



DECISION ON ADMISSIBILITY

Case no. CH/03/10916

Josipa KAVIĆ

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 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 17 February 2003 and registered the same day. The applicant complains of being ordered, by the procedural decision of the competent body, to move out of the apartment she was allocated.

2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone enforcement of the decision issued by the competent administrative organ, ordering her to vacate the apartment, until the competent organ issues a final decision. On 19 February 2003, the Chamber decided not to order provisional measure requested.

II. STATEMENT OF FACTS AND PROCEEDINGS

3. On 30 November 1993 the applicant, who is the widow of a deceased soldier, was allocated an apartment at Ulica B. Potkonjaka no. 14/1 in Banja Luka. The apartment was allocated for temporary use by the procedural decision of the Ministry for Internal Affairs of the Republika Srpska (the "Ministry"). Afterwards, she concluded a contract on use of the apartment with the competent organ.

4. On 16 December 1997, the Ministry issued another procedural decision allocating the apartment to the applicant, replacing the procedural decision of 30 November 1993.

5. On 11 February 2002, the Ministry for Refugees and Displaced Persons of the Republika Srpska–Department Banja Luka (the "administrative organ"), acting on the request of S.V., issued a procedural decision confirming S.V.'s occupancy right over the apartment and allowing him to repossess it. By same procedural decision, the applicant was ordered to vacate the apartment. An appeal against this decision does not stay the execution.

6. On 2 April 2002, the applicant appealed against the decision of the administrative organ. She mentioned that the apartment has never been declared abandoned. Further, she stated that S.V. could not be treated as refugee, because he never left Banja Luka, even during the armed conflict. She also claimed that S.V. has moved into a newly built house, which deprives him of the occupancy right over the apartment in question, if indeed he had acquired it. The proceedings upon the appeal are still pending.

7. In the meantime, the applicant submitted a petition to the Minister for Refugees and Displaced Persons of the Republika Srpska, as well as to the Ministry for Veteran and Victims of War Issues, asking protection of her rights. She also wrote to the Office of the High Representative. It appears that there were no answers to her letters.

8. On 7 February 2003, the administrative organ issued a conclusion allowing enforcement of the procedural decision of 11 February 2002 and scheduled the applicant's eviction for 20 February 2003.

9. The applicant appealed against this conclusion, and it appears that proceedings upon the appeal are still pending.

III. COMPLAINTS

10. The applicant alleges that her right to a fair hearing within a reasonable time has been violated because the Ministry did not decide upon her appeal in the time prescribed by the law. She also considers that her right to respect for her home, private and family life guaranteed by Article 8 of the European Convention on Human Rights (the "Convention") and her right to peaceful enjoyment of his possession guaranteed by Article 1 of Protocol No. 1 to the Convention have been violated.

IV. 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 applicant was ordered to vacate the apartment at ulica B. Potkonjaka no. 14/1 in Banja Luka pursuant to a lawful decision terminating a right of temporary use. In these circumstances, the Chamber finds that the facts complained of do 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.

V. CONCLUSION

13. For these reasons, the Chamber, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

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