



DECISION ON ADMISSIBILITY

Case no. CH/99/3250

Smajo SPAHIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 February 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir 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 as well as Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant, a citizen of Bosnia and Herzegovina of Bosniak origin, was the temporary user of an apartment in Tuzla from May 1995 until he was evicted on 12 May 1999. According to the decision of the Municipality of Tuzla, Secretariat of Housing and Communal Affairs, which granted the applicant the right to use the apartment temporarily, the applicant was to return it to the municipality one year after the cessation of the immediate threat of war in Bosnia and Herzegovina, which occurred on 23 December 1995. However, the applicant did not leave the apartment at the time stipulated. Rather, on 17 March 1998, he concluded a second contract on temporary use with the municipality.

2. Shortly thereafter, however, the pre-war occupant of the apartment initiated proceedings with a view to gain repossession of it. On 1 December 1998 the pre-war occupant received a decision from the above-mentioned municipality that the apartment was to be returned to him. On 12 May 1999 the applicant was evicted from the apartment. He has, however, continued to pursue various administrative proceedings in an attempt to regain control of the apartment. In each case the competent bodies have decided against him.

II. COMPLAINTS

3. The applicant complains that his right to a home as protected by Article 8 of the European Convention on Human Rights has been violated. Further, he alleges a violation of his right to an effective remedy under Article 13 of the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted to the Chamber on 30 November 1999 and registered on 1 December 1999. The applicant requested the Chamber to issue a provisional order granting him alternative accommodation and quashing the legal decisions taken against him. On 10 January 2000 the Chamber rejected his request.

IV. OPINION OF THE CHAMBER

5. 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 case which it considers manifestly ill-founded.

6. The applicant complains that his right to a home has been violated. According to the Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99), however, the pre-war occupancy right holder has the right to be reinstated into possession of his or her apartment. Further, persons using the apartment without a legal basis, such as the applicant, shall be evicted and the authorities are not obliged to provide alternate accommodation to such persons.

7. The Chamber notes that the pre-war occupancy right holder has a valid decision from the Municipality of Tuzla to repossess the apartment and to have the applicant evicted under the above law. Therefore, while the decision interfered with the applicant's right to his home, it was done in accordance with law. Moreover, the eviction of illegal 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 paragraph 2 of the Convention. Hence, the relevant decisions were justified under that provision. This complaint is accordingly manifestly ill-founded.

8. The Chamber further recalls that the applicant has pursued various remedies in an attempt to continue to use the apartment. It notes that Article 13 of the Convention does not guarantee a

favourable outcome of proceedings initiated but only requires that there be a remedy at national level capable of addressing “arguable” claims of violations of the Convention (see Eur. Court HR, *Powell and Rayner v. the United Kingdom* judgment of 21 February 1990, Series A no. 172, p. 14, paragraph 31). Having regard to its finding under Article 8 of the Convention, the Chamber finds that the applicant does not have such a claim. Therefore, this complaint is also manifestly ill-founded

9. 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

10. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel