



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1184

Slavo OVUK

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 13 March 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Leif BERG, 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)(b) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a Serb refugee from Postojna, Slovenia. He lives in a house in Dimitrije Tucovića Street No. 23, Prijedor, in accordance with a decision of Ministry for Refugees and Displaced Persons ("Ministry") of 18 April 1997. He shares the house with the owner, each of them using one floor. The owner of the house is E.T.

2. On 6 March 1997 E.T. filed a lawsuit to the Municipal Court of Prijedor, seeking the return into her possession of the floor of the house which the applicant occupies. After E.T. started these proceedings, the applicant applied to the Ministry for Refugees and Displaced Persons to allocate him alternative accommodation. On 8 May 1998 he was allocated another apartment in Prijedor. This apartment is occupied by another applicant to the Chamber (Case No. CH/98/935), and on 11 September 1998 the President issued an order for provisional measures in that case, preventing the eviction of that applicant.

3. Subsequently the applicant in the present case informed the Registry that on 9 September 1998 the court passed a decision ordering him to return the floor of the house that he occupies into possession of the owner within a two-week period, or he would be forcibly evicted. He appealed to the Regional Court against this decision, which suspends the execution. The second instance decision has not been passed to date.

II. COMPLAINTS

4. The applicant apparently complains about his possible eviction from the part of the house he currently occupies and about the provisional measure ordered in the case mentioned in paragraph 2 above.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 23 September 1998 and registered on the same day.

IV. OPINION OF THE CHAMBER

6. 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 and according to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

7. The Chamber notes that the proceedings that the owner of the house in question initiated against the applicant are still pending before the second instance court, following the applicant's appeal. As the appeal suspends the execution of the decision of 9 September 1998 the Chamber has no reason to doubt that the remedy is "effective" within the meaning on the Agreement.

8. Accordingly, the Chamber decided not to accept this part of the application pursuant to Article VIII(2)(a) of the Agreement, as the applicant has not demonstrated that the effective domestic remedies have been exhausted.

9. As to the complaint on the provisional measure issued by the president of the Chamber in Case No. CH/98/935 the Chamber recalls Articles X(1) and X(2) of the Agreement which read as follows:

Article X(1) it finds relevant as:

"...The Chamber shall have the power to order provisional measures..."

Article X(2) insofar as relevant states:

"...When an application is decided by a panel, the full Chamber may decide, upon motion of a party to the case or the (Ombudsperson), to review the decision..."

10. The Chamber notes that Case No. CH/98/935 has not been decided by the Chamber. An order for provisional measures does not determine a case; it is designed to prevent the occurrence of irreparable harm pending the final decision of the Chamber in the case concerned. In any event, the applicant in the present case would not be entitled to request a review of any decision in Case No. CH/98/935, had such been made. His complaint in respect of the provisional measure ordered in Case No. CH/98/935 may be understood as being directed against the Chamber itself. However, the Chamber cannot be a respondent Party under the Agreement. Nor can any or all of the Contracting Parties to the Agreement be held responsible for the substance of the Chamber's decisions. It follows that this part of the application must be rejected as being incompatible *ratione personae* with the Agreement.

11. Accordingly, the Chamber decides not to accept the application, partly pursuant to Article VIII(2)(a) of the Agreement because the applicant has not demonstrated that the effective domestic remedies have been exhausted, and partly pursuant to Article VIII(2)(c) as incompatible *ratione personae* with the Agreement.

12. The Chamber recalls, however, that under Rule 33(1) of its Rules of Procedure it may take any action which it considers necessary for the proper performance of its duties under the Agreement. The stipulation in the Agreement that a non-party cannot seek a review of the Chamber's decisions does not preclude the Chamber from taking into account, in its further consideration of Case No. CH/98/935, the information submitted by the applicant in the case now before the Chamber.

V. CONCLUSION

13. For these reasons, the Chamber, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel