



DECISION ON ADMISSIBILITY

Case no. CH/02/9835

Jovan GAJIĆ

against

THE REPUBLIKA SRPKSA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 November 2002 with the following members present:

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

Mr. Ulrich GARMS, 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The application was introduced on 2 April 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from an apartment which he occupies. On 4 September 2002, the Chamber decided not to order the provisional measure requested.

2. The applicant complains that his rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights have been violated. His complaints in this respect refer to two separate apartments which he has occupied at different times.

3. The applicant is a retired military officer. Before the armed conflict he lived in Šibenik, Croatia, in an apartment owned by the former Yugoslav National Army ("JNA") and located at Mandalinskih žrtava Street no. 11. On 10 September 1992, the Bijeljina Garrison issued a procedural decision allocating an apartment located in Vojvode Stepe Street no. 6 in Bijeljina to the applicant for his use. The pre-war occupancy right holder over that apartment was M.L.. M.L. submitted a request for repossession of the apartment in question to the Ministry for Refugees and Displaced Persons in Bijeljina.

4. On 20 March 2001, the Housing Commission of the Bijeljina Garrison suspended the procedure for confirmation of the procedural decision on temporary allocation of the apartment in Bijeljina to the applicant because of M.L.'s pending request for repossession of the apartment. The applicant submitted an appeal against this decision; however, it was rejected on 17 July 2001 as ill-founded by the Higher Housing Commission. The Higher Housing Commission reasoned that the procedural decision of 20 March 2001 did not terminate the applicant's right to use the apartment in Bijeljina but only suspended the procedure for confirmation of the procedural decision. The Army of the Republika Srpska, the Bijeljina Garrison, then initiated civil proceedings before the First instance Court in Bijeljina against M.L.

5. On 17 May 2001, the First Instance Court in Bijeljina issued its judgment confirming the termination of M.L.'s occupancy right over the apartment in Bijeljina and confirming the Bijeljina Garrison as the owner and holder of the allocation right, with the right to dispose freely of the apartment. The applicant alleges that M.L. did not appeal against the judgment in question, and, therefore, it became final on 25 July 2001.

6. The Ministry for Refugees and Displaced Persons of the Republika Srpska has so far neither issued any procedural decision on repossession of the apartment in Bijeljina by M.L. nor scheduled the applicant's eviction from that apartment.

7. The applicant further complains that Croatia deprived him of his occupancy right over the apartment in Šibenik, Croatia, owned by the former JNA and located at Mandalinskih žrtava Street no. 11.

II. OPINION OF THE CHAMBER

A. The applicable rule

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: ... (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."

B. Specific reasoning and conclusion

9. With respect to the applicant's complaint against the Republic of Croatia, the Chamber finds that the applicant's complaint does not concern an interference with his rights under the Agreement by the authorities of any of the parties to the Agreement. The Republic of Croatia is not a party to the

agreement and its acts are not capable of engaging the responsibility under the Agreement of any of the signatories to the Agreement. It follows that the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible.

10. The Chamber further notes that proceedings are still pending before the Ministry for Refugees and Displaced Persons of the Republika Srpska in relation to M.L.'s request for repossession of the apartment in Bijeljina and that until now there has been no decision by the public authorities against the applicant's interests. Therefore, 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 this part of the application inadmissible as well.

III. CONCLUSION

11. 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