



DECISION ON ADMISSIBILITY

Case no. CH/99/2915

Nusret NANIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 December 1999 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. 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 Articles VIII(2)(a) and VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina. He moved into an apartment at Bosanska Street 16 in Sarajevo on the basis of an allocation decision of 31 March 1997, issued by the owner of the apartment (his employer) in exchange for his former smaller apartment. The apartment was declared permanently abandoned in April 1997 by a decision of the Administration for Housing Affairs of the Canton Sarajevo after having been declared temporarily abandoned (when not specified). In November 1997 the applicant concluded a contract on the use of the apartment with "Sarajevostan", the company in charge of its maintenance. As the apartment was devastated during the war, the applicant invested 21,414 Convertible Marks (*Konvertibilnih Maraka*) in reparation costs.

2. In the meantime, V.S., the wife of the deceased occupancy right holder over the apartment, who had left Sarajevo with her children in 1992, requested the renewal of the proceedings regarding the declarations of the apartment as first temporarily and later permanently abandoned. In December 1997 the Cantonal Administration issued a procedural decision allowing the renewal of proceedings. The owner of the apartment appealed to the second instance administrative organ, the Cantonal Ministry for Urban Planning, Housing and Communal Affairs, which refused the appeal in February 1998. On 25 March 1998 the owner of the apartment initiated an administrative dispute before the Cantonal Court in Sarajevo against the above-mentioned second instance decision.

3. On 30 March 1998 the Cantonal Administration issued a procedural decision annulling the decision on the declaration of the apartment as temporarily and permanently abandoned. The owner of the apartment appealed again to the second instance organ. After the rejection of the appeal, the owner initiated another action before the Cantonal Court on 9 December 1998.

4. Upon V.S.'s request for reinstatement into the apartment, the Cantonal Administration issued a procedural decision on 3 June 1998 establishing that she had a right to submit a request for repossession and confirming that the applicant had occupied the apartment on the basis of the allocation decision. The Cantonal Ministry was called upon to decide who should remain in the apartment in question. V.S. appealed against this decision. Thereafter, the Cantonal Ministry annulled the procedural decision and returned the case to the Cantonal Administration for a renewal of proceedings. On 7 December 1998 the applicant initiated a civil action against the Ministry's decision before the Cantonal Court. All mentioned court proceedings are still pending.

5. On 1 September 1999 the Cantonal Administration issued a procedural decision establishing that the applicant was an illegal occupant of the apartment and ordering him to vacate it within three days of the receipt of the decision. On 3 September 1999 the Cantonal Administration issued a procedural decision allowing the execution by the force of the decision of 1 September 1999 and notified the applicant that the eviction would be executed on 30 September 1999. On 24 September 1999 the applicant appealed against the decision of 1 September 1999 and against the forcible execution.

II. COMPLAINTS

6. The applicant complains of violations of his right to a fair trial and his right to property. He further asserts that V.S. will not have the funds to reimburse the expenses he had for reconstructing the apartment devastated by the war.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was submitted to the Chamber on 27 September 1999 and registered on the same day. The applicant requested the Chamber to order that his eviction scheduled for 30 September 1999 be postponed until the court proceedings would be concluded or until his reinstatement into his previous apartment.

8. On 6 October 1999 the Chamber decided to reject the request for provisional measure and considered the case. On 8 December 1999 it adopted the present decision.

IV. OPINION OF THE CHAMBER

9. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

10. The applicant's eviction from the apartment in question could raise an issue under Article 8 of the European Convention on Human Rights as the apartment was his temporary home. In this context the Chamber notes the applicable amended version of the Law on the Cessation of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, 18/99 and 27/99). According to this law, the pre-war occupancy right holder has the right to reclaim reinstatement into the possession of his or her apartment (here V.S.). Therefore, while the decision of the housing authorities to re-allocate the apartment to V.S. and the court decisions to evict the applicant and to allow forcible execution of the eviction interfered with his right to a home, they were in accordance with the law. Whether the decision also determined the pre-war occupancy rights holder's obligation to reimburse the applicant for the funds invested into reconstruction of the apartment in question is not relevant for the lawfulness of the eviction decision. Moreover, the eviction of temporary occupants from apartments may be necessary in a democratic society for the protection of the rights and freedoms of others as required by Article 8 of the Convention. Hence, the complaint is manifestly ill-founded with regard to this provision.

11. As to the applicant's complaint of a violation of his property – which falls under Article 1 of Protocol No. 1 to the Convention – the Chamber notes that the applicant's appeal against the allocation decision has been pending before the local courts since the end of 1998. Thus the given domestic remedies have not been exhausted. The applicant has not shown that these remedies are not effective. Therefore, the Chamber finds that this part of the application is inadmissible for non-exhaustion of domestic remedies.

12. Moreover, the Chamber finds the applicant's allegations regarding a violation of his right to a hearing before an independent and impartial tribunal as guaranteed by Article 6 of the Convention to be unsubstantiated.

13. Accordingly, the Chamber decides not to accept the application, partly for non-exhaustion of domestic remedies and partly it being manifestly ill-founded.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel