



DECISION ON ADMISSIBILITY

Case no. CH/02/10587

Vladan PAVLOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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. INTRODUCTION

1. The application was introduced on 5 July 2002, and registered at the same day.
2. The application concerns the applicant's complaints regarding actions of the administrative and judicial organs in the procedure of repossession of an apartment in Banja Luka, situated at Srpskih vitezova no. 17, over which his mother was the pre-war occupancy right holder. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to prevent taking any steps in relation to further disposal of the apartment in question, including allocation of the apartment to third persons for temporary or permanent use. The applicant requested that such order should remain in force until the Chamber issues its final decision in the case. On 7 February 2003, the Chamber decided not to order the provisional measure requested.

II. FACTS

3. The applicant alleges that until the beginning of the armed conflict in Bosnia and Herzegovina, he lived in his family household together with his mother. He fled to the Republic of Croatia at the beginning of the hostilities, and his mother, Z.P., continued to live in the apartment in question until February 1993, when she left for Belgrade. Z.P. died on 23 May 1998 in Belgrade.
4. On 15 June 1999, the applicant submitted a request for repossession of the apartment.
5. On 26 February 2001, the Ministry for Refugees and Displaced Persons of the Republika Srpska (hereinafter the "Ministry"), Department Banja Luka, issued a procedural decision rejecting the applicant's request for repossession of the apartment. The applicant submitted an appeal against the procedural decision of the Department to the Ministry.
6. On 15 May 2001, the Ministry issued a procedural decision rejecting the applicant's appeal as ill-founded. The reasoning of this procedural decision points out that the first instance organ correctly established the facts. It was established as undisputed that on 1 April 1992, the occupancy right holder over the apartment was Z.P., that she had lived alone in the apartment since 1984, and that the applicant had been living and working in Zagreb since 1984.
7. The applicant initiated an administrative dispute against the procedural decision of 15 May 2001 before the Supreme Court of the Republika Srpska.
8. On 12 February 2002, the Supreme Court of the Republika Srpska issued a judgment rejecting the applicant's administrative dispute as ill-founded. The reasoning of the judgment states that the applicant was only fictitiously recorded as living at the address in Banja Luka, where his mother had lived, and that he was not a member of family household of his mother, who was the occupancy right holder over the apartment in the sense of Article 6 of the Law on Housing Relations.

III. ALLEGED HUMAN RIGHTS VIOLATIONS

9. In his application to the Chamber, the applicant alleges that he was a member of the family household of his mother, and regardless of business obligations and frequent trips, he had his permanent residence in the apartment in question, where his spouse and children also lived. He states that the second instance administrative organ and the Supreme Court did not take into account the evidence he submitted with his appeal and administrative dispute. Accordingly, he alleges that the acts of the administrative and judicial organs of the respondent Party have violated his fundamental human rights guaranteed by the Constitution of Bosnia and Herzegovina and the Human Rights Agreement, including the direct application of the European Convention on Human Rights which guarantees the right to property, respect of home, and the right to a fair trial. He further alleges discrimination in relation to these rights on the basis of his national/ethnic origin.

IV. OPINION OF THE CHAMBER

10. 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: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

11. The Chamber notes that the applicant complains that the relevant bodies wrongly assessed the facts pertaining to his case. Article 6 of the Convention guarantees the right to a fair hearing. The Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts for that of the national courts (*see, e.g.*, case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD “Trgosirovina” Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the courts failed to act fairly as required by the Convention. Moreover, the applicant’s allegations in relation to discrimination on the basis of his origin are unsubstantiated. It follows that the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

12. 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