



DECISION ON ADMISSIBILITY

Case no. CH/02/8499

Stjepan MUSA

against

THE FEDERATION BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
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) 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 that was allocated to him in 1996 by a procedural decision of the Department for Construction and Physical Planning of the Municipality of Mostar West. This allocation was intended as a temporary solution until he was reinstated into his pre-war apartment. According to the procedural decision, the applicant was required to invest certain funds to reconstruct the apartment in question.
2. The pre-war occupant requested repossession of the apartment in question. However, in accordance with a procedural decision issued on 10 August 2000, his request was rejected in administrative proceedings because in 1991, he was an illegal occupant and not the occupancy right holder over the apartment in question. The same procedural decision ordered the applicant to vacate the apartment in question within 15 days. The applicant appealed against the procedural decision, but this appeal had no suspensive effect.
3. On 9 November 2001, the applicant initiated court proceedings against the Municipality of Mostar for compensation for the funds he invested into reconstruction of the apartment in question.
4. On 15 November 2001, the applicant was informed that his eviction had been scheduled for 4 December 2001.
5. The applicant submitted information to the Chamber from the Court in Mostar indicating that a proceeding between "Aluminij" d.d. Mostar and "Soko" d.d. Mostar is pending before the Court regarding ownership over the apartment in question.

II. ALLEGED HUMAN RIGHTS VIOLATIONS

6. The applicant complains that his rights guaranteed under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention have been violated. He considers that if he is forced to vacate the apartment he occupies, his possibility of solving his housing problem would become even more remote, especially since ownership of the apartment is in dispute, there is no occupancy right holder over the apartment, and he does not know from whom he could claim reimbursement for the funds he invested in reconstruction of the apartment in question.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced to the Chamber on 29 November 2001 and registered on the same day. The applicant is represented by Branislav Kolovrat, an advocate from Mostar.
8. In his application, the applicant requested the Chamber, as a provisional measure, to order the respondent Party to suspend his eviction. On 3 December 2001, the Chamber decided to reject the request for a provisional measure.
9. The applicant has submitted a request for compensation in the amount of 46,453.00 KM for the funds he invested in reconstruction of the apartment in question.

IV. OPINION OF THE CHAMBER

10. 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."

11. With respect to his complaint concerning compensation for the funds he invested into reconstruction of the apartment in question, the Chamber notes that the applicant's complaint is premature as the proceedings to resolve this issue are still pending before the Municipal Court in Mostar. Accordingly, in this respect, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

12. With respect to his complaint concerning his eviction from the apartment in question, the Chamber notes that the applicant was ordered to vacate the apartment concerned on the ground that he had no right under domestic law to occupy it. 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 illegal occupant of an unclaimed apartment, with no right to alternative accommodation, and barring the suspensive effect of his 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 is no appearance of a violation of the applicant's right to respect for his home under Article 8 of the Convention. Therefore, the Chamber finds that in this regard 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.

13. As to the applicant's claim that he has been denied the right to housing, the Chamber notes that he is neither entitled to alternative accommodation under domestic law, nor does the European Convention on Human Rights contain a right to housing. 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.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel