



DECISION ON ADMISSIBILITY

Case No. CH/98/1802

Bogdan RADOVANOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 January 2001 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Mato TADIĆ

Mr. Peter KEMPEES, 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 application concerns an apartment located at Ulica novo naselje 19 in Banja Luka. The pre-war occupancy right holder is Ms Z.P. The pre-war allocation right holder is the Municipality Banja Luka ("the Municipality").
2. The applicant squatted the apartment in the course of 1993 without any legal grounds for that.
3. On 6 May 1997 the Municipality forwarded the apartment to the Ministry for Refugees and Displaced Persons for its disposal, since it was considered abandoned. In spite of that, the Municipality withdrew its conclusion by which the apartment was declared abandoned and on 30 May 1997 the Municipality sold the apartment to a company in Banja Luka ("the company"). On 3 June 1997 the company, as the new allocation right holder, allocated the apartment permanently to Mr. Ć.M.
4. On 5 November 1997 the Municipal Secretariat for Urban Planning Housing - Communal Affairs in Banja Luka issued a decision ordering the applicant to vacate the apartment within 3 days. The applicant appealed against this decision. On 16 May 1998 the Ministry for Urbanism, Housing - Communal Affairs, Building and Ecology in Banja Luka annulled the decision of 5 November 1997 stating that since the apartment had been declared abandoned once, it can not be treated differently after. Further, the Ministry found that the Secretariat was not authorised to issue such decision.
5. On 30 June 1998 the Ministry for Refugees and Displaced Persons Section Banja Luka (the first instance organ) issued a decision allocating the apartment to the applicant. However, on 16 November 1998 the Ministry for Refugees and Displaced Persons in Banja Luka (the second instance organ) annulled the decision of 30 June 1998 because the Municipality withdrew a conclusion by which the apartment was declared abandoned and sold the apartment to the company. The decision of 16 May 1998 was not taken into consideration. On 24 December 1998 the applicant appealed to the Supreme Court of the RS. He did not receive any answer.
6. On 12 January 1999 the company and Mr. Ć.M. filed a complaint against the applicant to the Court of First Instance in Banja Luka. On 19 February 1999 the Court of First Instance issued a judgement by default ordering the applicant to vacate the apartment within 15 days. On 13 July 1999 the Court of Second Instance in Banja Luka annulled the decision of 19 February 1999 and returned the matter to the Court of First Instance for reconsideration finding an essential violation of the principles of civil procedure. However, on 13 August 1999 the Court of First Instance issued a new decision ordering the applicant to vacate the apartment within 15 days finding that the company had purchased the apartment. The decision of 16 May 1998 was not taken into consideration. The applicant alleges that he appealed against this decision, which should have a suspensive effect. However, on 14 October 1999 the Court of First Instance in Banja Luka issued a decision scheduling his eviction for 4 November 1999. The eviction was not carried out because the Chamber ordered the respondent Party, as a provisional measure, not to evict the applicant.
7. The applicant occupies the apartment without any legal grounds even after November 1998.
8. On 5 April 1999 Ms Z.P, the pre-war occupancy right holder, filed a request for repossession to the Ministry for Refugees and Displaced Persons Section Banja Luka. According to the respondent Party, the Ministry has not issued a decision in this case yet.

II. COMPLAINTS

9. The applicant alleges a violation of Articles 6 and 8 of the European Convention and of Article 1 of Protocol 1 to the European Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

10. The application was introduced on 30 December 1998.

11. On 2 November 1999 the Chamber ordered the respondent Party, as a provisional measure, not to evict the applicant from the apartment at issue, finding that the decision authorising the eviction was based on an incorrect legal and factual basis.
12. On 8 December 1999 the Chamber considered withdrawing the provisional measure on the grounds that it had received further information on 8 November 1999. This consists of a copy of a request submitted under the Law on Cessation of Application of the Law on Abandoned Apartments on 5 April 1999 by the pre-war occupant of the apartment to regain possession of it. However, the Chamber decided to keep the order for provisional measure in force.
13. On 14 November 2000 and 29 November 2000 the respondent Party submitted observations on admissibility and merits. The respondent Party is of the opinion that the case should be declared inadmissible as manifestly ill-founded since the applicant has no right to occupy the apartment and that the provisional measure ordered on 2 November 1999 should be withdrawn.
14. On 30 November 2000 the Chamber received the applicant's response containing a compensation claim. The applicant requests the Chamber to order the respondent Party to compensate him in the amount of KM 2,500 – KM 3,000 for cost of the proceedings he pursued.
15. The respondent Party's observations on the compensation claim were received on 25 December 2000. The respondent Party is of the opinion that the claim is ill-founded.
16. On 12 January 2001 the Chamber adopted the present decision.

IV. OPINION OF THE CHAMBER

17. 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)(c) of the Agreement which, so far as relevant, provides as follows:

The Chamber will decide which applications to accept In so doing, the Chamber shall take into account the following criteria:

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

18. The applicant complains of the attempts of the respondent Party to evict him from an apartment at Ulica novo naselje 19 in Banja Luka. The pre-war occupancy right holder requested the Ministry for Refugees and Displaced Persons to reinstate her into her apartment. The Chamber notes that the applicant has no right to occupy the apartment. In the light of all the material in its possession, the Chamber finds that the facts complained of do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement.

19. Accordingly, the Chamber decides not to accept the application finding it manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. Therefore, the Chamber revokes its provisional measure of 2 November 1999.

V. CONCLUSION

20. For these reasons, the Chamber, by 5 votes to 1,

CH/98/1802

DECLARES THE APPLICATIONS INADMISSIBLE and

WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE WITH IMMEDIATE EFFECT.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel