



DECISION ON ADMISSIBILITY

Case no. CH/98/725

Radoslav BURAZOR

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. Dietrich RAUSCHNING
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. He occupies an apartment in Kozarska Dubica, Republika Srpska. In October 1995, he and his wife entered into a contract with the holder of the occupancy right over the apartment. Under this contract, the applicant and his wife would support the holder of the occupancy right during her lifetime. In return, they were entitled to reside in the apartment and would become the owners of it upon her death. She died in 1996. On 29 May 1998, the Secretariat for Administrative Affairs of the Municipality of Kozarska Dubica ("the Secretariat") declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within fifteen days 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, together with his family, occupied an apartment located at Desanke Maksimović No. 14 in Kozarska Dubica, Republika Srpska. On 9 October 1995, the applicant and his wife entered into an agreement with the holder of the occupancy right over the apartment, Ms. J.T. The main terms of this agreement were that the applicant and his wife would support Ms. J.T. during her lifetime. In return, they were entitled to reside in the apartment and would obtain the occupancy right over it upon her death. Ms. J.T. died in 1996.

4. On 29 May 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 4 June 1999 the applicant appealed against this decision. On 1 February 1999 the Ministry for Urbanism, Housing Communal Affairs Construction and Ecology of the Republika Srpska returned the matter to the Secretariat for reconsideration. On 2 April 1999 the Secretariat reconsidered the matter and terminated the request for the eviction of the applicant from the apartment concerned in the application. On 27 May 1999 the Municipal Housing Organ, at a hearing upon a further request for the eviction of the applicant, decided that this further request should not be proceeded with.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced to the Chamber on 26 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 his eviction from the apartment.

6. On 27 June 1998, the Vice-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.

7. On 5 August 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.

8. On 4 August 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 4 September 1998.

9. The observations of the respondent Party were received on 18 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 his further

observations. He was also asked to submit any claim for compensation or other relief he wished to make. His further observations, which did not include a claim for compensation, were received on 9 June 1999, outside the time-limit set for their receipt. Despite this, the Chamber decided to accept these observations.

10. The First Panel deliberated upon the admissibility of the application on 8 July 1999.

IV. COMPLAINTS

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

V. SUBMISSIONS OF THE PARTIES

12. 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 claims that the application was lodged while the domestic administrative proceedings were still pending.

13. The respondent Party also claims that the application is inadmissible as manifestly ill-founded. This is because the applicant had no legal right to occupy the apartment. His contract with the holder of the occupancy right over the apartment is not sufficient under national law to entitle him to succeed into the occupancy right over the apartment concerned in the application after her death. Therefore the case does not involve any violation of the applicant's rights as protected by the Agreement. The respondent Party requests that the provisional measure in the case be withdrawn.

14. The applicant states that although the Municipal authorities have finished the eviction proceedings against him, he fears that further attempts to evict him will be made.

VI. OPINION OF THE CHAMBER

15. 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)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

16. The Chamber notes that the applicant's complaint relates to the attempts by the Municipality to evict him from the apartment which he currently occupies. The proceedings relating to the eviction have been completed and the matter has been decided by the appropriate Municipal authorities (see paragraph 4 above). As a result, on 27 May 1999 the Municipal housing authority decided not to proceed with the attempts to evict him from the apartment. Accordingly, the matter which the applicant complains of has been resolved, as there does not appear to be any likelihood that eviction proceedings will be initiated against him.

17. The applicant states in his further observations that he fears that such attempts will be made in the future. However he does not provide any evidence to support such statements. Accordingly the Chamber considers that there is no objective reason to fear that further attempts will be made to evict the applicant.

18. The Chamber does not consider it necessary in the circumstances to decide upon the argument of the respondent Party that the applicant is an illegal occupant of the apartment (see paragraph 13 above).

19. 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.

VII. 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