



DECISION ON ADMISSIBILITY

Case no. CH/99/2742

M. H.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 May 2000 with the following members present:

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

Mr. Anders MÅNSSON, 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. FACTS

1. The applicant, a citizen of Bosnia and Herzegovina, is a former employee of the Yugoslav National Army ("JNA") residing in Tuzla. He retired from active service in 1991. The applicant asserts that on 13 May 1992 the JNA allocated him an apartment in Tuzla for permanent use. He moved into the apartment on 14 May 1992 and continues living there to date. However, the applicant never received a procedural decision conferring to him a permanent occupancy right because the JNA apparently left Tuzla on 15 May 1992 before issuing such a decision.

2. On 17 August 1992 a unit of the Territorial Defence in Tuzla issued a statement that the applicant was using the apartment in question and that the documentation from the JNA was unavailable at present, suggesting that the competent administrative body issue the applicant a new procedural decision. On 5 October 1992 the Ministry of Defence of the Republic of Bosnia and Herzegovina, through its district secretariat in Tuzla, issued such a decision, but granted the applicant only a temporary occupancy right under the Law on Abandoned Apartments.

3. On 28 June 1999 the Staff Department of the Federal Ministry of Defence issued a decision stating that the applicant was occupying the apartment illegally and ordering him to vacate it within eight days after the receipt of that decision. Thereafter, on 2 February 2000, the Department for Housing Affairs of the Municipality of Tuzla issued a procedural decision on the request of the previous occupancy right holder. Based on Article 4 of the Law on Cessation of Application of the Law on Abandoned Apartments, it stated that the applicant's temporary occupancy right was terminated and that he had to vacate the apartment within 15 days after the receipt of that decision.

II. COMPLAINTS

4. The applicant complains about a violation of his occupancy right over the apartment. He asks the Chamber to annul the administrative decision of 2 February 2000 and to prevent him from being evicted. The application appears to raise issues under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention. In addition, the applicant alleges that he has been discriminated against in the enjoyment of these rights on the ground that he was a member of the JNA.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 2 August 1999 and registered on the same day.

6. The Chamber received further submissions of the applicant on 28 December 1999 and on 14 February and 6 March 2000.

IV. OPINION OF THE CHAMBER

7. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

8. The Chamber notes that the applicant holds only a temporary occupancy right over the apartment conferred to him by the decision of 5 October 1992. The applicant has claimed that he is entitled to permanent use of the apartment as of 13 May 1992 and that the responsible JNA organs would have issued a procedural decision in that regard if hostilities had not broken out at the time.

9. The Chamber also notes that under Article 2 paragraph 3 of the Law on Cessation of Application of the Law on Abandoned Apartments, any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 shall be cancelled.

10. Therefore, the Chamber cannot find that the administrative decision of 2 February 2000, ordering the applicant to vacate the apartment in favour of the previous occupancy right holder,

constitutes a violation of the above-mentioned rights under the Agreement, as the applicant has alleged. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel