



DECISION ON ADMISSIBILITY

Case no. CH/02/10851

Zorica HAJDEK

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Rona AYBAY
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DEMEO, 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 19 December 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent her eviction from an apartment which she occupies in Banja Luka. On 20 December 2002, the President of the First Panel decided not to order the provisional measure requested.

2. The applicant complains of the decision of 15 October 2001 of the Ministry for Refugees and Displaced Persons in Banja Luka (the "Ministry"), ordering her eviction from an apartment which she occupies in Banja Luka.

II. STATEMENT OF FACTS

3. On 3 October 1994, the applicant concluded a contract on exchange with Matijević Dragutin by which she exchanged her apartment located at ulica KNT no. 1 in Nova Topola, Republika Srpska, for an apartment located at Starine Novaka no. 10 in Banja Luka, Republika Srpska. Matijević Dragutin currently occupies the apartment in Nova Topola.

4. On 3 October 2001, the applicant initiated civil proceeding before the Municipal Court in Banja Luka against Matijević Dragutin as the first defendant and Lazić Petra as the second defendant seeking establishment of the validity of the contract on exchange. In her lawsuit, the applicant points out that Lazić Petra was allocated the apartment in Banja Luka by the procedural decision of 16 November 1989 of the Department for the Protection of Disabled Veterans of Banja Luka. The applicant claims, however, that Lazić Petra has never occupied the apartment in question. The applicant requested the Municipal Court to issue an order for provisional measures to prohibit any actions in relation to the apartment in Banja Luka until the civil proceedings have been concluded. The Municipal Court has not decided upon the request for provisional measures or the merits of the lawsuit.

5. On 15 October 2001, the Ministry issued a procedural decision confirming that Lazić Petra is the pre-war occupancy right holder of the apartment in Banja Luka. The applicant was given 15 days to vacate that apartment.

6. On 24 October 2001, the applicant filed an appeal against the procedural decision of the Ministry. In her appeal the applicant stated that she had initiated proceedings before the competent court to establish the validity of the contract on exchange of 3 October 1994. She also pointed out that the administrative organ has an obligation to suspend the proceedings in accordance with Article 25 of the Law on Cessation of Application of the Law on Use of Abandoned Property, as well as under the provisions of the Law on Administrative Procedure which refer to preliminary issues.

7. On 4 November 2002, the Ministry issued a procedural decision rejecting the applicant's appeal.

8. On 11 November 2002, the applicant initiated an administrative dispute against the Ministry before the Supreme Court of the Republika Srpska.

9. The Ministry issued a conclusion allowing execution of the procedural decision of 15 October 2001. The execution was scheduled for 24 December 2002.

10. On 18 December 2002, the applicant filed an appeal against the conclusion on execution.

III. OPINION OF THE CHAMBER

11. 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.”

12. The Chamber notes that the decision on the applicant’s eviction from the apartment in Banja Luka was taken to allow the pre-war occupancy right holder to repossess the apartment. Moreover, the contract on exchange of 3 October 1994 was cancelled upon the entry into force of Article 2 of the Law on Cessation of the Application of the Law on Abandoned Property, which states that a “contract on use made between 1 April 1992 and 19 December 1998 is cancelled”. Therefore, this contract on exchange provides the applicant with no legal basis to occupy the apartment in Banja Luka. In these circumstances, the Chamber finds that 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.

IV. CONCLUSION

13. 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