



DECISION ON ADMISSIBILITY

Case no. CH/02/12409

Izet BEČKOVIĆ

against

**THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
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. FACTS AND COMPLAINTS

1. The applicant is a temporary occupant of the apartment in Sarajevo, in Zagrebčka street 55/6. The pre-war occupancy right holder over the stated apartment was H.A. who died in 1994 without any remaining members of the household.
2. The Parliament of the Federation of Bosnia and Herzegovina, as the owner of the apartment, initiated proceedings before the competent body for the applicant's eviction from the apartment.
3. On 24 April 2001 the Administration for Housing Affairs ("the Administration") issued a procedural decision ordering the applicant to move out of the apartment concerned. On 27 November 2001, the Administration issued a conclusion on enforcement of the procedural decision on the request of the owner of the apartment.
4. On 22 June 2001 the representatives of the Administration made a record in the premises of the applicant's apartment stating that due to the problems of finding an accommodation for the applicant's family it was not possible to carry out the eviction. The same body made a similar record on 19 December 2001.
5. At the same time, the owner of the apartment initiated proceedings for the applicant's eviction by an ownership action before the Municipal Court II Sarajevo. The first instance judgement was issued on 15 April 2002 and the applicant was ordered to return the apartment to the owner's possession. The applicant appealed against the stated judgement but on 16 July 2002 the Cantonal Court refused the appeal and upheld the first instance judgement.
6. In the proceedings of enforcement of the valid judgement the Municipal Court II Sarajevo sent the applicant a conclusion that his eviction will be carried out on 12 November 2002 at 10:00 hours.
7. The applicant states that his right to alternative accommodation, right to be recognised a status of a displaced person, right to a legal protection in court and administrative proceedings before the state bodies, as well as the right to equality of citizens before the court and administrative bodies have been violated.
8. The applicant complains that he was a refugee from Gacko, Republika Srpska. He lived there before the war in the house, which is completely destroyed and unfit for living. He filed a claim for reinstatement of his house but he has no place to return to in Gacko. The applicant complains that some documents of incorrect content were presented during the proceedings. According to this documents he received a donation for reconstruction of his prewar house. The applicant also complains that the court decided in the legal matter which does not fall under the court's competence, as the apartment was declared abandoned.

II. PROCEEDING BEFORE THE CHAMBER AND COMPLAINS

9. The application was introduced before the Chamber on 5 November 2002. The applicant requests the Chamber to order the respondent Party, as a provisional measure, to temporary suspend the enforcement of the court judgement until the Chamber's final decision. On 7 November 2002 the Chamber decided to reject the request for provisional measure.

III. OPINION OF THE CHAMBER

10. 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."
11. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton, the Municipal Court II Sarajevo and the Cantonal Court

responsible for the proceedings complained of by the applicant are organs of the Federation of Bosnia and Herzegovina (“the Federation”), the conduct of which engages the responsibility of the Federation, not of the Republika Srpska, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against the Republika Srpska, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against the Republika Srpska.

12. As to the applicant’s claim that he has been denied the right to alternative accommodation, the Chamber notes that he is neither entitled to such accommodation under domestic law, nor does the European Convention on Human Rights contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to housing, which is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible as well.

13. The Chamber further notes that the applicant complains that the Municipal Court 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 court 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 this part of 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