



DECISION ON ADMISSIBILITY

Case no. CH/03/13503

Goran DOJČINOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2003 with the following members present:

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

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 21 March 2003 and registered on the same day. The applicant requested that the Chamber order the respondent Party, as a provisional measure to suspend the administrative proceedings and to prevent his eviction from the apartment located at Ravnogorska no. 10, in Banja Luka. On 5 May 2003 the First Panel decided not to order the provisional measure requested.

2. The pre-war occupancy right holder over the apartment in question was the late A.Š. Her son, M.Š., has attempted to obtain his right to repossession of the apartment in question before the Ministry of Refugees and Displaced Persons, Department Banja Luka (hereinafter “the Ministry”). Currently there are three proceedings pending before the competent authorities of the Republika Srpska. The first proceedings are being conducted before the Ministry on M.Š.’s request for repossession of the apartment in question. The second proceedings, pending before the First Instance Court in Banja Luka, have been initiated on the applicant’s action against M.Š. for the protection of his right to possession (these proceedings are currently suspended until the conclusion of the third proceedings). The third proceedings are being conducted before the Department of Housing and Public Utility Affairs, the City of Banja Luka, on M.Š.’s request for the occupancy right transfer from his deceased mother, A.Š., to him.

II. FACTS

3. Based on the procedural decision of 2 November 1992, the applicant, as a war veteran and disabled person, was allocated the apartment in question for temporary use. On 3 December 1992 the applicant concluded a contract on temporary use of the apartment in question with the Housing self-management community of interest (hereinafter: SIZ) Banja Luka.

A. Proceedings on M.Š.’s request for repossession

4. On 1 June 1999 M.Š. filed a request for the repossession of the apartment in question to the Ministry. He attached to his request the evidence that his late mother, A.Š., while alive, was the occupancy right holder over the apartment concerned.

5. On 10 October 2002 the Ministry issued a procedural decision confirming that A.Š. was the occupancy right holder over the apartment in question, and that her son, M.Š. is the occupant of the apartment in question, and he is allowed to repossess the apartment. It has been established that the applicant’s right to temporary use of the apartment concerned ceased and that he is obliged to vacate the apartment within 15 days. It has also been established that the applicant is not entitled to alternative accommodation, as he is a domicile person and a pre-war sub-tenant.

6. On 31 October 2002 the applicant filed an appeal against the procedural decision of 10 October 2002. He points out that M.Š. has been living in Poreč since 1985, and that he did not live in the common household with his mother at the time of her death, for which reasons M.Š. cannot be considered a member of his deceased mother’s common household.

7. On 5 November 2002 the Ministry issued a conclusion allowing enforcement of the procedural decision of 10 October 2002.

8. On 20 January 2003 the Ministry for Refugees and Displaced Persons of RS annulled the procedural decision of 10 October 2002 on grounds of incomplete and incorrect establishment of the factual background as well as the incorrect application of the material law and transmitted the case to the first instance administration for renewed proceedings.

9. On 26 February 2003, acting upon the instructions of the second instance body, the Ministry confirmed that A.Š. was the occupancy right holder over the apartment concerned, and that her son, M.Š., the occupant of the apartment concerned is allowed to repossess the apartment. It has been

established that the applicant's right to temporary use the apartment in question ceased, that he is obliged to vacate the apartment within 15 days and is not entitled to alternative accommodation.

10. On 18 March 2003 the applicant filed an appeal against the procedural decision of 26 February 2003.

B. Proceedings before the First Instance Court in Banja Luka

11. The applicant filed an action against M.Š. and Republika Srpska – the Ministry for Refugees and Displaced Persons of RS to the First Instance Court in Banja Luka for the protection of his right to the possession of the apartment concerned. In his action, the applicant requested the court to issue a provisional measure ordering the Ministry to suspend the enforcement proceedings on the conclusion allowing enforcement of 5 November 2002, ordering the applicant to leave the apartment concerned.

12. On 15 November 2002 the First Instance Court issued a procedural decision ordering the Ministry as provisional measure to suspend the enforcement proceedings of the conclusion allowing enforcement of 5 November 2002. It has been established that the provisional measure shall remain in force until the valid conclusion of the civil proceedings, unless the court withdraws it prior to that.

13. On 10 December 2002 the First Instance Court issued a procedural decision putting out of force the provisional measure of 15 November 2002.

14. On 26 December 2002 the applicant filed an objection against the procedural decision of 10 December 2002.

15. On 30 December 2002 the First Instance Court issued a procedural decision suspending the proceedings before the court until the conclusion of the administrative proceedings before the competent body, conducted on M.Š.'s request for establishment of the occupancy right holder's status. The Court determined that the valid conclusion of the administrative proceedings constitutes a preliminary issue on which depends the outcome of the proceedings before the court.

16. The applicant alleges that he did not file an appeal against the procedural decision of the First Instance Court of 30 December 2002, because the housing body of Banja Luka has to decide on the preliminary issue as to whether M.Š. is entitled to the occupancy right transfer from his mother A.Š., to him. The applicant points out that the Ministry should have also suspended the administrative proceedings conducted on M.Š.'s request for the repossession of the apartment concerned until the housing body of Banja Luka issues a procedural decision on M.Š.'s request for the occupancy right transfer.

C. Proceedings on M.Š.'s request for transfer of occupancy right

17. The applicant alleges that the proceedings of the occupancy right transfer from the deceased A.Š. to her son, M.Š., are pending before the housing body of the City of Banja Luka. On 23 October 2002 the applicant sent a request for obtaining a legal right to the status of the intervening party in this proceedings. He also raised a request to be issued a confirmation that the proceedings of the occupancy right transfer are pending before the housing body of the City of Banja Luka, for the needs of the Ministry for Refugees and Displaced Persons of RS.

III. ALLEGED HUMAN RIGHTS VIOLATIONS

18. The applicant alleges the following violations of the Constitution of the Republika Srpska: Article 10 which stipulates equality of all citizens before the law, Article 16 which guarantees the right to equal protection before judicial and state bodies, Article 45 which provides that everybody is obliged to adhere to the Constitution and the laws. He also alleges violations of the Constitution of BiH, Article I(2), II(2) which provide that the European Convention shall be directly applied in BiH, and has priority over all other laws, as well as Article II(3)(k) of the Constitution of BiH (right to property).

19. The applicant considers that Articles 6 and 13 of the Convention have been violated in the proceedings before domestic bodies. He also alleges a violation of the International Covenant on Civil and Political Rights.

20. The applicant points out that OHR and the Independent Judicial Commission after the issuance of the provisional measure of 15 November 2002, addressed a warning to judge Mitić Nevenka, as she did not comply with the property laws and that she would not be appointed the judge again. He alleges that it was the reason for which the judge rendered ineffective the ordered provisional measure and issued a procedural decision suspending the court proceedings until the conclusion of the administrative proceedings.

IV. OPINION OF THE CHAMBER

21. 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.”

22. In so far as the applicant complains of his threatened eviction from the apartment, the Chamber notes that the Ministry’s decision of 26 February 2003 was taken to allow M.Š., who is considered by the Ministry to be a member of the family household of the pre-war occupancy right holder, to repossess the apartment. The applicant raises some doubt as to the status of M.Š. in view of the fact that the proceedings on M.Š.’s request for the transfer of his late mother’s occupancy right are still pending. However, the applicant himself has no right under domestic law to occupy the apartment. 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.

23. In relation to the applicant’s allegation that the court failed to act fairly as required by Article 6 of the Convention, the Chamber finds that the information before it does not disclose any violation of this requirement

24. The Chamber therefore finds that the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement and decides to declare it inadmissible.

V. CONCLUSION

23. 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