



DECISION ON ADMISSIBILITY

Case no. CH/98/294

Mustafa IKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Jakob MÖLLER, Acting President
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. INTRODUCTION

1. The subject of the application is the applicant's complaint regarding his eviction from an apartment located at Albina Herljevića no. 13, in Tuzla, which was allocated to him for his temporary use on 1 December 1993.

II. FACTS

2. Before the armed conflict, the applicant was an occupancy right holder over a three-room apartment located at Branilaca Banovića no. 53, Banovići. The owner of the apartment was the coal mine "Banovići" (hereinafter the "Mine").

3. On 17 November 1993, the applicant concluded a contract on exchange with the Mine Banovići, exchanging his apartment in Banovići for two smaller apartments in Tuzla. The contract stated that the Mine would allocate an apartment located at Albina Herljevića no. 13, in Tuzla, to the applicant and an apartment located at Maršala Tita bb, in Tuzla, to his daughter.

4. On 1 December 1993, the Municipal Secretariat for Housing – Communal Affairs of the Municipality Tuzla (hereinafter the "Secretariat") issued a procedural decision allocating the apartment located at Albina Herljevića no. 13 to the applicant for his temporary use. The procedural decision states that the apartment had been declared abandoned. On 19 September 1994, the applicant concluded a contract on temporary use of the apartment.

5. On 3 May 1994, the Mine issued a procedural decision allocating an apartment located at Maršala Tita bb to the applicant's daughter for her use. Subsequently, she concluded a contract on use of the apartment.

6. On 14 December 1994, the Secretariat issued a procedural decision annulling its procedural decision of 1 December 1993, ordering the applicant to immediately vacate the apartment located at Albina Herljevića no. 13, under the threat of execution. The applicant lodged an appeal.

7. On 20 February 1995, the Secretariat scheduled the applicant's eviction for 2 March 1995. On that day the applicant was evicted.

8. On 17 March 1995, the Secretariat allocated the apartment for temporary use to Trakić Semir (T.S.), a disabled war veteran.

9. On 29 July 1995, the Ministry for Urbanism, Physical Planning and Environment Protection of Tuzla-Podrinje Canton (hereinafter: the "Ministry") annulled the procedural decision of 14 December 1994 and returned the case to the first instance organ for renewed proceedings.

10. On 5 February 1996, the Secretariat issued a new procedural decision, which was essentially the same as the procedural decision of 14 December 1994. The applicant lodged an appeal.

11. On 17 July 1996, the Ministry annulled the procedural decision of 5 February 1996 and returned the case to the first instance organ for renewed proceedings.

12. On 2 February 1998, the Secretariat annulled the procedural decision by which the apartment in question was declared abandoned and annulled paragraph 2 of the operative part of the procedural decision of 17 March 1995 allocating the apartment to T.S. It further decided that T.S. was obliged to vacate the apartment within 15 days from the date on which adequate accommodation is found. The applicant lodged an appeal related to the time limit determined for the eviction of T.S. from the mentioned apartment.

13. On 18 March 1998, the Ministry rejected the appeal as ill-founded. The Ministry confirmed that T.S., as a 60% disabled person, falls into a category of persons who cannot be evicted until adequate accommodation is provided for him. The applicant initiated an administrative dispute against the procedural decision.

14. On 24 February 1999, the Cantonal Court rejected the lawsuit initiating the administrative dispute. In the reasoning, the Cantonal Court stated that as of the entry into force of the Law on Cessation of the Application of the Law on Abandoned Apartments on 4 April 1998, organs of the Federation of Bosnia and Herzegovina must stop conducting further proceedings initiated on the basis of the old legislation, the application of which ceased on the same day. The Cantonal Court established that the issue here, in the present case, was the eviction of the temporary user from an apartment that had been declared abandoned, and that the request for his eviction was not submitted by the pre-war occupancy right holder but by the applicant himself.

15. In accordance with the amended legislation, the applicant on 14 April 1998 and 25 September 1998, submitted his request for repossession of the apartment at issue; however, the competent organ has never issued a procedural decision upon this request.

III. PROCEEDINGS BEFORE THE CHAMBER

16. The application was received by the Chamber on 6 February 1998 and registered on 10 April 1998.

17. On 10 September 1999, the Chamber deliberated on the admissibility of the application and decided to transmit the case to the respondent Party under Article 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.

18. On 24 December 1999, the respondent Party submitted its written observations on the admissibility and merits of the application. It opined that, under Article VIII(2)(a) of the Agreement, the application was inadmissible as premature, as well as for non-exhaustion of domestic legal remedies.

19. On 27 January 2000, the applicant submitted his written statement in reply to the observations of the respondent Party. He stated that all domestic legal remedies have been exhausted and that the procedural decision of the Cantonal Court of 24 February 1999, issued in the administrative dispute, is final and binding in sense of Article VIII(2)(b) of the Agreement. He further alleged a violation of his right to an apartment (home).

20. On 29 February 2000, the Chamber received additional observations of the respondent Party. In regard to the applicant's request for compensation for pecuniary and non-pecuniary damages resulting from his eviction on 2 March 1995, the respondent Party objected that the Chamber lacks competence *ratione temporis* for events that occurred before 14 December 1995. Also, the respondent Party pointed out that applicant could not have acquired the occupancy right over the mentioned apartment in 1993, on the basis of the property laws.

21. On 6 December 2002, the respondent Party submitted additional information. The respondent Party pointed out that the Service for Housing Relations of the Municipality Tuzla on 7 September 2001 reinstated the pre-war occupancy right holder, I.K., into possession of the apartment at Albina Herljevića no. 13. Also, it alleged that the applicant did not submit a request for repossession of his pre-war apartment in Banovići, that is to say, on 29 May 2000, the applicant provided a written statement to the Service that he was giving up his request for repossession of his pre-war apartment over which he had had an occupancy right.

22. The Chamber transmitted this additional information of 6 December 2002 to the applicant, but he did not respond to it.

IV. OPINION OF THE CHAMBER

23. 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.”

24. The Chamber notes that on 19 September 1994, the applicant concluded a contract on temporary use of the apartment in question; however, by the property laws enacted in 1998, all contracts concluded in the period from 1 April 1992 to 7 February 1998 were annulled. Accordingly, the applicant has no right under domestic law to occupy the apartment in question. Furthermore, from the additional information provided by the respondent Party, it appears that I.K., the pre-war occupancy right holder, has entered into possession of the apartment in question. 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.

V. CONCLUSION

25. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President of the Second Panel