



DECISION ON ADMISSIBILITY

Case no. CH/02/10853

Boris KLAUT

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 2003 with the following members present:

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

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)(a) and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant states that he was reinstated into possession of an apartment in Prijedor located at Nikole Pašić Str. no. 21, as a member of the pre-war family household, on the basis of the procedural decision of the OMI Prijedor of 1 February 2000. The pre-war occupancy right holder of the apartment in question was the applicant's mother, who died on 3 January 1993.

2. By the procedural decision of the Department for Housing and Communal Affairs of the Prijedor Municipality of 14 February 2001, it was established that the applicant became the occupancy right holder over the apartment in question. The procedural decision further states that it replaces the contract on the use of the apartment between the allocation right holder and the new occupancy right holder and that it will remain in force until the conclusion of the contract pursuant to the Law on Housing Relations.

3. According to the applicant, from 1988 until the armed conflict, there was a room and a toilet under the staircase inside the apartment, which had been added with funds provided by the AIPK "Žitopromet" Prijedor, as the employer, for the purpose of increasing the housing space. The applicant has not submitted relevant documentation which show whether the separated rooms are an integral part of the apartment in question.

4. The applicant states that the apartment, including the additional rooms, was usurped by M.G., who also resides in the same building. He further alleges that when he repossessed the apartment in question, M.G. did not deliver possession of the additional rooms to him, as M.G. intends to renovate them and usurp them for his further use. In order to prevent the mentioned activities by M.G., the applicant addressed the Construction Inspection of the Doboj Municipality on 18 August 2000, but it did not respond to his request.

5. The applicant states that on 15 September 2000, M.G. took advantage of the applicant's absence and reconstructed the doorway on the ground floor and walled it in, thereby closing the entrance to the additional room and making it impossible for the applicant to use his apartment. Consequently, the applicant addressed the Public Security Centre (CJB) Prijedor seeking that criminal charges be brought against M.G. However, the applicant claims that the CJB Prijedor has not pursued such charges. None the less, on 22 March 2002, the applicant, assisted by the First Instance Court in Prijedor, was reinstated into possession of the walled in part of the apartment: the partition wall was pulled down and the passage to his apartment opened, but the applicant did not also regain possession of the "subsequently built room".

6. The applicant alleges that M.G. commenced construction of a business facility in the yard of the same building without adequate documents in his possession, thereby making it impossible for the applicant to use the yard. As a result, on 17 June 2002, the applicant addressed the Department for Physical Planning of the Prijedor Municipality – Construction Inspection Service. However, the Construction Inspection Service has not acted upon his request.

7. On 8 November 2002, the applicant complained to the Department for Physical Planning of the Prijedor Municipality that M.G. had commenced construction works in yard of the building. He requested that they visit the site and establish the facts and lawfulness of the mentioned actions.

II. PROCEEDINGS AND COMPLAINTS BEFORE THE CHAMBER

8. The application was introduced on 20 December 2002. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to prevent construction of the business facility which usurped the yard in the applicant's building. On 7 February 2003, the Chamber refused the provisional measure requested.

9. The applicant proposes that the Chamber establish violations of his human rights. He requests the Chamber to oblige the respondent Party pursue criminal charges against M.G. and to respond to his requests submitted to the Construction Inspection Service. He also seeks

compensation for non-pecuniary damages caused to him by the respondent Party's failure to take action in response to his requests.

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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted"

11. The Chamber notes that the applicant has failed to initiate any proceedings before the domestic courts regarding his complaint that he did not regain possession of the additional rooms of the apartment in question. Moreover, regarding the applicant's complaint that M.G. commenced construction of a business facility in the yard of the same building and that the Construction Inspection Service has not acted upon his requests, the Chamber notes that the applicant has failed to continue with the administrative proceedings before the competent administrative body. The applicant has not shown that these remedies are ineffective, and they do not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. 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