



DECISION ON ADMISSIBILITY

Case no. CH/02/9896

Nermin MUMINBAŠIĆ

against

THE FEDERATION BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Giovanni GRASSO
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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)(b) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The applicant is the temporary occupant of an apartment located in Sarajevo, Edhema Mulabdića Street no. 8/3, which was allocated to him in 1997. M.B., the pre-war occupancy right holder initiated proceedings for reinstatement into the possession of the apartment occupied by the applicant before the Commission for Real Property Claim of Displaced Persons and Refugees (CRPC). On 5 December 2002 the CRPC issued a decision in favour of the pre-war occupancy right holder.
2. On 28 September 2001 the Administration for Housing Affairs of Sarajevo Canton issued a conclusion on enforcement of the CRPC decision by which the pre-war occupancy right holder is entitled to repossess the apartment and the applicant is ordered to leave the apartment within 15 days.
3. On 6 November 2001 the applicant appealed against the conclusion on enforcement of the CRPC decision.
4. The Ministry for Housing Affairs issued the decision partly accepting the applicant's appeal in relation to his right to alternative accommodation and confirming the remainder of the conclusion on enforcement.
5. On 13 June 2002 the applicant initiated an administrative dispute against the Ministry for Housing Affairs' procedural decision. On 29 November 2002 the Cantonal Court annulled the procedural decision issued by Ministry for Housing Affairs and returned the case to the Ministry for Housing Affairs.
6. The applicant also initiated the proceeding before the CRPC requesting a reconsideration of the CRPC decision. His request was rejected.
7. The applicant alleges that he has been living in the apartment in question since he was born. He states that the pre-war occupancy right holder left the apartment before the war, in 1989, and that he is only nominally the occupancy right holder. The applicant claims that the pre-war occupancy right holder is not entitled to repossession because he does not have refugee status. The applicant states that his rights protected under Articles 8 and 13 of the Convention and Article 1 Protocol No. 1 to the Convention have been violated.

II. PROCEEDINGS BEFORE THE CHAMBER

8. The application was submitted to the Chamber on 9 April 2002. The applicant requested the Chamber to order the Federation of Bosnia and Herzegovina, as a provisional measure, to take all necessary steps to suspend his eviction from the apartment he occupies. On 20 April 2002, the President of the Second Panel decided to reject the provisional measure requested. On 28 January 2003 the applicant again submitted the same request. On 29 January 2003 the President of the Second Panel rejected the second request.

III. 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: (b) The Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement" and "(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 finds that, insofar as the applicant is complaining that the CRPC decision establishing that M.B. was the occupancy right holder of the apartment as of 1 April 1992 violates

his right to peaceful enjoyment of possessions, this matter has been “submitted to another procedure of international investigation or settlement” within the meaning of Article VIII(2)(b), the CRPC. The Chamber therefore decides to declare this part of the application inadmissible.

11. The Chamber notes that the decision on the applicant’s eviction was taken to allow the pre-war occupancy right holder to repossess the apartment. In these circumstances, 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 this part of the application inadmissible.

12. The Chamber further notes that domestic organs are obliged to examine whether the applicant has a right to alternative accommodation. However, the Chamber also notes that the European Convention on Human Rights does not contain a right to alternative accommodation or to housing as such. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to housing, which is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel