



DECISION ON ADMISSIBILITY

Case no. CH/99/2443

Dragan RADINOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 January 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Andrew GROTRIAN, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

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. His aunt, who died in 1997, held the occupancy right over an apartment in Prijedor, Republika Srpska. The applicant lived with her in the apartment and remains there. After his aunt's death, he applied to the holder of the allocation right over the apartment to be granted the occupancy right over it. On 16 May 1997 the holder of the allocation right refused his request.

2. The applicant then applied to the relevant municipal organs, requesting that he be granted the occupancy right over the apartment. His request was refused at first and second instance, the reason given being that under the relevant law of the Republika Srpska he is not entitled to succeed into the occupancy right. The final decision in the administrative proceedings was made by the Ministry for Urbanism, Housing Communal Affairs, Construction and Ecology of the Republika Srpska on 18 October 1999. This decision rejected the applicant's appeal against the decision of the first instance organ and ordered him to vacate the apartment within fifteen days. He has not done so and still occupies it.

II. COMPLAINTS

3. The applicant alleges that his right to an apartment has been violated and claims that the law of the Republika Srpska concerning succession into occupancy rights over apartments is contrary to international law.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 26 November 1999 and registered on the same day.

5. The applicant requested a provisional measure from the Chamber ordering the respondent Party to prevent his eviction. On 6 December 1999 the Chamber refused the applicant's request and considered the admissibility of the application.

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)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

7. The Chamber notes that the applicant's claims essentially relate to the refusal of the authorities to allow him to succeed to his aunt's occupancy right over the apartment he occupies.

8. The Chamber has previously held that an occupancy right may constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. However, the Convention only protects existing possessions and does not guarantee any right to acquire a right protected under that Protocol (case no. CH/98/1588, *Tomčić*, decision on admissibility of 9 February 1999, paragraph 9, Decisions January-July 1999). In certain circumstances, a right which is recognised under national law as a possession may be protected by Article 1 of Protocol No. 1 (see e.g. CH/98/1245, *Slavnić*, decision on admissibility and merits delivered on 1 November 1999, paragraphs 71-73, Decisions August-December 1999). The Chamber notes that in the present case the applicant is not entitled under the law of the Republika Sprksa to succeed to the occupancy right over the apartment. Accordingly, the case does not involve a right protected under Article 1 of Protocol No. 1.

9. The Chamber considers therefore that the inability of the applicant to succeed to his aunt's occupancy right over the apartment does not reveal any violation of the Agreement.

10. 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

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