



DECISION ON ADMISSIBILITY

Case no. CH/01/7096

Biljana KOJIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 3 July 2001 with the following members present:

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

Mr. Peter KEMPEES, 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 the basis of a Contract on Exchange concluded between the applicant and a third person on 9 February 1994, the applicant is owner of an apartment in Banja Luka.
2. On 11 April 1947 a City National Board of Banja Luka-Department for Social Politics, allocated the apartment concerned, which was always private property, to M.L. pursuant to his request. On 20 December 1966 and 3 May 1973, M.L. concluded contracts on use of the allocated apartment with the Construction Company in Banja Luka and the Housing Company in Banja Luka. In the contract of 3 May 1973, M.L. was allocated some additional space and the housing unit was completely defined.
3. On 26 February 2001 the Ministry for Refugees and Displaced Persons/Department in Banja Luka ("the first instance organ") issued a procedural decision allowing Dž.L. (wife of deceased M.L.) to regain possession over the apartment concerned and suspending the applicant's right of further use of the apartment.
4. On 6 March 2001 the Court of First Instance in Banja Luka ("the Court") issued a procedural decision ordering a provisional measure aimed at preventing the applicant's eviction from the premises concerned. The applicant was obliged, by this procedural decision, to initiate civil proceedings before the Court. Provided the applicant initiated such proceedings, the order for provisional measures would remain in force until the proceedings were completed; otherwise, the order would terminate. According to the applicant's allegations, she initiated the above-mentioned proceedings on 2 April 2001. The proceedings are still pending.
5. On 21 May 2001 the Ministry for Refugees and Displaced Persons, deciding upon the applicant's appeal against the procedural decision dated 26 February 2001, upheld the procedural decision.
6. On 29 May 2001 the first instance organ issued a Conclusion on Enforcement of the procedural decision dated 26 February 2001, despite the Court's order mentioned in paragraph 4 above.
7. On 13 June 2001 the Republic Inspector of the Ministry for Administration and Local Self-Administration in Banja Luka issued a procedural decision ordering the first instance organ to suspend all proceedings until the court proceedings are completed. This decision was issued upon the applicant's request.

II. COMPLAINTS

8. The applicant claims that her right to fair proceedings before the domestic organs and her right to peaceful enjoyment of her possessions were violated.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced on 6 March 2001 and registered on the same day. On 9 March 2001 the Chamber decided to transmit the application to the respondent Party for its observations on the admissibility and merits of the application.
10. In its observations of 12 April 2001, the respondent Party expressed the opinion that the application should be declared inadmissible.
11. On 31 May 2001 the Chamber received the applicant's observations.

12. On 5 June 2001 the Chamber ordered the respondent Party, as a provisional measure, to prevent the eviction of the applicant from the premises concerned. At the same time, the Chamber requested additional information from the parties.

13. On 12 June 2001 and 25 June 2001, the Chamber received additional submissions of the parties concerning the genesis of the property and occupancy rights of the apartment concerned. There were no material disputes of fact contained within these submissions.

IV. OPINION OF THE CHAMBER

14. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Accordingly to Article VIII(2)(a), the Chamber shall dismiss any application where it has found that domestic remedies have not been exhausted.

15. The Chamber notes that the proceedings initiated by the applicant before the First Instance Court in Banja Luka are still pending. Further, the Republic Inspector of the Ministry for Administration and Local Self-Administration in Banja Luka has issued a procedural decision ordering the first instance organ to suspend all proceedings until the court proceedings are completed. Therefore, the Chamber finds that the application is premature.

16. Accordingly, the Chamber decides not to accept the application, finding it inadmissible within the meaning of Article VIII(2)(a) of the Agreement. It will also withdraw its order for a provisional measure with immediate effect.

V. CONCLUSION

17. For these reasons, the Chamber, by 6 votes to 1,

**DECLARES THE APPLICATION INADMISSIBLE AND
WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE WITH IMMEDIATE EFFECT.**

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel