



DECISION ON ADMISSIBILITY

Case no. CH/03/13548

Borislav DRAGOLJEVIĆ

against

THE REPUBLIKA SRPSKA

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. 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 application was introduced on 17 April 2003. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to postpone his eviction from an apartment he occupies at Ž. Mišića no. 37/4 in Banja Luka until the First Instance Court in Banja Luka issues a final decision in his case. On 22 April 2003, the President of the Second Panel decided not to order the provisional measure requested.

II. FACTS

2. On 13 November 1992, the applicant concluded a contract on exchange of apartments with A.R. By this contract, the applicant exchanged his pre-war apartment in Rijeka, Republic of Croatia, for an apartment at Radoja Domanovića Str. no. 9 in Banja Luka. On the basis of the contract on exchange, the applicant concluded a contract on use of the apartment at Radoja Domanovića Str. no. 9 with the SIZ (Self-Governing Community of Interest) for Housing in Banja Luka.

3. On 20 July 1993, the applicant concluded a second contract on exchange of apartments with F.M. by which he exchanged the apartment at Radoja Domanović Str. no. 9 in Banja Luka for an apartment at Ž. Mišića no. 37/4 in Banja Luka. On the basis of the second contract on exchange, the applicant concluded a contract on use of the apartment at Ž. Mišića no. 37/4 with the SIZ for Housing in Banja Luka.

4. F.M. submitted a claim for repossession of the apartment at Ž. Mišića no. 37/4 in Banja Luka to the Ministry for Refugees and Displaced Persons, Banja Luka Department (the "Ministry").

5. On 24 September 2001, the Ministry issued a procedural decision entitling F.M. to repossess the apartment at Ž. Mišića no. 37/4 and ordering the applicant to vacate that apartment within 90 days.

6. On 22 October 2001, the applicant filed an action with the First Instance Court in Banja Luka against F.M. to establish the validity of the second contract on exchange of 20 July 1993. This claim is still pending

7. On 15 November 2001, the applicant submitted a claim for suspension of proceedings before the Ministry until the preliminary issue of the validity of the second contract on exchange is resolved before the First Instance Court. Alternatively, the applicant set forth a claim for repossession of the apartment at Radoja Domanovića Str. no. 9.

8. On 4 April 2003, the Ministry issued a conclusion authorising enforcement of the procedural decision of 24 September 2001 and scheduling the applicant's eviction from the apartment at Ž. Mišića no. 37/4 for 2 May 2003. The reasoning of the conclusion states that on 23 April 2003, the applicant will be reinstated into possession of the apartment at Radoja Domanovića Str. no. 9, which he had exchanged during the disputed period with A.R. for his apartment in Rijeka, Republic of Croatia. Further, as A.R. does not claim repossession of the apartment at Radoja Domanovića Str. no. 9, this apartment shall be returned into the applicant's possession.

9. On 14 April 2003, the applicant filed an appeal against the conclusion of 4 April 2003.

III. OPINION OF THE CHAMBER

10. 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."

11. The Chamber notes that the decision on the applicant's eviction was taken to allow the pre-war occupancy right holder to repossess the apartment and that the applicant is scheduled to be reinstated into the apartment at Radoja Domanovića Str. no. 9, in Banja Luka. 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. 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)
Jakob MÖLLER
Acting President of the Second Panel