



DECISION ON ADMISSIBILITY

Case nos. CH/01/6754, CH/01/7046 and CH/01/7216

Živko ŽIVKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 May 2002 with the following members present:

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

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. The applicant had the occupancy right over an apartment in Gradiška, Trg narodnih heroja 4/II (the "apartment no. 1"). In February 1994 he exchanged the apartment no. 1 for an apartment at ul. Vidovdanska 69/I, newly named ulica Milana Tepića E-2/i in Gradiška (the "apartment no. 2"), with the pre-war occupancy right holder S.K. However, on 9 February 2000 the Ministry for Refugees and Displaced Persons of the Republika Srpska (the "Ministry"), Department Gradiška, confirmed S.K.'s pre-war occupancy right over the apartment no. 2. The applicant's occupancy right was cancelled and he was ordered to vacate it within 15 days, with no right to alternative accommodation. As of 27 February 2002 the applicant's appeal against the procedural decision has not been decided.

2. In order to resolve the applicant's housing problem, the Gradiška Municipality (the "Municipality") allocated an other apartment to the applicant located at ul. Vidovdanska 69/III in Gradiška (the "apartment no. 3") on 7 April 2000. Prior to the applicant's move into the apartment no. 3, the apartment has been occupied by M.P. and B.M. However, the Municipality considered them as illegal occupants and they were ordered to vacate the apartment within three days, by the Municipality's procedural decision of 13 June 2000. They appealed against the procedural decision.

3. Moreover, M.P. and B.M. submitted an application to the Chamber on 21 June 2001, which was registered under case no. CH/00/3895, requesting the Chamber to prevent their eviction from the apartment no. 3. The Chamber granted the order for provisional measures on 22 June 2000.

4. On 25 September 2000 the procedural decision of 13 June 2000 was annulled and the case was referred to the Municipality for renewed proceedings. M.P. was ordered to move out of the apartment no. 3 by the Municipality procedural decision of 27 March 2001.

5. On 9 May 2001 the Chamber withdrew its order of 22 June 2000 in the case no. CH/00/3895. On 3 July 2001 the Chamber declared the application of M.P. and B.M. inadmissible.

6. On 30 July 2001 the applicant appealed to the Ministry and on 1 August 2001 to the Municipality against his eviction scheduled for 30 August 2001, requesting possession of the apartment no. 3 and eviction of the illegal occupants from it. The appeals have not been decided yet.

7. On 27 February 2002 the applicant informed the Chamber that he was evicted from the apartment no. 2 on 2 October 2001. Moreover, he was allocated other accommodation on a temporary base by the Gradiška Municipality, until the proceedings concerning the apartment no. 3 are concluded. As to the apartment no. 3, illegal occupants are still in. They initiated an administrative dispute in July 2001 before the Supreme Court of the Republika Srpska, which is still pending.

II. PROCEEDINGS BEFORE THE CHAMBER

8. The applicant introduced three applications before the Chamber's two offices concerning the proceedings before the authorities of the Republika Srpska regarding to the three apartments.

Case no. CH/01/6754

9. The application was introduced to the Chamber's main office on 18 January 2001 and registered on the same date. The subject matter of the application is a request for a provisional measure to have the Chamber withdraw its order for provisional measures of 22 June 2000 in case no. CH/00/3895 that prevented the eviction of M.P. from the apartment no. 3.

10. On 23 May 2001 the applicant submitted a letter to the Chamber explicitly giving up his application before the Chamber's main office, and requesting his case to be joined with case no. CH/01/7046, registered in the Banja Luka office.

Case no. CH/01/7046

11. The applicant earlier, on 16 January 2001, introduced an identical application at the Chamber's office in Banja Luka, requesting the same order for provisional measure as in case no. CH/01/6754. The case was registered on 23 January 2001.

Case no. CH/01/7216

12. The third identical application was introduced on 25 June 2001 at the Chamber's office in Banja Luka. The case was forwarded to the Sarajevo Office in July 2001.

13. On the same date, the applicant submitted a letter requesting that the Chamber joins the case CH/00/3895 M.P. and B.M. v. the Republika Srpska with his case no. CH/01/7046, Živko Živković v. the Republika Srpska.

14. In addition to the identical order for provisional measures requested in his previous two applications, the applicant requested, as a provisional measure, that his eviction be prevented from the apartment no. 2, until the Chamber issues its decision in the case. On 18 July 2001 the President of the Second Panel rejected the request.

III. COMPLAINTS

15. The applicant explicitly complains of the violation of his right to property, the right to a fair hearing in the civil and administrative proceedings and the right not to be subjected to inhuman or degrading treatment.

IV. OPINION OF THE CHAMBER

16. 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...." .

17. The Chamber notes that the applicant's complaints are premature as appeal proceedings are still pending before the Gradiška Municipality, the Ministry for Refugees and Displaced Persons of the Republika Srpska and the administrative dispute before the Supreme Court of the Republika Spska. 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 applications inadmissible

V. CONCLUSION

18. For these reasons, the Chamber, unanimously,

JOINS THE APPLICATIONS AND

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel