



DECISION ON THE ADMISSIBILITY

Case No. CH/98/1219

Gina VRABAC

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 February 1999 with the following members present:

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

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 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. FACTS

a) The general facts

1. The applicant is a citizen of Bosnia and Herzegovina, resident in Prijedor. Her late father was the owner of real properties (agricultural land) in Prijedor. The property was nationalised by a decision of the Municipality of Prijedor ("the Municipality") in 1962, and was allocated to the Municipal Fund for Urbanism in 1973. The Municipality was obliged to pay a symbolic amount which allegedly did not correspond to the real value of the land, as compensation for the nationalised property. The Municipality has allegedly paid only a part of this sum.

2. The land was allocated to the "Kraš" Company ("the Company") for use by a contract in 1975. By this contract the company was given the right to build a factory. The company has not done so to date.

3. In 1990 the Municipality started proceedings for taking over the land from the company, and allocated the land for use by private investors. The company appealed against the decisions of the Municipality to the Regional Court, and the court invalidated the decisions of the Municipality.

4. On 11 September 1997 the Municipality issued a decision by which it took over the right to use the properties. The representative of the company has allegedly not appealed. In the decision of 11 September 1997 it was stated that it had been passed at the Municipal Assembly session of 8 September 1997. According to the minutes of this session, this item was not on the agenda. The applicant alleges that the decision has been falsified, which is confirmed by the written statements of the Municipal Assembly Deputies Mr. Đuro Končar and Mr. Mile Mutić.

5. It appears that later the Municipality sold the relevant property for a symbolic price to a certain V.J. for business construction. Allegedly V.J. has not paid the price, but has the right to pay it after finishing the construction.

6. The applicant has allegedly not been delivered the document whereby V.J. obtained the land, so she could not file an appeal or start any other regular proceedings.

7. The applicant alleges that the members of the political party Srpska Demokratska Stranka ("SDS") were behind the decision of 11 September 1997 as this was in their own interest, and that only the sympathisers or members of SDS are entitled to buy or to use the properties in question. Only one of the persons whose land has been expropriated has been re-allocated his land (as the beneficiary), and the applicant alleges that is only because he is a sympathiser of SDS as well.

8. In the Land Register part of the properties in question is registered in the name of V.J. as the holder of a right to build a factory there. One part is still registered in the name of company, as the beneficiary, and one part has apparently not been registered at all.

9. As of 19 October 1998 the company is still registered in the Land Register as the possessor of the applicant's land.

b) Domestic proceedings

10. On 9 March 1998 the applicant filed a request with the State Directorate of Geodetic and Property Affairs in Prijedor ("the Directorate") for returning her properties. On 12 May 1998 the Directorate answered her request by refusing it. This refusal is not an administrative decision and there is no remedy provided.

11. On 17 March 1998 the applicant filed a similar request with the Executive Board of the Municipality.

12. On 2 June 1998 the applicant initiated proceedings before the Municipal Court in Prijedor (“the Court”) together with a request returning the properties into her possession and that the Court provisionally forbid the Municipality to dispose of the land.

13. On 15 July 1998 the Court issued a decision refusing the request for a provisional measure, for the request had not been stated properly. The decision was not delivered to the applicant until 2 September 1998, when she personally went to the Court and asked for a copy. She filed an appeal against the decision on the same day. There have been three hearings related to the property right of the applicant before the Court to date.

II. COMPLAINTS

14. The applicant claims that she, as the successor of her father, has the right of pre-emption in case the holder of the land decides to sell it.

15. The applicant requests that the Chamber order the respondent Party to invalidate the decisions whereby sympathisers of SDS allocated themselves the land, and invalidate the decision whereby V.J. was registered as the beneficiary in respect of part of the land.

III. PROCEEDINGS BEFORE THE CHAMBER

16. The application was introduced on 12 October 1998 and registered on the same day. The applicant requested that the Chamber order a provisional measure to take all necessary action to prevent the possible constructions on the land in dispute.

17. On 15 January 1999 the First Panel refused the request for a provisional measure.

IV. OPINION OF THE CHAMBER

18. The Chamber will assume that the case could raise an issue under Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) in respect of the applicant’s right to property. The case might also involve an issue under Article 6 (1) of the Convention in respect of the applicant’s right to a fair hearing within a reasonable time before an independent and impartial tribunal.

19. However before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. According to Article VIII(2)(c) of the Agreement the Chamber shall dismiss any application which it considers manifestly ill-founded.

20. In respect of the applicant’s right to property the Chamber notes that the applicant started proceedings before the Municipal Court in Prijedor on 2 June 1998. These proceedings remain pending and three hearings have been held to date. The court’s later decision can be appealed to the Regional Court in Banja Luka. On the facts before it today the Chamber has no reason to doubt that these remedies are “effective” within the meaning of the Agreement.

21. Accordingly, the Chamber decides not to accept this part of the application pursuant to Article VIII(2)(a) of the Agreement, as the applicant has not demonstrated that the effective domestic remedies have been exhausted.

22. As regards the applicant’s rights under Article 6(1) of the Convention, the Chamber has just found that the applicant still has court remedies at her disposal. The Chamber cannot find that the court proceedings so far have been unreasonably long.

23. Accordingly, this part of the application must be rejected as being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

24. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel