



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1209

Aleksandar and Vladimir BERONJA

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 November 1998 with the following members present:

Mr. Manfred NOWAK, President
Mr. Giovanni GRASSO, Vice-President
Mr. Vlatko MARKOTIĆ
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Leif BERG, 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 and 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

1. The applicants are currently resident in Banja Luka, Republika Srpska. They are the legal successors of their grandfather together with their aunt, Mrs. Slavica Tihonov. Their grandfather was the owner of a house in Manastira Moštanice Street No. 19. The applicants have lived in that house since their birth. Their aunt does not live in the house.
2. On 13 December 1995 the aunt of the applicants commenced proceedings against them for disturbance of possession. On 5 April 1996 the Municipal Court in Banja Luka issued a decision suspending the proceedings regarding the succession to their grandfather's estate. This was on the ground that the applicants were to start proceedings against Ms. Tihonov, in order to establish the right of succession to the whole of their grandfather's estate.
3. On 6 March 1997 the Municipal Court ordered the eviction of the applicants from the first floor of the house. They appealed against this decision.
4. On 4 November 1997, the Regional Court rejected this appeal. On 25 December 1997, the Municipal Court issued a decision ordering the execution of its decision of 6 March 1997. The applicants were ordered to allow Ms. Tihonov to regain possession of the first floor of the house. On 12 January 1998, the applicants filed a complaint against this decision.
5. On 27 February 1998, this appeal was partially accepted by the Municipal Court. On 16 March 1998 Ms. Tihonov filed an appeal against this decision. The applicants in turn appealed on 13 March 1998. On 7 May 1998 the Regional Court accepted the appeal of Ms. Tihonov, and rejected the appeal of the applicants. The Municipal Court issued a decision authorizing the eviction of the applicants from part of the property. On 10 June 1998, the first applicant filed an appeal against the decision of 25 December 1997, stating that she had the right to live in the house, and requesting the Court to declare the decision on execution unlawful. There has been no decision on this appeal to date.
6. On 9 February 1998, Mrs. Dragica Beronja, mother of the applicants files a lawsuit as an intervening party in the proceedings, requesting the establishment of her participation in the property as well.

ii. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 7 October 1998 and registered on the same day. The applicants requested that the Chamber order a provisional measure, preventing their eviction from part of the house they occupy. The eviction was scheduled for 13 October 1998.
8. The Chamber considered the application at its session on 12 October 1998 and decided to reject the applicant's request for a provisional measure. The application was originally registered under case number CHB/98/110. Due to a change in the system used by the Registry of the Chamber for registering applications, the case has been given the new number of CH/98/1209. Pursuant to Rule 49(2) of the Chamber's Rules of Procedure, the application has not been transmitted to the Respondent Party.

III. COMPLAINTS

9. The applicant allege that their rights to property and to fair proceedings have been violated.

IV. OPINION OF THE CHAMBER

10. Before considering the merits of the application, the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded .

11. The Chamber notes that the court proceedings to which the current application relates were commenced by the aunt of the applicants on 13 December 1995. The Agreement came into force on the subsequent day, 14 December 1995. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (see the Decision on Admissibility of the Chamber in *Matanović v. Republika Srpska*, CH/96/1, delivered on 13 September 1996). The Chamber must, therefore, confine its examination of the case to considering whether the applicants' human rights have been violated or threatened with violation after that date.

12. The Municipal Court in Banja Luka issued a decision on the proceedings initiated by the aunt of the applicants on 5 April 1996. Since that decision, there have been a number of appeals and other proceedings initiated by the applicants, their aunt and the mother of the applicants (as outlined at paragraph 3 - 6 above), all of which relate to essentially the same dispute. The appeal of the first applicant of 10 June 1998 seems to be still pending.

13. The Chamber is not aware of any evidence indicating that the various sets of proceedings initiated by the applicants and the other persons involved in the dispute have not been conducted in accordance with the requirements of Article 6 of the European Convention for the protection of Human Rights and Fundamental Freedoms

14. As regards the alleged violations of the applicants' rights, the Chamber notes that the present case involves proceedings between the applicants and their aunt relating to the ir succession to the estate of their grandfather. Normally these disputes between private parties do not rise to a violation of the right to property which could be attributed to one of the Respondent Parties in Articles I of the Agreement.

15. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed) Leif BERG
Registrar of the Chamber

(signed) Manfred NOWAK
President of the Second Panel