



DECISION ON ADMISSIBILITY

Case no. CH/99/2806

Ramiz MEMIŠEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 December 1999 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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 is the owner of real estates in Kasindo and Gorniji Kotorac (near Sarajevo) and in Višegrad, all located in the Republika Srpska. On 19 March 1996 he entered into a contract on a temporary exchange of the right to occupy the respective real estates with N.N., who is the owner of a property in Ilidža (the Federation of Bosnia and Herzegovina). The contract provided that the exchange shall be temporary for one year and that the contract shall automatically extend after the expiry of this period of time until the moment one of the contracting parties proposes its termination.
2. On 10 April 1997 N.N. initiated an action against the applicant before the Municipal Court II in Sarajevo, seeking the termination of the contract and return of his real estates located in Ilidža. On 24 December 1997 the court found in favour of the plaintiff. The applicant appealed the judgment and asserted that, being of Bosniak origin, he could not return safely to Republika Srpska. The appeal was refused and, upon request by N.N., the court allowed the execution of the judgment by a decision of 17 May 1999. Thereafter the court rejected the applicant's appeal and allowed his eviction.
3. On 24 August 1999 the applicant was informed that he would be evicted on 30 August 1999, but the eviction was not executed on that day. By a letter of 3 September 1999 the Municipal Court informed the applicant that the eviction was scheduled for 9 September 1999.

II. COMPLAINTS

4. The applicant alleges violations of his right to an independent and impartial court, his right to property (and to having the right following from the contract recognised) and to a home. The application refers to Articles 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was submitted on 3 September 1999 and registered on the same day. The applicant requested the Chamber to order, as a provisional measure, that his eviction, scheduled for 9 September 1999, be postponed.
6. On 8 September 1999 the Chamber decided to reject the applicant's request for a provisional measure.

IV. OPINION OF THE CHAMBER

7. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.
8. The applicant complains about violations of his rights to a home and enjoyment of his possessions. The Chamber notes that the applicant occupied the real property in question on the basis of a temporary exchange contract. The owner of the real estate requested termination of the contract and return of his real property according to the terms of the contract. Therefore, the applicant's right to the property could not be considered a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.
9. The real property in question could, as such, be regarded as home, but as the applicant's right to live in the apartment ceased according to the contract following N.N.'s termination request, the Municipal's Court's decision does not show any failure to respect the applicant's rights under Article 8 of the Convention.
10. Furthermore, the Chamber regards the allegations of a violation of the right to an independent

and impartial tribunal as guaranteed by Article 6 of the Convention as unsubstantiated.

11. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel