



DECISION ON ADMISSIBILITY

Case no. CH/02/9588

Kahira and Husein KOVAČ

against

**BOSNIA AND HERZEGVINA
AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitimir POPOVIĆ
Mr. Mato TADIĆ

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

I. FACTS

1. The applicants were users of an apartment located at Palmira Toljatija St. (now Gradacacka), Sarajevo until 1996. On 12 November 1996, in accordance with the legal regulations then in force, they were allocated an apartment located at Kranjčevića St. no. 35/IV, Sarajevo. They handed over the keys to their previous apartment to the authorised person of the competent organ.
2. On 9 September 1998, the Administration for Housing Affairs of Sarajevo Canton (the first instance organ) issued a procedural decision establishing that T.M. was the pre-war occupancy right holder and therefore entitled to submit a request to return to the apartment located at Kranjčevića St. no. 35/IV, Sarajevo. The applicants allege that they were not summoned to the hearing on that decision.
3. On 12 January 1999, the applicants lodged an appeal against the procedural decision of 9 September 1998.
4. On 27 December 1999, the second instance administrative organ, on the basis of the applicants' appeal, annulled the first instance procedural decision. It also ordered the first instance organ to secure the parties to participate in the proceedings, and on the basis of the established facts, to issue a new decision based on the law.
5. On 22 August 2001, the applicants were summoned to a hearing before the first instance organ scheduled for 29 August 2001. According to the applicants, the employee of the first instance organ who delivered the summons gave the acknowledgement receipt to their underage son, which he was not allowed to do under the law.
6. On 29 August 2001, the applicants responded to the summons. However, the official in charge of the proceedings was on sick leave that day and the following several days. The applicants requested that a colleague of the official note that they had responded to the summons, and such a note was made and signed by the colleague. Thereafter, the applicants expected to be summoned to a new hearing. However, they later received a procedural decision, dated 29 August 2001 in which the first instance organ reinstated T.M. into possession of the apartment and ordered them, as the temporary occupants, to vacate it within 15 days.
7. On 6 November 2001, the applicants filed an appeal against the procedural decision of 29 August 2001. The applicants requested that their eviction from the apartment be connected to their return to their previous apartment, as had allegedly been promised to them, in order that they not become homeless.
8. On 28 February 2002, a conclusion on execution of the contested procedural decision of 29 August 2001 was slipped under the applicants' door to their underage son, along with a note informing them that they must vacate the apartment by 20 March 2002 at 11:00. The applicants appealed to the Head of the Municipality, asking her to postpone their eviction because they would not be able to find other accommodation on such short notice. The Head of the Municipality did not respond to their plea.
9. On 19 March 2002, the applicants turned over possession of the apartment at issue to the competent organ of the Administration for Housing Affairs.
10. According to the applicants, T.M., the purported pre-war occupancy right holder, is not entitled to be reinstated into possession of the apartment under the legal regulations related to housing affairs. T.M. allegedly left Bosnia on 14 February 1989 when he was fired for illegal actions by the company that had provided the apartment to him. Since that date, he has worked in Belgrade, Republic of Serbia. The applicants claim he intends to sell the apartment.

II. PROCEEDINGS BEFORE THE CHAMBER AND REQUESTED LEGAL REMEDIES

11. The application was submitted to the Chamber on 20 March 2002 and registered on the same day.

12. The applicants requested that the Chamber order the respondent Parties, as a provisional measure, to prevent T.M.'s entry into possession of the apartment located at Kranjčevića St. no. 35/IV, Sarajevo. On 4 September 2002 the Chamber decided not to order the provisional measure requested.

13. In the application, the applicants request the Chamber to examine the legality of the actions by the competent organs that returned possession of the apartment to its purported pre-war occupant, T.M. The applicants allege that their right to home and right to participate in the proceedings have been violated. These complaints raise claims under Articles 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

14. The applicants request compensation for pecuniary damages which they incurred when they were forced to store their furniture and when they invested money in renovations to the apartment. The applicants also request compensation for non-pecuniary damages due to the violations of their human rights and dignity.

III. OPINION OF THE CHAMBER

15. 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 ... (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."

16. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton (Uprava za stambenje pitanja Kantona Sarajevo), responsible for the proceedings complained of by the applicants, is an organ of the Canton, the conduct of which engages the responsibility of the Federation of Bosnia and Herzegovina, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

17. The Chamber further notes that the decision on the applicants' eviction was taken to allow the pre-war occupancy right holder to repossess the apartment and that the applicants have no right under domestic law to occupy the apartment. In these circumstances, the Chamber finds that this part of 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 this part of the application inadmissible.

18. In addition, the Chamber notes that the applicants failed to initiate an administrative dispute against the contested decision of the administrative organ. The applicants have not shown that this remedy was ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicants have not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the remainder of the application inadmissible as well.

IV. CONCLUSION

19. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel