



DECISION ON ADMISSIBILITY

Case no. CH/00/5087

Alija MOČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 December 2000 with the following members present:

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

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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. The applicant lived in Čajniče, Republika Srpska before the war broke out.

2. By a procedural decision of the Department for General Administration and Housing Affairs in Zenica of 3 December 1999, it was confirmed that another person is the occupancy right holder of the apartment inhabited by the applicant. The applicant was ordered to move out of the apartment and granted the right to alternative accommodation.

3. Against this procedural decision the applicant filed a complaint with the Ministry for Urbanism, Town Planning and Environmental Protection of Zeničko-Dobojski Canton, which was rejected on 14 February 2000.

4. The applicant initiated an administrative dispute against this procedural decision on 8 April 2000. On 27 July 2000 the Cantonal Court in Zenica rejected the applicant's appeal as ill founded.

5. On 26 September 2000 the applicant filed an appeal against the judgement of 27 July 2000 to the Supreme Court of the Federation of Bosnia and Herzegovina. This appeal is still pending

II. COMPLAINT

6. From the application it can be concluded that the applicant considers that his right to respect for his home (Article 8 of the Convention) was violated, as well as the right to a fair trial, (Article 6(1) of the Convention).

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 12 June 2000 and registered on 13 June 2000. On 16 June 2000 the Chamber ordered, as a provisional measure, that the respondent Party take all necessary steps to prevent the applicant's eviction from the apartment concerned. On 19 June 2000 the respondent Party informed the Chamber that it had totally complied with the order.

8. On 12 July 2000 the respondent Party submitted to the Chamber its observations regarding the order for a provisional measure issued on 16 June 2000. On 17 July 2000 the respondent Party submitted its observations on the admissibility and merits in this case, and on 24 July 2000 it requested the urgent annulment of provisional measure. On 16 August 2000 the applicant submitted to the Chamber his reply to the observations of the respondent Party.

9. On 10 October 2000 the Chamber decided to withdraw the provisional measure issued on 16 June 2000.

IV. SUBMISSIONS OF THE RESPONDENT PARTY

10. The respondent Party states that in this case the competent Department for General Administration and Housing Affairs in Zenica offered the applicant alternative accommodation, until his final return to his home in the Republika Srpska, but that he refused it. The respondent Party reminded the Chamber that the applicant had initiated an administrative dispute, which proceedings were pending.

V. SUBMISSIONS OF THE APPLICANT

11. In his observations in reply the applicant states that the respondent Party is treating him as a temporary occupant, and the previous occupant of the apartment as the holder of the occupancy right. He submits that this is not correct, because both of them concluded contracts for the use of the apartments between 1 April 1992 and 7 February 1998, which were annulled by a decision of the High Representative.

Vi. OPINION OF THE CHAMBER

12. 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)(a) the Chamber shall take into account whether effective remedies exist, and whether the applicant has demonstrated that they have been exhausted.

13. The Chamber has examined the application and finds that the applicant's complaint is premature as the proceedings are still pending before the Supreme Court of the Federation of Bosnia and Herzegovina. The domestic remedies have therefore not been exhausted as required by Article VIII(2)(a) of the Agreement. It follows that the application must be rejected.

Vii. CONCLUSION

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

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel