



DECISION ON ADMISSIBILITY

Case no. CH/99/1843

Milan SOLAR

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 October 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Hasan BALIĆ
Mr. Dietrich RAUSCHNING
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 Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a refugee of Serb origin from Croatia. On 1 August 1993 he entered into a contract with A.H., by which the two parties exchanged occupancy rights over their respective apartments in Banja Luka and Rijeka. On 25 August 1993 A.H. requested the Municipality of Banja Luka, who had the allocation right over the Banja Luka apartment now occupied by the applicant, to approve the contract. However, the Municipality did not issue any decision.

2. On 26 August 1993 the Secretariat of Economy, an administrative organ competent to deal with housing issues, decided to terminate A.H.'s occupancy right over the Banja Luka apartment as he was found to have abandoned it. The applicant was ordered to vacate the apartment, as he was considered an illegal occupant. On 1 September 1993 the applicant was forcibly evicted. He was not allowed to remove his furniture and other belongings. The applicant and A.H. appealed against the Secretariat's decision to the Ministry for Urbanism, Housing-Communal Affairs, Civil Engineering and Ecology.

3. On 1 July 1997 A.H. invited the Secretariat to conclude that, under the relevant provisions of the Law on Housing Affairs, the Municipality's failure to respond to his request of 25 August 1993 should be considered as an approval of the exchange contract. This petition was rejected by a decision of the Secretariat of 26 May 1998. Following an unsuccessful appeal to the Ministry the applicant and A.H., on 19 September 1998, initiated an administrative dispute before the Supreme Court of the Republika Srpska against the Secretariat's decision. Apparently, this dispute is still pending.

4. By a decision of 8 May 1998 the Ministry quashed the Secretariat's decision of 26 August 1993. The Ministry found that the Secretariat had not been competent to terminate A.H.'s occupancy right and that the applicant had not been given an opportunity to participate in the proceedings before the Secretariat.

5. On 24 November 1998 the applicant initiated civil proceedings in the Municipal Court in Banja Luka against the present occupant of the Banja Luka apartment and the City of Banja Luka. The applicant sought compensation for his furniture and other belongings that apparently had been sold by the occupant. These proceedings are still pending.

II. COMPLAINTS

6. The applicant complains of his eviction from the Banja Luka apartment. He requests the Chamber to help him regain possession of that apartment.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 17 February 1999 and registered on the same day.

IV. OPINION OF THE CHAMBER

8. 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.

9. The Chamber notes that the applicant initiated an administrative dispute before the Supreme Court on 19 September 1998 and civil proceedings before the Municipal Court on 24 November 1998. Both sets of the proceedings are still pending. Further, the Municipal Court's future decision can be appealed to the Regional Court in Banja Luka. On the facts before it today, the Chamber has no reason to doubt that these remedies are "effective" within the meaning of the Agreement.

10. Accordingly, the Chamber decides not to accept the application pursuant to Article VIII(2)(a) of

the Agreement, as the applicant has not demonstrated that all effective domestic remedies have been exhausted.

V. CONCLUSION

11. 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