



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1387

S.K.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 14 May 1999 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. 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a resident of Republika Srpska and occupies an apartment located at Sime Miljuša 8 in Banja Luka ("the apartment").

2. In July 1995, the applicant entered into possession of the apartment pursuant to a verbal agreement with an official of "Metal" ODP, a publicly-owned company in Banja Luka ("the company"). The applicant, despite repeated requests, has been unable to provide the Chamber with any document showing that she has any legal right to occupy the apartment. On 7 July 1997, the Commission for Housing Affairs of the company issued a decision allocating the applicant another apartment. The applicant appealed against this decision to the appropriate organs within the company, on the grounds that this second apartment was too small for her requirements. These appeals were refused. On 19 September 1997, the applicant initiated proceedings before the Municipal Court ("*Osnovni Sud*") in Banja Luka against the company. In these proceedings, the applicant requested that the decision allocating her the second apartment be put out of force and that she be granted a permanent right to occupy the apartment. Two hearings have been held in these proceedings to date, on 23 April 1998 and 2 June 1998. The proceedings are still pending before the Municipal Court.

3. On 17 July 1998, the Secretariat for Housing Affairs of the Municipality of Banja Luka issued a decision authorising the applicant's eviction from the apartment. This decision was based on the ground that the applicant is an illegal occupant of the apartment. On 5 August 1998, the applicant appealed against this decision. There has been no decision on this appeal to date. On 3 November 1998, the same organ issued a conclusion ordering the applicant's eviction on 9 November 1998. This eviction was postponed. On 19 November 1998, the Secretariat issued a further conclusion authorising the applicant's eviction for 27 November 1998. This eviction was not carried out. According to the latest information provided by the applicant to the Chamber, she still occupies the apartment.

II. COMPLAINTS

4. The applicant alleges that her right to be granted an apartment has been violated. She also claims that it is unfair to evict her, a pregnant woman with a three-year old child, before the final decision of the Municipal Court.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 6 November 1998 and registered on the same day.

6. The applicant requested that the Chamber order a provisional measure to take all necessary action to prevent the applicant's eviction. On 27 November the President of the Panel ordered, pursuant to Rule 36(2), the respondent Party to prevent the taking of any steps to evict the applicant. This order was stated to remain in force until 11 December 1998, unless withdrawn before that date or subsequently extended by a further order. The applicant was invited to submit evidence showing that she had a legal right to occupy the apartment. The applicant failed to do so.

IV. OPINION OF THE CHAMBER

7. Before considering the merits of the case 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.

(i) The domestic proceedings initiated by the applicant

8. The Chamber notes that the applicant initiated proceedings before the Municipal Court in Banja Luka on 19 September 1997. There have been two hearings in that case to date, neither of which have decided the matter. As the Chamber has previously noted, one of the guarantees

provided by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) is the right to fair trial within a reasonable time in the determination of one’s civil rights and obligations (*Mitrović v. Federation of Bosnia and Herzegovina*, CH/97/54, Decision on Admissibility of 10 June 1998, paragraph 10). The Chamber also noted that “the reasonableness of the length of the proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the (European) Court’s case-law, in particular the complexity of the case and the conduct of the applicant and the relevant authorities” (*ibid.*).

9. The Chamber notes that the applicant initiated proceedings before the Municipal Court in Banja Luka on 19 September 1997. Accordingly the period of time to be taken into account by the Chamber in determining whether or not the duration of the proceedings has been reasonable begins on that date.

10. The Chamber notes that two hearings have been held in the case to date. Accordingly, the Chamber does not consider that the period of time that has elapsed since the applicant initiated proceedings before the Municipal Court in Banja Luka (approximately one year and eight months) is excessive for the determination of the case.

11. Accordingly, the Chamber decides not to accept this part of the application as it is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

(ii) The applicant’s claim regarding her right to an apartment

12. The Chamber notes that the applicant’s claims relate to her alleged right to be granted an appropriate apartment. Even if the respondent Party could be held responsible for the actions of the company, as a publicly-owned body, the complaint of the applicant concerns essentially a private civil dispute between the parties to the domestic proceedings. The Convention does not contain any right to be granted an apartment, much less the right to be granted an apartment of a particular size.

13. A complaint concerning the right to housing could come within the scope of Article 11 of the International Covenant on Economic, Social and Cultural Rights (“the Covenant”). Under Article II(2) of the Agreement, the Chamber only has jurisdiction to consider whether there has been alleged or apparent discrimination on a wide range of specified grounds in relation to the enjoyment of the rights guaranteed under the Covenant and the other international instruments referred to in the Appendix to the Agreement. The applicant has not alleged that there has been any such discrimination. Neither is it apparent from the facts of the case that the applicant has in fact been the victim of discrimination on any of the grounds set out in Article II(2)(b) of the Agreement. Accordingly the Chamber refuses to accept this part of the application as it is incompatible with the Agreement *ratione materiae* in the sense of Article VIII(2)(c) thereof.

V. CONCLUSION

14. 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