



DECISION ON ADMISSIBILITY

Case no. CH/99/3360

Esad MEKIĆ

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. Menfred 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 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 entered into an apartment at Sulejmana Filipovića Street 9, Sarajevo, on the basis of a procedural decision declaring the apartment permanently abandoned, issued by the Administration for Housing Affairs of Canton Sarajevo (hereinafter “the Housing Administration”) on 12 December 1996 and a procedural decision temporarily allocating the apartment to him, issued by the owner of the apartment, the company “Šipad Export-Import d.d Sarajevo”, on 8 July 1997.

2. On 16 April 1998 the pre-war occupancy right holder of the apartment in question, Ms. Z.S., who had left Sarajevo during the war, requested to be reinstated into possession of the apartment.

3. On 18 August 1998 the Housing Administration issued a procedural decision confirming that Ms. Z.S. was the occupancy right holder of the apartment.

4. The applicant appealed against the decision to the second instance administrative organ, the Cantonal Ministry for Urban Planning, Housing and Communal Affairs, complaining that the Housing Administration had made a wrongful and incomplete establishment of the facts. On 16 June 1999 the Cantonal Ministry annulled the decision and referred the case back to the Housing Administration for re-examination.

5. On 9 December 1999 the Housing Administration issued a new procedural decision, establishing that the applicant was an illegal occupant. The applicant was ordered to vacate the apartment within three days from the receipt of the decision. The decision stated that the applicant was not entitled to alternative accommodation, as, firstly, he had been a subtenant of another apartment in Sarajevo before he moved into Z.S.’s apartment and, secondly, he had sufficient means to obtain alternative accommodation. The decision stated also that an appeal had no suspensive effect.

6. On 14 December 1999 the Housing Administration issued a procedural decision ordering the applicant’s eviction by force on 20 December 1999. That eviction did not take place. However, the Chamber has learned that the applicant later moved out of the apartment.

II. COMPLAINT

7. The applicant claims that he has a right to alternative accommodation and that he does not have sufficient means to pay for that himself.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was received on 16 December 1999 and registered on the same day. The applicant requested the Chamber to issue a provisional measure postponing his eviction and annulling the procedural decision of 9 December 1999. On 19 December 1999 the Chamber decided to reject his request.

IV. OPINION OF THE CHAMBER

9. 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.

10. The decision to evict the applicant 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, 27/99 and 43/99). According to this law, the pre-war occupancy

right holder (in this case Z.S.) has the right to be re-instated into possession of his or her apartment and persons using the apartment without a legal basis shall be evicted. The authorities are not obliged to provide emergency accommodation to an illegal occupant.

11. Moreover, the Chamber notes that the Housing Administration correctly concluded that the applicant was an illegal occupant, as the apartment was allocated to him only for temporary use and as he never concluded a contract on use of the apartment.

12. Therefore, while the decisions of the Housing Administration to re-allocate the apartment to Z.S., to evict the applicant and to allow forcible execution of the eviction interfered with the applicant's right to a home, they were in accordance with the law. 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 relevant decisions were justified under that provision.

13. 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.

VI. CONCLUSION

14. 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