



DECISION ON ADMISSIBILITY

Case no. CH/02/8789

S.K.

against

**BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 September 2002 with the following members present:

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

Mr. Ulrich GARMS 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. On 10 September 1992 the applicant received a procedural decision from the former JNA – Headquarters in Bijeljina allocating him an apartment in Bijeljina at Vojvode Stepe no. 6 for use.
2. On 8 July 1999 the previous user of that apartment, Mr. D.P., submitted his request for reinstatement into the apartment. On 22 August 2001 the Ministry for Refugees and Displaced Persons of the Republika Srpska, Department in Bijeljina, issued a procedural decision confirming that the previous user was a *bona fide* occupancy right holder over that apartment; terminating the applicant's right to temporary use of the apartment; and ordering him to leave the apartment within 15 days.
3. The applicant lodged an appeal against this procedural decision to the Ministry for Refugees and Displaced Persons of the Republika Srpske on 10 September 2001. The applicant requested the second instance organ to annul the first instance decision and reject the previous owner's request for reinstatement. The second instance organ has not issued any procedural decision upon the applicant's appeal.
4. On 16 July 2001 the Republika Srpska, that is, the Army of the Republika Srpska represented by the Military Prosecutor's Office, submitted a complaint to the First Instance Court in Bijeljina against the previous user of the apartment, Mr. D.P., requesting the Court to issue a judgment annulling the procedural decision of the Garrison Command in Bijeljina of 17 September 1977 by which the apartment had been allocated to the previous user, terminating his occupancy right and the right of members of his household over the apartment,, and stating that the owner and holder of the allocation right, the Garrison in Bijeljina, may freely dispose of the apartment.
5. On 29 November 2001 the First Instance Court in Bijeljina issued a judgment accepting in whole the complaint of the Army of the Republika Srpska. This Court established that the previous user, Mr. D.P., voluntarily gave up the apartment in order to be placed on a priority list for allocation of an apartment in Gornji Milanovac. According to a decision of the Government of the Republika Srpska that all apartments owned by the former JNA shall have been registered as the property of the Republika Srpska, this Court decided to return the apartment to the allocation right holder for its use. The previous user of the apartment, Mr. D.P., lodged an appeal on 29 December 2001 against this judgment, and according to the applicant's allegations, these proceedings are still pending.

II. COMPLAINTS AND PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced with the Chamber on 4 February 2002. The applicant is represented by Branko Govedarica, a lawyer from Bijeljina.
7. The applicant alleged that his rights guaranteed by Articles 6 and 8 of the European Convention on Human Rights (the "Convention") have been violated, as well as his rights guaranteed by Article 1 of Protocol No. 1 to the Convention.
8. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to suspend the proceedings on return of the occupancy right to the previous user of the apartment until the proceedings before the First Instance Court in Bijeljina have been completed.
9. On 23 May 2002 the applicant submitted a conclusion ordering his eviction for 28 May 2002.
10. On 27 May 2002 the President of First Panel rejected the request for provisional measures.
11. On 28 May 2002 the representative of the applicant informed the Chamber by telephone that the First Instance Court in Bijeljina had issued an order for provisional measures. On 29 May 2002 the Chamber received a letter confirming this information.

III. OPINION OF THE CHAMBER

12. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

13. The Chamber notes that the applicant’s complaint is premature as the proceedings are still pending before the First instance Court in Bijeljina. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare 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