



DECISION ON ADMISSIBILITY

Case no. CH/02/10556

Miroslav VUKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 July 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. On 18 September 1992, the applicant concluded an exchange contract involving an apartment in Banja Luka (Ulica Braće i Sestara Kapor no. 21), over which he held an occupancy right, and another apartment in Banja Luka (Ulica Mejdan no. 39/1, re-named Ulica Srđe Zlopogleđe), over which Mr. Z.M. held an occupancy right.

2. On 10 September 2001, the Republika Srpska Ministry for Refugees and Displaced Persons, Department Banja Luka (hereinafter: "the Ministry") issued a decision which allowed Z.M. to repossess the apartment at Ulica Srđe Zlopogleđe no. 39/1. On 26 February 2002, the applicant initiated civil proceedings before the Court of First Instance in Banja Luka with a view to establishing the validity of the exchange contract. On 31 May 2002, the Ministry issued a conclusion allowing the enforcement of its decision of 10 September 2001 and the eviction of the applicant from the apartment at Ulica Srđe Zlopogleđe no. 39/1.

II. COMPLAINTS

3. The applicant alleges violations of his rights as protected by Articles 6, 8 and 13 of the European Convention on Human Rights ("the Convention") and by Article 1 of Protocol 1 to the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 13 June 2002.

5. On 14 June 2002, the Chamber ordered the respondent Party, as a provisional measure, to refrain from taking further steps in order to evict the applicant from the apartment at Ulica Srđe Zlopogleđe no. 39/1. On 3 July 2002, the Chamber withdrew its order for a provisional measure.

6. On 4 July 2002, a submission from the applicant was received, in which he conceded that his interests are protected by paragraph 5 of Article 2a of the Republika Srpska Law on Cessation of Application of the Law on the Use of Abandoned Property. According to that provision, the Ministry shall suspend proceedings until the court proceedings as to the validity of the exchange contract are concluded. The applicant stated, however, that he reserves his rights to lodge a new complaint in case the Ministry does not comply with the law.

IV. OPINION OF THE CHAMBER

7. 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 ...".

8. The Chamber notes that proceedings aiming at the establishment of the validity of the exchange contract are still pending before the Court of First Instance in Banja Luka. The applicant has not shown that this remedy is ineffective and it does not appear so to the Chamber. Moreover, it appears that the Ministry has suspended the proceedings to enforce its decision of 10 September 2001 and that the applicant is not under the threat of an eviction. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

9. 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