



DECISION ON ADMISSIBILITY

Case no. CH/01/7509

E. H.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 March 2002 with the following members present:

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

Mr. Ulrich GARMS, 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. INTRODUCTION

1. On 27 December 1995, the applicant concluded a contract for the use of an apartment located at Ulica Branilaca Sarajeva, no. 31, Sarajevo. On 31 August 2000, the applicant and his spouse concluded a further contract for the purchase of the said apartment with the owner of the apartment, the Municipality Centre Sarajevo. On 5 September 2000 they were registered in the Land Books of the Municipal Court I in Sarajevo as owners with one half ownership each.

2. The pre-war occupancy right holder, A. V., died on 18 December 1991. Subsequent to her death her children, E. V. and A. V. remained in the apartment. By a procedural decision of the Commission for the Allocation of Apartments of the Municipality Centre of Sarajevo of 7 May 1994, it was determined that E. V. may continue to use the disputed apartment as the occupancy right holder. A. V. agreed to this. However, E. V. was killed immediately thereafter. The apartment was then allocated to the applicant for use, as it had remained unoccupied.

3. On a date unspecified to the Chamber, A. V. submitted to the Administration for Housing Affairs a request for repossession of the disputed apartment, which was rejected by a procedural decision of 10 December 1999. The reason for this procedural decision was that she had left the apartment in April 1992 and moved to Zenica, where she had married. She submitted an appeal to the Cantonal Court in Sarajevo, but this appeal was denied as her complaint was held to be ill-founded. An appeal is currently pending against this decision before the Supreme Court of the Federation of Bosnia and Herzegovina.

4. On an unspecified date, A. V. submitted to the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter the "CRPC") a request for confirmation of her occupancy right. On 20 March 2001 the CRPC confirmed that her late mother was the pre-war occupancy right holder over the apartment on 1 April 1992, and she and members of her household were permitted to enter into possession of the apartment in question. The applicant submitted a request for review of this decision on 27 April 2001, which has not yet been solved.

II. COMPLAINTS

5. The applicant alleges violations of his rights guaranteed under Articles 6(1) and 8 of the Convention and Article 1 of Protocol 1 to the Convention.

6. The applicant further alleges that he is threatened by eviction from the apartment he purchased as a result of the CRPC decision and requests that the Chamber order the CRPC to render ineffective its decision of 20 March 2001 and to order a new decision rejecting the request of A. V. The applicant has also requested compensation for pecuniary and non-pecuniary damages.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced to the Chamber on 17 May 2001 and registered on the same day. On 24 January 2002 the applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from the apartment which he occupies.

IV. OPINION OF THE CHAMBER

8. 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"

9. The applicant has argued correctly that the newest amendments to the Law Amending the Law on Implementation of CRPC Decisions state in the new Article 4 (Official Gazette of the Federation of Bosnia and Herzegovina no. 56/01) that the administrative organs are competent to determine whether a person not listed in the operative part of the decision might be considered a member of the family household for the purpose of obtaining an occupancy right. It is submitted by the applicant that A. V. submitted a request to the Administration for Housing Affairs of Canton Sarajevo for enforcement of the CRPC decision. However, the conclusion on the enforcement of the CRPC decision has never been issued by the Administration for Housing Affairs of Canton Sarajevo in order to evict the applicant as is complained. Furthermore, an appeal is currently pending before the Supreme Court and as such a final and binding decision has not been delivered. The Chamber notes therefore that the applicant's complaint is premature as the proceedings are still pending before the Supreme Court. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

10. 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