



DECISION ON ADMISSIBILITY

Case no. CH/02/11927

Mehmed AKŠAMIJA

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 24 July 2002. 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 favour of P.S. (and therefore prevent the applicant's eviction) until the Municipal Court I issues its judgement in the dispute regarding the validity of P.S.'s pre-war occupancy right. The applicant already submitted an application on 11 December 2001 on the same issue requesting the Chamber to issue provisional measures to prevent his eviction. On 9 January 2002 the President of the First Panel decided not to order the provisional measure requested. Further, on 8 February 2002 the Chamber adopted the decision declaring the application inadmissible for non-exhaustion of domestic remedies (case no. CH/01/8552). The Chamber on that occasion noted "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." The applicant now claims that new facts have arisen that justify his new request for provisional measures and that his forcible eviction has been scheduled for 26 July 2002 at 9 o'clock.
2. On 31 July 2000 "KTK VISOKO", the owner of the apartment, filed an action against P.S. as the first defendant and the Housing Fund of the City of Sarajevo as the second defendant, requesting the court to issue a decision declaring that the contract on use of the apartment dated 29 April 1983 concluded between the SIZ (Self-governing Community of Interest) for Housing of the City of Sarajevo (the legal predecessor of the second defendant) and P.S. is null and void and ordering the Housing Fund of the City of Sarajevo to erase P.S. from the record as occupancy right holder.
3. On 15 January 2002 the Municipal Court I Sarajevo issued a procedural decision suspending the proceedings in the aforementioned case.
4. On 21 March 2002 the Administration for Housing Affairs of Canton Sarajevo issued a conclusion ordering the applicant's eviction from the apartment he occupies. The conclusion was issued in order to allow the enforcement of the CRPC decision dated 9 December 1999. In accordance with the CRPC decision, the aforementioned conclusion gives permission P.S., the holder of the occupancy right, to regain possession of the apartment in question. It was established that the applicant's temporary right to use the apartment ceased and he was given a 15 days deadline to vacate the apartment. It was also established that the applicant is not entitled to alternative accommodation.
5. "KTK VISOKO" filed an appeal against the procedural decision of 15 January 2002 of the Municipal Court I Sarajevo, stating *inter alia* that the subject matter of the dispute is the validity of the contract on use over the apartment. "KTK VISOKO" claimed that the contract was not signed by the holder of the occupancy right P.S. and by the Housing Fund of the City of Sarajevo, but that the contract was signed by a third, unauthorised party.
6. On 26 April 2002 the Cantonal Court in Sarajevo issued a procedural decision accepting the appeal, setting aside the first instance procedural decision and returning the case for renewed proceedings.
7. The Administration for Housing Affairs of Sarajevo Canton Sarajevo, and the Sarajevo Centar Municipality scheduled the applicant's forcible eviction for 26 July 2002 at 9 o'clock.
8. The applicant alleges that P.S. should not be considered to be the pre-war occupancy right holder since the validity of his contract is disputed before a court and until the court issues its decision. He alleges that evidence shows that P.S. never moved into the apartment or used it.

II. OPINION OF THE CHAMBER

9. 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: ... (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.”

10. The Chamber notes that the applicant disputes that P.S., who is to be the beneficiary of the applicant’s eviction, was the legal occupancy right-holder of the apartment as of 1 April 1992. According to Articles 2 and 11 of the *Law on Housing Relations* certain conditions should be fulfilled for the creation of an occupancy right to be valid. These conditions are: an allocation decision, a contract on use, and legal occupation. The applicant alleges that P.S. should not be considered the pre-war occupancy right holder since the validity of his contract is disputed before a court and until the court issues its decision. He alleges that evidence shows that P.S. never moved into the apartment or used it. “KTK VISOKO” in its appeal against the 15 January 2002 decision of the Municipal Court I Sarajevo further claims that the contract was not signed by the holder of the occupancy right P.S. and by the Housing Fund of the City of Sarajevo, but that the contract was signed by a third, unauthorised party.

11. However, the Chamber notes that CRPC decisions are final and binding as regards a determination of the property right as of 1 April 1992 (Dayton Agreement, Annex 7, Article XII, Paragraph 7). The Federation *Law on the Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees*, Article 10(2) states the regularity of the Commission decision may be reviewed “only through the reconsideration procedures referred to in Article 11 of this Law”. Article 11 deals with the CRPC reconsideration procedure. In the absence of an appeal based upon a transfer of rights to the property after 1 April 1992, the Implementation Law allows authorities no discretion whatsoever. They must enforce the CRPC decision once a request for enforcement is filed.

12. Further, according to Article 12 of the Law on the Cessation of the Application of the Law on Abandoned Apartments, court procedures to cancel an occupancy right can only be instigated after the prewar occupancy right holder has been reinstated.

13. For these reasons, the Chamber concludes that the applicant’s eviction is lawful. Accordingly the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

14. Further, the applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the Chamber on its own motion find any such evidence. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina.

III. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Pane