



DECISION ON ADMISSIBILITY

Case no. CH/98/709

M.G.

against

THE REPUBLIKA SRPSKA

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

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

Mr. Anders MÅNSSON, 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 Articles VIII(2) and XI of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina. She occupies an apartment in Kozarska Dubica, Republika Srpska. She lived in the apartment with her grandfather prior to his death. The Secretariat for Administrative Affairs of the Municipality of Kozarska Dubica (“the Secretariat”) has declared the applicant to be an illegal occupant of the apartment and ordered her to vacate it under threat of forcible eviction.

II. THE FACTS

2. The facts of the case as they appear from the submissions of the Parties and the documents in the case file may be summarised as follows.

3. The applicant has lived in an apartment located at Svetosavska No. 7 in Kozarska Dubica, Republika Srpska (“the apartment”) since 1991. The holder of the allocation right over the apartment is the Municipality of Kozarska Dubica (“the Municipality”). She lived with her grandfather, who was the holder of the occupancy right over the apartment. According to the applicant, she took care of her grandfather until his death and he wished that she would obtain the occupancy right over the apartment after his death. She claims that she was a member of her grandfather’s household, as evidenced by certain documents, and as such is entitled to succeed into the occupancy right over the apartment. The Secretariat, in the domestic proceedings, denies that the applicant was a member of her grandfather’s household, impugns the validity of the documents referred to by the applicant, and accordingly states that she is an illegal occupant of the apartment.

4. On 3 June 1998 the Secretariat ordered the applicant to vacate the apartment within fifteen days, under threat of forcible eviction. The reasoning for this decision was that the applicant was an illegal occupant of the apartment. On 11 June 1998 the applicant appealed against this decision. On 1 February 1999 the Ministry for Urbanism, Housing Communal Affairs Construction and Ecology of the Republika Srpska (“the Ministry”) annulled the decision of the Secretariat of 3 June 1998 and returned the matter to the Secretariat for reconsideration. According to the information available to the Chamber, the Secretariat has not yet decided upon the matter.

5. On 15 June 1998 the applicant initiated proceedings before the Municipal Court in Kozarska Dubica against the Municipality, complaining of the decision of the Secretariat of 3 June 1998 and requesting that she be confirmed as the holder of the occupancy right over the apartment. On 16 March 1999 a preliminary hearing was held in the proceedings, which are still pending.

6. The applicant still occupies the apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced to the Chamber on 18 June 1998 and registered on the same day. The applicant requested that the Chamber order the respondent Party as a provisional measure to take all necessary action to prevent her eviction from the apartment.

8. On 18 June 1998, the President of the Chamber ordered, pursuant to Rule 36(2) of the Rules of Procedure, the respondent Party to refrain from evicting the applicant from the apartment. The order stated that it would remain in force until the Chamber had given its final decision in the case, unless it was withdrawn by the Chamber before then.

9. On 8 July 1998 the Municipality of Kozarska Dubica (“the Municipality”) submitted observations on the application to the Chamber. The Chamber decided not to accept these observations as they had not been submitted by the Agent of the respondent Party.

10. On 8 December 1998 the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure, to transmit the application to the respondent Party for observations on its admissibility

and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 8 January 1999. No observations were received from the respondent Party within the above time-limit. On 18 January 1999 the applicant was requested to submit her further observations and any claim for compensation she wished to make. Her reply, which included a claim for compensation, was received on 10 February 1999.

11. The observations of the respondent Party were received on 19 February 1999, outside the time-limit set for their receipt. Despite this, the Chamber decided to accept these observations. On 5 March 1999 the respondent Party's observations were transmitted to the applicant for observations. Her observations were received on 12 March 1999.

12. The First Panel deliberated upon the admissibility of the application on 9 September 1999.

III. COMPLAINTS

13. The applicant did not make any specific allegations of violations of any of her human rights as protected by the Agreement.

IV. SUBMISSIONS OF THE PARTIES

14. The respondent Party, in its observations of 18 February 1999, claims that the application is inadmissible for failure to exhaust the domestic remedies available to the applicant. It states that the applicant's appeal against the decision of the Secretariat was successful, as the Ministry annulled that decision and returned the matter to the Secretariat for reconsideration, which is still pending. The respondent Party also refers to the initiation by the applicant of court proceedings against the Municipality and points out that a preliminary hearing has been held in these proceedings. The respondent Party concludes that the application is premature and suggests that it be declared inadmissible.

15. The applicant states that the Municipality is still trying to evict her from the apartment.

V. OPINION OF THE CHAMBER

16. 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 shall take into account, *inter alia*, whether any effective remedies are available to the applicant, and if so, whether they have been exhausted.

17. The Chamber notes that the applicant appealed against the decision of the Secretariat of 3 June 1998 ordering her to vacate the apartment. This appeal was successful and the decision was annulled by the Ministry on 1 February 1999, who returned the matter to the first instance organ for redecision. According to the information provided to the Chamber, the matter is still pending before the Secretariat. The Chamber notes that as the decision of the Secretariat of 3 June 1998 was annulled by the decision of the Ministry, the applicant is currently not under any threat of eviction. The applicant's proceedings before the Municipal Court in Kozarska Dubica relating to the matter are still pending. According to the information available to the Chamber, a preliminary hearing was held on 16 March 1999.

18. Accordingly, administrative and court proceedings are still pending before the national authorities. The Chamber has no reason to doubt that these proceedings are anything other than "effective", within the meaning of the Agreement.

19. Accordingly, the Chamber decides not to accept the application, as the applicant has not demonstrated that she has exhausted the effective domestic remedies available to her, as required by Article VIII(2)(c) of the Agreement.

VI. CONCLUSION

20. For the above reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel