



DECISION ON ADMISSIBILITY

Case no. CH/01/8597

Rasema BEGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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 (c) and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. On 28 November 2001 the Administration for Housing Affairs of the Sarajevo Canton (the "Administration") issued *ex officio* a procedural decision ordering the applicant to vacate the apartment at Skenderija no. 40, Sarajevo.

2. The aforementioned procedural decision states that the applicant occupies the apartment in question on the basis of a procedural decision on the allocation of the apartment on use of 10 October 1997, issued by the owner of the apartment, the Government of the Federation of Bosnia and Herzegovina, and a contract on use of the apartment of 21 October 1997. The decision also states that until 30 April 1991, the applicant lived at Gandijeva Str. No. 1/2 in an apartment for which her husband is the occupancy right holder, and that he was reinstated into possession of the apartment on 7 June 2001. That apartment is habitable and the applicant's husband lives there with their son. The decision further states that the applicant and her husband were divorced by a 2000 court judgement.

3. On 12 December 2001, the applicant filed an appeal against the procedural decision of the Administration of 28 November 2001.

4. On 10 December 2001, the Administration issued a conclusion authorising the enforcement of the procedural decision, thereby rendering the Administration's procedural decision enforceable.

5. By the Administration's letter of 10 December 2001, the applicant was notified that, in accordance with the conclusion on enforcement of 10 December 2001, the applicant's forcible eviction would be carried out by the Administration on 25 December 2001 and the apartment delivered to the Administration.

6. The applicant states that her ex-husband does not allow her and her younger son (for whom she has custody) to approach the apartment at Gandijeva no. 1/2, and he does not use the apartment as it is devastated and uninhabitable. For this reason, her elder son is forced to live with her, although her ex-husband was given custody of him.

7. The applicant complains that she has not been provided with alternative accommodation.

8. She further alleges that she was dismissed from her job in an illegal manner, and that is why other proceedings are also pending before the Chamber (case no. CH/98/1319 *Rasema BEGIĆ against Bosnia and Herzegovina*, decided by decision in case no. CH/98/1309 at al., *Kajtaz and others v. Bosnia and Herzegovina*, decision on admissibility and merits of 7 September 2001, Decision July-December 2001).

II. PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced on 20 December 2001. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to prevent her eviction until the administrative proceedings are completed. On 24 December 2001, the President of the First Panel ordered the provisional measure requested; such order remained in force until 11 February 2002.

10. On 4 January 2002, the Chamber transmitted the case to the respondent Party for its observations on the admissibility and merits under Articles 6 and 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.

11. On 21 January 2002, the respondent Party submitted its observations. On 30 January 2002, the applicant submitted observations in reply.

12. On 8 February 2002, the Chamber extended the order for a provisional measure until 11 March 2002.

13. On 28 February 2002, in response to the Chamber's request, the respondent Party submitted additional information about the apartment at Gandijeva no. 1, namely, that the apartment is only partially devastated and the applicant's husband was reinstated into possession of it on 7 June 2001.

14. On 8 March 2002, the Chamber withdrew its order for a provisional measure.

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. Regarding the applicant's eviction from the apartment located at Skenderija no. 40 in Sarajevo the Chamber notes that her eviction was ordered on the ground that before the war she used to live in apartment at Gandijeva no. 1/2 in Sarajevo with her ex-husband, who is holder of occupancy right, and that apartment has been returned to her ex-husband. As the Chamber has explained in cases of *M.H v. the Federation of Bosnia and Herzegovina* and *Kulovac v. the Federation of Bosnia and Herzegovina* (case no. CH/02/8939, decision on admissibility and merits delivered on 7 March 2003, paragraph 66, and case no. CH/02/12421, decision on admissibility and merits delivered on 7 March 2003, paragraph 53), the Chamber considers that the legislation, allowing the *ex officio* determination of the applicant as a double occupant of an unclaimed apartment, with no right to alternative accommodation, and barring the suspensive effect of her appeal against this determination, serves the significant public interest of providing alternative accommodation in order to resolve the thousands of outstanding housing claims in the most efficient manner possible. Given the margin of appreciation afforded to the respondent Party in this area of social policy, the Chamber concludes that the aim pursued and the means employed are on the whole proportional, and that, therefore, there has been no violation of the applicant's right to respect for her home under Article 8 of the Convention. Therefore, the Chamber finds 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.

17. As to the applicant's claim that she has been denied the right to alternative accommodation, the Chamber notes that the Convention does not contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to housing, which is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

18. For these reasons, the Chamber, by 5 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel