



DECISION ON ADMISSIBILITY

Case No CH/00/5035

Elmedina MOSTARAC

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 September 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Peter KEMPEES, 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 case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina, to regain possession of the apartment at Ulica Hrgića 9b, Sarajevo, over which she claims to hold the occupancy right. She has initiated administrative proceedings to regain possession of the apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was received on 5 June 2000 and registered on 6 June 2000.

3. The applicant requested that the Chamber order the Federation of Bosnia and Herzegovina as a provisional measure to suspend the forced eviction from the apartment scheduled for 4 July 2000 until the date when the administrative body solved the issue of her right to return into her pre-war home or else to provide her a temporary accommodation. On 6 June 2000, the Chamber rejected her request.

4. On 12 June 2000, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits of the case. In reply dated 11 September 2000 the applicant stated that the respondent Party did not consider her rights to return into her pre-war apartment and that this was her main request. On 22 January 2001 the observations of the respondent Party were received.

5. On 6 September 2001, the Chamber considered the case and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

6. Before the war, the applicant lived in an apartment at Ulica Hrgića 9b, Sarajevo (apartment A) on the basis of a decision of the Municipal Commission for Housing and Communal Affairs of the Stari Grad Municipality (no. 05/1-372-678/86) and a contract with the SIZ (Self-managing Community of Interest) of 26 November 1990. The contract was concluded for a definitive time-period ending on 29 October 1991. The reason for this was that the owner of the apartment, the Stari Grad Municipality, had relinquished the mentioned apartment for the use of the Security Services Centre Sarajevo, where the applicant was employed, for a definitive time-period.

7. In May 1992, due to the shelling, the apartment was drastically devastated and became uninhabitable (see report of Commission of JSP (Public Housing Company) "Sarajevostan" of 22 May 1995), but the applicant continued to live there until 1995.

8. By a procedural decision of the Ministry of Interior of 23 July 1996, the applicant was allocated an apartment at Ulica Marka Marulića 17 (apartment B) for temporary use. The pre-war occupancy right holder over the apartment was Dž.B.

9. On 31 December 1998 the Administration for Housing Affairs of the Sarajevo Canton ("The Administration for Housing Affairs") issued a procedural decision by which Mr. Dž.B. was allowed to be reinstated and the applicant was ordered to move out within a 90-day time-limit. The applicant's right to alternative accommodation was recognised.

10. On 20 July 1999 the Administration for Housing Affairs issued a procedural decision (no. 23/1-372-4083/98) by which the applicant's claim for reinstatement into possession of the apartment A was refused. In the reasoning of the procedural decision it was stated that the applicant had concluded the contract on the use of the apartment in question for a definite time-period ending on 29 October 1991 and that this time-period had expired so that the contract had ceased to be valid pursuant to Article 51 (1) of the Law on Housing Relations.

11. The Administrative Organ's decision was delivered to the applicant on 7 January 2000. On 18 January 2000, the applicant filed an appeal against this decision to the Ministry for Urban Planning, Housing and Communal Affairs, claiming that the facts were not correctly established. No decision has yet been issued upon the appeal.

12. On 11 May 2000 the Administration for Housing Affairs issued a procedural decision ordering the applicant to move out from the apartment B within the 3 days time-limit but not providing her any alternative accommodation. In the reasoning of this procedural decision it is stated that the applicant is the occupancy right holder over the apartment A, which is inhabitable. The appeal against this procedural decision does not postpone the enforcement. On 8 June 2000, the applicant appealed against this decision.

13. By conclusion of 18 May 2000, the decision of 11 May 2000 became enforceable and the eviction was scheduled on 4 July 2000.

14. On 4 July 2000, the applicant left the apartment B handing over the keys. She currently lives at Odobašina no.45/II, Sarajevo.

15. The applicant's pre-war apartment (apartment A), which has been rebuilt, is now occupied by Mr. H.N. He lets the apartment to subtenants, while he still lives in ul. Šahinagića 17.

B. Relevant legislation

1. The Law on Administrative Procedures

16. Article 227 of the Law on Administrative Procedures reads as follows:

"1. An appeal against a decision shall be submitted within 15 day if the law does not envisage it in a different way.

2. The deadline for the appeal for each person and each body to which the decision was sent shall be calculated from the day of delivering the decision."

17. Article 244 of the Law on Administrative Procedure reads as follows:

"1. The decision on the appeal must be made and submitted to the party as soon as possible, and at latest within 30 days counting from the date of delivery of the appeal, unless a shorter deadline has been defined by a separate regulation.

2. If the party withdraws the appeal, the appeal proceedings shall be terminated by the conclusion. "

2. The Law on Administrative Disputes

18. Article 22(1) of the Law on Administrative Disputes reads as follows:

"1. If in the administrative proceedings the second instance organ has failed to issue, within one month time-period or within a special time limit provided by a regulation, the procedural decision upon the party's complaint against the first instance procedural decision and if the second instance organ fails to issue such procedural decision within the further time limit of seven days upon the written request, the party may institute an administrative dispute as if the appeal had been refused."

IV. COMPLAINTS

19. The applicant claims that her inability to regain possession of the apartment A involves violations of her right to a fair hearing, as guaranteed by Article 6 paragraph 1 of the Convention, and her right to respect for her home, as guaranteed by Article 8 of the Convention. The Chamber

considers, of its own motion, that the case might also raise an issue under Article 1 of Protocol No. 1 to the Convention.

V. SUBMISSION

20. The respondent Party states in its submissions on the admissibility and merits that the applicant initiated administrative proceedings before the Second Instance Administrative Organ by her appeal of the 18 January 2000, which are still pending. Furthermore, the applicant has not initiated any court proceedings. Therefore, domestic remedies have not been exhausted.

21. The applicant maintains her complaint.

VI. OPINION OF THE CHAMBER

22. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

23. On 18 January 2000, the applicant filed an appeal to the Ministry for Urban Planning, Housing and Communal Affairs ("The Ministry") against the decision of the Administration for Housing Affairs of 20 July 1999. Since this decision was delivered to the applicant only on 7 January 2000, the appeal was submitted within the deadline of 15 days, as foreseen in Article 227 of the Law on Administrative Procedures (see paragraph 16).

24. The Ministry, as second-instance body, failed to issue a decision within the time limit of 30 days set by law, pursuant to Article 244 of the Law on Administrative Procedure (see paragraph 17). Consequently, according to Article 22(1) of the Law on Administrative Disputes, the applicant may "institute an administrative dispute as if the appeal had been refused" (see paragraph 18). The applicant did not do so.

25. The Chamber notes in the first place that the applicant has not instituted an administrative dispute in the administrative proceedings, as required by Article 22(1) of the Law on Administrative Disputes.

26. Under Article 1 of the Law on Administrative Disputes it is provided that the courts shall decide in administrative disputes on the lawfulness of administrative acts (see paragraph 18). Consequently, the Chamber notes in the second place that the applicant has not initiated proceedings before the competent court to regain possession of her property.

27. It follows that the available domestic remedies have not been exhausted.

VII. CONCLUSION

28. For the above reasons, the Chamber unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel