



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1588

Zora TOMIĆ

against

REPUBLIKA SRPSKA

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

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

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 application relates to the occupancy right over an apartment located at Pećani B-3, Apartment No. 42, Prijedor, Republika Srpska. The applicant entered into possession of the apartment on 12 September 1996, in pursuance of an agreement she had entered into with the holder of the occupancy right over it. Under this agreement, she paid the holder of the occupancy right DM 1,000. This agreement was not concluded with the prior knowledge or consent of the holder of the allocation right over the apartment, Željeznice Doboj ("Doboj Railways"), a publicly-owned company. The applicant states that she was told previously by an official of the holder of the allocation right to find a suitable apartment and to occupy it. She would then be granted an occupancy right over the apartment concerned.

2. After moving into the apartment concerned, the applicant went to the offices of Željeznice Doboj, in order to obtain a decision granting her the occupancy right over the apartment. She was informed that she should return the next day, when such a decision would be given to her. When she did so, she was informed that the occupancy right over the apartment had already been allocated to a third person. Another, smaller apartment had been allocated to the applicant instead. The applicant refused to accept the written decision of the company to this effect. The applicant claims that certain officials of Željeznice Doboj accepted improper payments in relation to the allocation of the occupancy right over the apartment.

3. On 30 October 1998, the applicant was informed by the Secretariat for Urbanism and Housing Affairs of the Municipality of Prijedor that her eviction had been scheduled for 11 November 1998. This decision also informed the applicant that the eviction proceedings had been commenced already on 5 June 1997. The applicant had refused to accept delivery of previous documents relating to these proceedings. The eviction was postponed a number of times at the request of the applicant. She has not informed the Chamber whether the eviction has been carried out.

II. COMPLAINT

4. The applicant does not claim that any of her rights as protected by the Agreement have been violated. She complains of the failure of an official of Željeznice Doboj to honour a promise that he purportedly made to her relating to the occupancy right over the apartment which is the subject of the application.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 1 December 1998 and registered on the same day.

6. The applicant requested that the Chamber order a provisional measure to the effect that the respondent Party take all necessary action to prevent her eviction. On 17 December 1998 the Second Panel refused the request for a provisional measure.

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.

8. The Chamber notes that the application relates to events surrounding the allocation of the occupancy right over an apartment. The essence of the applicant's claim is that as she had allegedly been told that she would be allocated the occupancy right over a particular apartment, the failure of Željeznice Doboj to keep this promise is unfair.

9. The Chamber recalls that an occupancy right may constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). Nevertheless, according to the case-law under the

Convention this provision only protects already existing possessions and does not guarantee any right to acquire a right protected under that Protocol (see, e.g. Eur. Court H.R. *Inze v. Austria*, judgment of 28 October 1987, Series A No. 126, page 17, paragraph 38).

10. The Chamber considers therefore that an informal representation such as that alleged in the present case to the effect that the applicant would be granted an occupancy right in respect of a specific apartment does not raise an issue under Article 1 of Protocol No. 1 to the Convention.

11. It is therefore not necessary for the Chamber to consider whether the actions of officials of the publicly-owned company concerned could engage the responsibility of the respondent Party.

12. 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

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel