



DECISION ON ADMISSIBILITY

Case no. CH/02/10635

Milomir and Ljiljana RADULOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 June 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 submitted and registered on 1 August 2002. It concerns the applicants' attempts to prevent their eviction from a house situated in Banja Luka, which they have occupied since 1990.
2. The applicants requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary steps to prevent their eviction from the house in Banja Luka. On 5 May 2003, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

3. The applicants have occupied the house situated at Kolubarska 10, Banja Luka, since 1990, allegedly with the permission of the owner. On 30 September 1994, A.R., the purported owner of the house, authorised the applicants in writing to reside in the house, *i.e.*, he gave the applicants permission to temporarily use the house. This authorisation was certified by the Secretariat for General Administration of the Banja Luka Municipality.

4. On 18 December 1998, the applicant Milomir RADULOVIĆ submitted a previous application to the Chamber, registered as case no. CH/98/1785. In this application, the applicant complained about a decision issued by the Commission for the Accommodation of Refugees and the Administration of Abandoned Property (the "Commission") in Banja Luka of 14 December 1998, declaring him to be an illegal occupant of the house in question and ordering him to vacate the house. He claimed that he could not be an illegal occupant of the house in question because he occupied it in accordance with the written consent of the owner, as described above. The Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits on 31 December 1998. The respondent Party made no submissions in case no. CH/98/1785 and did not contest any of the applicant's allegations.

5. On 10 December 1999, the First Panel of the Chamber delivered its decision on admissibility and merits in case no. CH/98/1785. The Chamber considered the case under Article 8 of the European Convention on Human Rights, which protects the right to respect for home. Given that the applicant had lived in the house in question since 1990 and that he was threatened with eviction by the Commission, the Chamber found that there was an "interference by a public authority" with his right to respect for home (case no. CH/98/1785, *Radulović*, decision on admissibility and merits of 4 November 1999, Decisions August–December 1999, paragraphs 27-28). Noting the absence of any evidence that the property was entered into the register of abandoned property, as required by Article 2 of the Law on the Use of Abandoned Property, the Chamber found that the decision of the Commission of 14 December 1998 was not in accordance with the law, as required by Article 8 paragraph 2 of the Convention (*id.* at paragraph 30). Moreover, the Chamber stated that "the eviction of persons from properties which they occupy with the consent of the legal owner, without the provision of any compensation or alternative accommodation, cannot be considered to be proportional" (*id.* at paragraph 31). Accordingly, the Chamber concluded that there was a violation of the applicant's right as guaranteed by Article 8 of the Convention. The Chamber ordered the Republika Srpska "to revoke the decision of the Commission ... of 14 December 1998 and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of the authorisation of the owner of the house" (*id.* at paragraph 37).

6. On 26 July 2002, the Ministry for Refugees and Displaced Persons, Department Banja Luka (the "Ministry") issued a procedural decision confirming the right of F.P. (a third person) to regain possession over the house in question. The Ministry recognised F.P. as a co-owner of the house, which was his family home and in which he had inherited co-ownership.

7. On 15 March 2003, the Ministry issued a conclusion on enforcement of the procedural decision of 26 July 2002, scheduling the applicants' eviction for 8 May 2003 at 12 PM. The applicants' right to alternative accommodation was not recognised.

8. On 22 April 2003, Z.R. (apparently the wife of A.R.) signed a statement confirming her agreement that the applicants may continue to use the house in question. This statement was verified by the City Administration of Novi Sad, Serbia and Montenegro.

9. The applicants and Z.R., in accordance with her statement of 22 April 2003, claim that Z.R. became the owner of the house in question on the basis of a procedural decision on inheritance, dated 4 November 1993, issued by the First Instance Court in Banja Luka. However, this procedural decision refers only to "real estate registered in the land books under 9043 k.o. Banja Luka". Upon the request of the Chamber, the applicants obtained this land book extract. However, no house is registered under the mentioned number in the extract. In addition, the cadaster record of 23 April 2003 for the house in question designates A.Č. (the deceased husband of V.Č., the sister of Z.R.) as the current possessor of the house in question.

10. None of the documents submitted to the case file establish A.R. or Z.R. to be the registered owners of the house in question.

III. OPINION OF THE CHAMBER

11. 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."

12. The Chamber notes that the decision on the applicants' eviction from the house in question, which was issued by the Ministry on 15 March 2003, was taken to allow F.P., one of the co-owners of the pre-war family house, to repossess the house. Although the applicants claim to occupy the house pursuant to the written permission of other co-owners, A.R. and Z.R., there is no evidence in the case file before the Chamber to establish that they are in fact the owners and that they are therefore authorised to grant the applicants permission to continue to occupy the house. The cadaster record establishes A.Č. to be the possessor of the house in question, but the applicants have not submitted any evidence that A.Č. has authorised them to occupy the house. Therefore, the application appears to the Chamber to raise primarily a private, civil law dispute that does not disclose any appearance of a violation of the applicants' rights and freedoms guaranteed under the Agreement.

13. Moreover, the Chamber finds that this conclusion is not inconsistent with its previous decision on admissibility and merits delivered on 10 December 1999 in case no. CH/98/1785. In that previous decision, also involving the applicants' occupancy of the house in question, the respondent Party failed to submit any observations or to contest the allegations presented in the application (see paragraph 4 above). The issue of whether or not the applicants' occupy the house in question with the valid permission of the legal owners of the house falls within the competence of the domestic courts, not the Chamber.

14. 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.

IV. CONCLUSION

15. 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