



DECISION ON ADMISSIBILITY

Case no. CH/02/11934

Omer ŠAHIN

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
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. FACTS

1. The applicant is a temporary occupant of an apartment located in Sarajevo, ulica Adija Mulabegovića 8/II. On 3 December 1999, upon a request of the pre-war occupancy right holder, T.M., the Administration for Housing Affairs (the "Administration") issued a procedural decision allowing the pre-war occupancy right holder to return into possession of the apartment and ordering the temporary occupant to vacate the apartment within 90 days, with the right to alternative accommodation. On 5 July 2002, the Administration issued a conclusion on eviction. It reasoned that the procedural decision had become enforceable and that the temporary occupant had refused to move into the offered alternative accommodation. The eviction of the applicant was scheduled for 2 August 2002. The applicant submitted a request to renew the proceeding and a request to suspend his eviction.

2. The applicant complains that the pre-war occupancy right holder of the apartment in question died in 2000. The applicant submitted to the Chamber the death certificate. The applicant complains that T.M.'s wife is not registered on the address of the apartment in question, and therefore, she is not entitled to repossession. The applicant states that his pre-war house was totally destroyed during the armed conflict, but he did not deny that he had rejected the offered alternative accommodation.

II. PROCEEDINGS BEFORE THE CHAMBER AND ALLEGED VIOLATIONS OF HUMAN RIGHTS

3. The application was introduced before the Chamber on 25 July 2002 and registered on the same day. The applicant complains that his right to respect for home has been violated. The applicant requests the Chamber to order the respondent Party, as a provisional measure, to annul the conclusion on eviction. On 1 August 2002, the Acting President of the Second Panel decided to reject the provisional measure requested.

4. On 24 September 2002 the applicant informed the Chamber that he changed his address.

III. OPINION OF THE CHAMBER

5. 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."

6. 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 has no right under domestic law to occupy the apartment. Moreover, the applicant rejected the offered alternative accommodation.

7. The Chamber further notes that the applicant alleges that the pre-war occupancy right holder died, and his wife is not entitled to repossess the apartment. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national organs (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the domestic organs failed to act fairly as required by Article 6 of the Convention.

8. 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

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel