the Administration for Housing Affairs of the Sarajevo Canton ("Administration") issued on 17 August 2001 the conclusion on the permission of enforcement of this decision allowing V.E. to regain possession of the apartment in question. At the same time, the applicant was ordered by this conclusion to vacate the apartment within a 15 days time-limit with no right to an alternative accommodation.

3. On 6 September 2001 the applicant filed a complaint against the conclusion issued by the Administration claiming that this conclusion should be annulled and the case referred back for renewal of proceedings. The applicant has not received any reply to this complaint, except that he was invited on one occasion to submit certain supplemental documentation, which he did.

4. On 19 March 2002 the applicant received information that on 10 April 2002 the CRPC decision will be enforced. On 17 April 2002 the applicant informed the Chamber that he has been evicted.

ii. COMPLAINTS AND PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced before the Chamber on 29 March 2002 and registered on that same date. The applicant complains that his rights guaranteed by Articles 6 and 8 of the European Convention on the Human Right have been violated. In particular he states that V.E. is neither the pre-war occupancy right holder nor a member of the pre-war occupancy right holder's family, that he (the applicant) is entitled to alternative accommodation and that the administrative organ wrongly established the facts in this regard.

6. The applicant did not specifically request that the Chamber issue the provisional measure, but based on the facts presented in the application, and especially taking into account the fact that the enforcement of the CRPC decision had been scheduled for 10 April 2002, the Chamber concluded that that the applicant intended to request it to issue an order for provisional measures postponing the eviction.

7. On 9 April 2002 the Chamber decided to reject the request for provisional measure.

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: ... (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 that the decision on the applicant's eviction was taken to allow a member of the pre-war occupancy right holder's family household to repossess the apartment. V.E.'s entitlement was established by a decision of the CRPC, which is final and binding. In these circumstances, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. The Chamber therefore decides to declare the application inadmissible as manifestly ill-founded insofar as the applicant complains of a violation of his right to respect for his home.

10. As 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.

11. The Chamber notes that the applicant also complains of a violation of Article 6 of the Convention in that the Administrative organ wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing before a tribunal. The applicant's complaint concerns solely to proceedings before administrative organs, so that is doubtful within Article 6 applies at all. In any event, the Chamber has stated on several occasions 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 administrative organ 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 in this part as well.

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