



DECISION ON ADMISSIBILITY

Case no. CH/02/12208

Mensura MOSTARAC

against

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

I. INTRODUCTION

1. The application was submitted to the Chamber on 4 September 2002. It concerns two proceedings in an occupancy right dispute over an apartment located at ul. Nikole Kašikovića no. 3. in Sarajevo, the Federation of Bosnia and Herzegovina (the “apartment”). The applicant is a temporary occupant of the apartment.

2. The late pre-war occupancy right holder of the apartment, Mr. M.B., died on 20 February 1983. His daughter, Ms. M.Č., obtained a decision of the Commission for Real Property Claims of Displaced Persons and Refugees (the “CRPC”) on 21 March 2000 in favour of her late father. The applicant’s request to the CRPC to review its decision was refused. On 5 August 2002, a conclusion of the Administration for Housing Affairs of Sarajevo Canton (“Administration”), granting enforcement of the CRPC decision was issued, ordering the applicant to vacate the apartment with no right to alternative accommodation. This was because on 30 April 1991, the applicant was a subtenant and has sufficient income to rent other accommodation. The applicant’s appeal, submitted on 28 August 2002, is still pending. The appeal has no suspensive effect, however.

3. Moreover, Ms. M.Č. submitted a request to the Administration for repossession of the apartment. The request was refused by a procedural decision on 11 April 2000. Her subsequent appeal against the procedural decision was refused on 8 September 2000 by a procedural decision of the Ministry of Housing Affairs of the Sarajevo Canton (the “Ministry”). On 27 November 2000, she initiated an administrative dispute against the Ministry’s procedural decision. The dispute is still pending.

4. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to postpone the enforcement of the conclusion of the Administration until the administrative dispute against the Ministry’s procedural decision before the Cantonal Court in Sarajevo is concluded. On 10 September 2002, the applicant submitted a letter and documents informing the Chamber that the Administration shall carry out her forcible eviction on 16 September 2002, at 9.00 a.m. On 12 September 2002, the President of the Second Panel decided not to order the provisional measure requested. The Chamber has no information whether the applicant has been evicted.

5. The applicant alleges that the CRPC decision and its enforcement are illegal because, allegedly, Ms. M.Č. has not been a member of her late father’s household.

II. OPINION OF THE CHAMBER

6. 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.”

7. The Chamber notes that the applicant was ordered to vacate the apartment concerned on the ground that she had no right under domestic law to occupy it. In these circumstances, the Chamber finds that the facts complained of do 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 as well.

III. CONCLUSION

8. 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