



DECISION ON ADMISSIBILITY

Case no. CH/02/10835

Zlatan MODIĆ

against

THE REPUBLIKA SRPSKA

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

Mr. Jakob MÖLLER, Acting President
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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 Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant complains of being ordered, by the procedural decision of the Ministry for Refugees and Displaced Persons of the Republika Srpska – Department Banja Luka, to move out of the apartment in which he lives.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was registered on 10 December 2002.

3. On 17 December 2002, the applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone his eviction scheduled for 31 January 2003. On 7 January 2003, the Chamber decided to order the provisional measure requested and to transmit the case to the respondent Party for its observations on admissibility and merits.

4. On 14 and 27 February 2003, the respondent Party submitted its observations on the application. On 6 March 2003, the applicant submitted his observations in reply.

5. On 4 April 2003, the Chamber decided to withdraw its order for a provisional measure.

III. FACTS

6. In February 1993, an apartment located in a pre-fabricated house in ulica Goce Delčeva 32 (currently Kajmakčalanska 28) in Banja Luka, was badly damaged by an anti-tank grenade. It appears that the occupancy right holders over the apartment, I.K. and S.K., left afterwards. The owner of the apartment is the company "Vrbas" Banja Luka.

7. The Commission of the owner of the apartment allegedly established that the apartment was destroyed so much that it was no longer suitable for living, and it issued a decision to allocate the apartment, through a tender, to some of its employees to reconstruct it.

8. On 14 September 1994, on the basis of a published tender, the owner of the apartment issued a decision allocating the apartment to the applicant.

9. On 1 October 1994, the owner of the apartment issued a decision on co-ownership over the apartment. On the same day the owner of the apartment and the applicant concluded a contract on obtaining the ownership right on the basis of investment of his own means into the construction of the apartment, according to which the applicant obtained 90% ownership over the apartment.

10. On 4 April 2002, the Ministry for Refugees and Displaced Persons – Department in Banja Luka (hereinafter: the administrative organ), acting on the request of S.K., issued a procedural decision confirming that S.K. was the occupancy right holder over the apartment and allowing her to repossess it. The same procedural decision terminated the applicant's right to temporary use and ordered him to vacate the apartment. The applicant filed an appeal against this procedural decision.

11. On 8 November 2002, the Ministry for Refugees and Displaced Persons of the Republika Srpska rejected the applicant's appeal and upheld the procedural decision of 4 April 2002.

12. On 10 December 2002, the applicant initiated an administrative dispute before the Supreme Court of the Republika Srpska against the second instance procedural decision of 8 November 2002. It appears that the administrative dispute is still pending before the Supreme Court.

13. Meanwhile, on 25 May 2002, the applicant filed a lawsuit before the First Instance Court in Banja Luka against the owner of the apartment and S.K. requesting the court to establish his

ownership right over the apartment in dispute and to register his right in the land books. It appears that these proceedings are still pending before the First Instance Court.

IV. COMPLAINTS

14. The applicant complains that his right to a fair hearing within a reasonable time guaranteed under Article 6 of the European Convention on Human Rights (the "Convention") and his right to peaceful enjoyment of his possessions guaranteed under Article 1 of Protocol No. 1 to Convention have been violated.

15. The applicant requests the Chamber to order the respondent Party to compensate him for his personal investment in reconstruction of the apartment. He also seeks compensation for the costs of the proceedings.

V. 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 initiated an administrative dispute before the Supreme Court of the Republika Srpska on 10 December 2002. Also, on 25 May 2002, the applicant initiated civil proceedings before the First Instance Court in Banja Luka. Both sets of proceedings are still pending before the courts. However, according to the established case-law of the Chamber, the length of these proceedings, so far, cannot be considered unreasonable within the meaning of Article 6 paragraph 1 of the Convention.

18. Furthermore, the Chamber notes that the applicant's complaints are premature as the proceedings are still presently pending before the domestic courts. 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 application inadmissible.

VI. CONCLUSION

19. For these reasons, the Chamber by 4 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mr. Jakob MÖLLER
Acting President of the Second Panel