



DECISION ON ADMISSIBILITY

Case no. CH/03/12968

Fahrudin NJEMČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 May 2003 with the following members present:

Mr. Jakob MÖLLER, Acting President
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant complains that the Municipality Centar Sarajevo concluded a contract on purchase of an attic apartment located in Sarajevo at ulica Agmanaguša 18 with G.B. and S.B. However, according to the applicant, this attic apartment is his property, and his right to it will be recognised once the Law on Restitution enters into force. The applicant alleges violations of his right to property, right to a fair hearing in civil proceedings, and right to liberty and security of person.
2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to forbid further construction on the attic apartment until completion of the proceedings. On 4 April 2003, the Chamber decided to reject the provisional measure requested.

II. FACTS

3. In 1958 the building where the apartment in question is located was partly nationalised, that is, two apartments in the building, k.č. 234, registered in land book entry no. LVII/140 k.o. Sarajevo, were nationalised.
4. After the death of Kasim Njemčević, the applicant and his brother inherited an apartment in the building. They became the owners of this apartment, which was exempted from the nationalisation. The other two nationalised apartments (one in the basement and one in the attic) were allocated to third persons. The attic apartment was allocated to P.P.
5. While P.P. lived in the attic apartment, he constructed an annex, thereby expanding its surface area. P.P. then exchanged his attic apartment with S.B. On 17 February 1992, the occupancy right was transferred to S.B.'s wife, G.B.
6. G.B. and S.B. left the attic apartment during the armed conflict. After the end of the conflict, they submitted a request for repossession of the attic apartment, and then they purchased it. On 9 April 2002, the Municipality Centar and a representative of G.B. and S.B. concluded a contract on purchase of the attic apartment.
7. On 20 August 2002, the applicant initiated proceedings before the court for annulment of the contract on purchase of the attic apartment of 9 April 2002. The applicant presumes that once the Law on Restitution enters into force, he will be declared the owner of the attic apartment, although on what basis remains unclear. The applicant requested the court to pronounce that ownership of the attic apartment was in dispute and therefore it could not be disposed of.
8. On 26 September 2002, S.B. and G.B. sold the attic apartment to DŽ.S.R.
9. On 2 October 2002, DŽ.S.R. initiated court proceedings before the Municipal Court I against the applicant for interference with her possessions. She complained that the applicant had prevented her from taking possession of the attic apartment she had purchased by placing a lock on it.
10. On 23 October 2002, the Municipal Court I, upon the request of DŽ.S.R., issued a procedural decision ordering a provisional measure. The defendant/applicant was ordered to allow DŽ.S.R. to enter into possession of the attic apartment by removing the chain and lock from the wooden door erected in front of the entrance to the apartment.
11. On 1 November 2002, the applicant submitted an appeal against the mentioned procedural decision. On 8 November 2002, the Municipal Court rejected his appeal as not allowed.

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: ... (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."

13. The applicant complains that the respondent Party violated his human rights protected under the European Convention on Human Rights by concluding a contract on purchase of an apartment which the applicant hopes to someday be recognised as the owner of. The applicant contends that his right over the attic apartment will be recognised when the Law on Restitution enters into force. However, the Chamber notes that at this time, the attic apartment is not the applicant's property and he does not appear to have any currently enforceable right to the apartment.

14. The Chamber recalls that, according to the jurisprudence of the European Court of Human Rights, a protected "possession" can only be an "existing possession" (Eur. Court HR, *Van der Musselle v. Belgium*, judgment of 23 November 1983, Series A no. 70, paragraph 48), or, at least, an asset which the applicant has a "legitimate expectation" to obtain (case no. CH/98/1040, *Živojnović*, decision on admissibility of 9 October 1999, paragraph 20, Decisions August– December 1999). The Chamber is of the opinion that in order to be such a "legitimate expectation" constituting a protected possession, the applicant's prospect should be based upon a valid administrative act or upon legislation in force (*id.* at paragraph 21). However, the applicant can show no such legitimate expectation to the attic apartment at this time. 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

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President of the Second Panel