



DECISION ON ADMISSIBILITY

Case no. CH/03/14091

Muharem TRUMIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 July 2003 with the following members present:

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

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)(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 8 May 2003. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from an apartment which is located in Sarajevo, at Antuna Branka Šimića Street no. 17, until the issuance of final decisions in proceedings for extraordinary legal remedies for allocation of the occupancy right over the apartment in question. On 9 May 2003, the Chamber decided not to order the provisional measure requested.

2. The applicant complains of a violation of his rights under Articles 6 and 8 of the European Convention on Human Rights (the "Convention"). The applicant deems that the domestic courts wrongly assessed the evidence regarding his housing needs and consequently misapplied the law, which resulted in the violation of his right to a home.

II. STATEMENT OF FACTS

3. In 1987, during the marriage with his ex-spouse B.Š., the applicant was allocated the occupancy right over a two-room apartment. The apartment in question is located in Sarajevo, at Antuna Branka Šimića Street no. 17.

4. The applicant states that at the beginning of the war, in 1992, his ex-spouse abandoned the apartment in question and left for Zagreb in the Republic of Croatia together with their two children. The applicant stayed in the apartment in question in Sarajevo and maintained contact with his ex-spouse and children as much as possible, due to the circumstances of the war.

5. The applicant states that he learned that his ex-spouse was having an affair with another man and filed for a divorce. Their marriage was legally dissolved by a court decision in 1994. The applicant further states that he re-married in 1996, and his new wife gave birth to a daughter the same year, so he has been using the apartment in question since 1996 with his new spouse and his under-age daughter.

6. The applicant further states that his ex-spouse B.Š. returned to Sarajevo with the younger daughter from their previous marriage at the end of 1996 and immediately started court proceedings aimed at determining the occupancy right holder over the apartment in question.

7. The Municipal Court II in Sarajevo issued a procedural decision on 14 November 1997 determining that the applicant's ex-spouse B.Š. was the exclusive occupancy right holder over the apartment in question, while the applicant's occupancy right was terminated and he was ordered to vacate the premises within 15 days from the date when his wife secures alternative accommodation for him. After detailed proceedings, the Court considered the spouses' housing situations at the time of divorce and, based on the evidence presented, determined that the applicant's ex-spouse, B.Š., is the occupancy right holder. The applicant filed an appeal against the aforementioned procedural decision with the Cantonal Court in Sarajevo.

8. Deciding on the applicant's appeal, the Cantonal Court issued a procedural decision on 11 December 1998 taking into account the applicant's appeal, annulling the first instance procedural decision, and returning the case to the first instance court for a retrial. The Cantonal Court found that the first instance court wrongly applied Article 20 of the Law on Housing Relations as it considered the spouses' housing needs at the time of divorce, without considering their present housing needs and the persons who live with them presently. The Cantonal Court instructed the first instance court to consider additional evidence in the renewed proceedings and based on all the evidence presented, applying Article 20 of the Law on Housing Relations, to issue a new procedural decision.

9. In the renewed proceedings, the Municipal Court II in Sarajevo issued a procedural decision on 25 June 2001, determining that the applicant's ex-spouse was the exclusive occupancy right holder over the apartment in question, while the applicant's occupancy right was terminated and he was ordered to vacate the premises within 15 days and his wife had no obligation to secure alternative accommodation for him. After the additional evidence was presented, the Court found that,

beside the apartment, the applicant had been using a family house he had built together with his ex-spouse in Rakovica near Sarajevo. The Court opined that the marriage was dissolved though applicant's fault and his ex-spouse's housing needs were more important; therefore, the Court applied Article 20 of the Law on Housing Relations to determine that she was the occupancy right holder and freed her from the obligation to secure alternative accommodation for the applicant, since he had been using the family house they had built together. Again, the applicant filed an appeal against this procedural decision to the Cantonal Court in Sarajevo.

10. Deciding on the applicant's appeal, the Cantonal Court in Sarajevo issued a procedural decision on 23 September 2002 rejecting the applicant's appeal and confirming the first instance procedural decision. The applicant states that he filed a review to the Supreme Court of Federation of Bosnia and Herzegovina against the procedural decision of the Cantonal Court and at the same time he filed a request for renewed proceedings to the Municipal Court II in Sarajevo. In these proceedings the decisions have not yet been issued.

11. Finally, the applicant states that he received a conclusion on forcible eviction from the apartment in question of 28 April 2003 made in executive proceedings initiated by his ex-spouse. The applicant states that he was never informed that executive proceedings were filed in this case and that he only received the conclusion allowing forcible eviction.

III. OPINION OF THE CHAMBER

12. 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."

13. The Chamber notes that the applicant complains that the courts wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the courts failed to act fairly as required by Article 6 of the Convention. 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.

IV. CONCLUSION

14. 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