



DECISION ON ADMISSIBILITY

Case no. CH/03/14025

S.K.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel 6 June 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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 21 April 2003. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to prevent her eviction from an apartment located at Nemanjića no. 40 in Nevesinje and to enable her to continue to use this apartment. On 22 April 2003, the Chamber decided not to order the provisional measure requested.

II. FACTS

2. The applicant started working for the Social Company of Wood Industry "Šipad-Velež" Nevesinje (the Company) on 30 January 1978, and she has been employed there ever since.

3. On 1 March 1991, the Worker's Council of the Company, as the allocation right holder, issued a decision granting permission to the applicant to enter into possession of a two-room apartment in Braće Bašagića nn (currently Nemanjića no. 40) in Nevesinje. The decision states that this apartment was previously used by S.S., who was employed by the Company until 31 March 1988, when he voluntarily terminated his labour relations and stopped using the apartment. Further, due to non-use of the apartment, on 14 December 1990, the Company submitted a complaint to the First Instance Court in Mostar to terminate the contract on use of the apartment. The applicant was given permission to use the apartment until the end of the pending dispute.

4. The applicant entered into possession of the apartment in question on 15 September 1991.

A. Proceedings on the complaint of S.S. for interference with possessions

5. On 18 October 1991, S.S., the occupancy right holder of the apartment now located at Nemanjića no. 40, submitted a complaint against the applicant for interference with possessions.

6. On 27 March 1995, S.S. died.

7. On 28 December 2001, the First Instance Court in Nevesinje issued a procedural decision upon the complaint of S.S. against the applicant for interference with his possessions. The Court determined that the applicant had interfered with S.S.'s peaceful and physical possession of the apartment in question by entering into possession of it with her spouse and two underage children at the end of September 1991. The Court ordered the applicant to vacate the apartment and to refrain from any further interference. The Court further ordered the applicant to pay compensation for the costs of the proceedings in the amount of 880 KM. The reasoning explains that S.S. died during the course of the proceedings and that his wife, the co-holder of the occupancy right in question, took over the dispute as the only legal inheritor.

8. The applicant appealed against the decision of 28 December 2001. On 16 April 2002, the District Court in Trebinje rejected the applicant's appeal as ill-founded and it confirmed the first instance procedural decision.

9. The Republic Public Prosecutor's Office submitted a request for the protection of legality for the incorrect application of the substantive law against the procedural decision of the District Court in Trebinje of 16 April 2002.

10. The applicant's eviction from the apartment in question was scheduled for 5 September 2002. The applicant requested the postponement of enforcement due to the Republic Public Prosecutor's request for protection of legality. On 9 September 2002, the enforcement was postponed until the end of the proceedings on this request.

11. On 8 November 2002, the Supreme Court of the Republika Srpska issued a procedural decision rejecting the request for protection of legality.

12. On 27 March 2003, the First Instance Court in Nevesinje informed the applicant by letter that she was obliged to vacate the apartment in question on 24 April 2003, subject to forcible eviction on the same day. According to the letter, the representative of S.S.'s wife had informed the Court that the proceedings for the protection of legality were finalised before the Supreme Court of the Republika Srpska by the procedural decision of 8 November 2002. The representative proposed the Court immediately to perform the enforcement that had been postponed.

13. Meanwhile, ODP DI "Botin-Velez", Nevesinje, as a third party, filed an objection before the First Instance Court in Nevesinje against the enforcement of the procedural decision of 28 December 2001. On 21 April 2003, the First Instance Court issued a conclusion upon the objection. The conclusion refers the third party to file a civil action requesting to have the enforcement declared impermissible. The conclusion determines that ODP DI "Botin-Velez", Nevesinje, is obliged to initiate such a civil action within 15 days from the date of receiving the mentioned conclusion. The applicant alleges that she was delivered the mentioned conclusion on 5 May 2003.

14. The applicant's eviction from the apartment in question was postponed from 24 April 2003 until 5 May 2003.

B. Proceedings to terminate the contract on use of the apartment between S.S. and the allocation right holder

15. On 17 December 1990, the Company, as the allocation right holder of the apartment located at Nemanjića no. 40 in Nevesinje, submitted a complaint before the First Instance Court in Mostar against S.S. to terminate, due to non-use, the contract on use of the apartment concluded between the Company and S.S. on 12 August 1976 (see paragraph 2 above). The Company further asked the court to order S.S. to vacate the apartment within 30 days and to return it to the Company. On 12 April 1991, the First Instance Court in Mostar issued a judgement rejecting the Company's claim.

16. The Company appealed against the judgement of 12 April 1991. On 30 June 1993, the Higher Court in Trebinje issued a procedural decision quashing the judgement of 12 April 1991 and returning the case for renewed proceedings.

17. On 28 December 2001, the First Instance Court in Nevesinje issued a judgement rejecting as ill-founded the complaint of the allocation right holder against S.S.'s wife and others to terminate, due to non-use, the contract on use of the apartment of 12 August 1976. The plaintiff claimed that the occupancy right holder (S.S.) and his household had failed to use the apartment for a continued period of six months, had rented it to third persons, and owned a residential family house in Beliča. The applicant participated in these proceedings as an interested party on the side of the plaintiff.

18. The allocation right holder and the applicant appealed against the judgement of 28 December 2001. On 25 March 2002, the District Court issued a procedural decision quashing the judgement of 28 December 2001 and returning the case for renewed proceedings.

19. On 11 July 2002, in the renewed proceedings, the First Instance Court in Nevesinje issued a judgement rejecting the allocation right holder's claim as ill-founded.

20. Once again, the allocation right holder and the applicant appealed. On 12 December 2002, the District Court in Trebinje issued a procedural decision accepting the appeals, quashing the judgement of 11 July 2000, and returning the case to the First Instance Court for renewed proceedings. The applicant states that a hearing in this case is scheduled for May 2003.

III. COMPLAINTS

21. The applicant seeks to prevent her eviction from the apartment in question. She complains that the courts never considered the evidence that S.S. is a multiple user of special-purpose housing credits. She alleges that he used such housing credits for the construction of his private house in

Bileća. The Chamber considers these complaints to raise issues under Articles 6 and 8 of the European Convention on Human Rights (the “Convention”).

IV. OPINION OF THE CHAMBER

22. 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.”

23. Article 8 of the Convention protects the right to home. It is clear that the applicant used the apartment in question as her home. However, her eviction from this apartment appears to have been scheduled in accordance with the law. On 28 December 2001, the First Instance Court in Nevesinje established that by entering into possession of the apartment, the applicant had interfered with the occupancy right holder’s right to peaceful possession of the apartment, and the Court ordered the applicant to vacate the apartment. Moreover, such decision appears to be justified because at the time the applicant entered into possession of the apartment on 15 September 1991, she knew that the occupancy right of S.S. had not been terminated. The Chamber observes that to date, despite years of proceedings on the issue, the contract on use of the apartment concluded between the allocation right holder and S.S. on 12 August 1976 still has not been terminated. These proceedings are still pending before the domestic courts. In these circumstances, the Chamber finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. 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 with respect to Article 8 of the Convention.

24. The Chamber further notes that the applicant complains that the courts wrongly assessed the facts pertaining to her case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law 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 Article 6 of the Convention. 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 with respect to Article 6 of the Convention as well.

IV. CONCLUSION

25. 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