



DECISION ON ADMISSIBILITY

Case no. CH/02/8172

Slobodan KUVAC

against

THE REPUBLIKA SRPSKA

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

Mr. Mato TADIĆ , President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
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 to Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 15 January 2002. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from the premises located at ulica Kolubarska br. 16 in Banja Luka, which he currently occupies. On 28 January 2002, the President of the Second Panel ordered the provisional measure requested. Subsequently, on 4 June 2002, the Chamber decided to withdraw the provisional measure order.

2. The applicant complains of a decision of the Section of the Ministry for Refugees and Displaced Persons of Republika Srpska in Banja Luka ordering his eviction from the family building he occupies.

II. FACTS

3. On 28 November 1995, the applicant concluded a contract on exchange of real estate with A.F. Under this contract, the applicant exchanged real estate in Visoko for real estate in Banja Luka, owned by A.F.

4. The applicant states that A.F. filed an action before the Court of First Instance in Banja Luka requesting it to annul the contract on exchange of real estate of 28 November 1995. On 26 September 2001, the Court of First Instance in Banja Luka issued a judgment establishing that the contract on exchange is null and void. On 13 December 2001, the applicant filed an appeal to the District Court in Banja Luka. The District Court in Banja Luka received the appeal on 24 December 2001, and the proceedings upon the appeal are still pending.

5. In the meantime, on 25 July 2000, the other contracting party obtained a decision of the Commission for Real Property Claims of Displaced Persons and Refugees (the "CRPC") confirming A.F. as a *bona fide* pre-war possessor of the real estate in Banja Luka. On 28 January 2002, the Section of the Ministry for Refugees and Displaced Persons of Republika Srpska in Banja Luka issued a conclusion allowing execution of the CRPC decision and entitling A.F. to repossess the real estate in Banja Luka. The same conclusion ordered the applicant's eviction and terminated his temporary right to occupy real estate in Banja Luka.

6. On 13 January 2003, the Chamber sent a letter to the applicant requesting him to submit information as to whether there have been any developments in the mentioned case and, specifically, whether the District Court in Banja Luka had issued a decision following the applicant's appeal of 13 December 2001.

7. On 29 January 2003, the applicant informed the Chamber that he was evicted from the real estate in question on 5 July 2002 and that the District Court in Banja Luka has not yet issued a decision on his appeal.

III. OPINION OF THE CHAMBER

8. 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...".

9. The Chamber notes that the applicant filed his application to the Chamber before the proceedings upon his appeal pending before the District Court in Banja Luka have been concluded. The applicant has not demonstrated that this remedy would be ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not exhausted effective domestic remedies, as required by Article VIII(2)(a) of the Agreement. Therefore, the Chamber decides to declare the application inadmissible.

IV. CONCLUSION

10. For these reasons, the Chamber, with 5 votes to 2,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel