



DECISION ON ADMISSIBILITY

Case no. CH/01/8552

Memed AKŠAMIJA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 February 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice- President
Mr. Jakob MÖLLER
Mr. Manfred NOWAK
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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. The application was introduced on 11 December 2001. It concerns a dispute regarding the five-room apartment (“apartment”), located at ul. Čobanija no.20/III (former Tome Masarika) in Sarajevo, the Federation of Bosnia and Herzegovina, occupied by the applicant on a temporary basis. The applicant and the leather factory known as “Kožarsko tekstilni kombinat Visoko”, the owner of the apartment, contested before domestic bodies the occupancy right over the apartment held by its pre-war user, Mr. P.S. They claim that the 29 April 1983 contract on use of the apartment under which Mr. P.S. acquired his pre-war occupancy right contains some irregularities. None the less on 9 December 1999, the Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC”) confirmed Mr. P.S.’s pre-war right to the apartment.

2. On 2 April 2001 Mr. P.S. requested the administrative organ competent for housing affairs of the Sarajevo Centar Municipality to execute the CRPC decision of 9 December 1999. According to the file, the request for execution has not been decided.

3. In addition, the proceedings filed by the applicant contesting Mr. P.S.’s occupancy right over the apartment before domestic bodies, *i.e.*, the Administration for Housing Affairs of Sarajevo Canton and the Municipal Court I in Sarajevo, according to the file, are still pending.

4. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to suspend execution of the CRPC decision in favor of Mr. P.S. until the Municipal Court I issues its judgement in the dispute regarding the validity of Mr. P.S.’s contract to use the apartment. On 9 January 2002 the Chamber decided not to order the provisional measure requested.

5. The applicant explicitly complains of violations of his right to a fair hearing in civil proceedings under Article 6 of the European Convention on Human Rights his right to home, private and family life under Article 8 of the Convention, and his right to property under Article 1 of Protocol No. 1 to the Convention.

II. OPINION OF THE CHAMBER

6. 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....”

7. The Chamber notes that the applicant’s complaints are premature as proceedings are still pending before the Sarajevo Municipal Court I, the Administration for Housing Affairs of Sarajevo Canton Sarajevo, and the Sarajevo Centar Municipality. 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.

III. CONCLUSION

8. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO,
President of the Second Panel