



DECISION ON ADMISSIBILITY

Case no. CH/02/10849

Milivoj MILOJEVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications 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. INTRODUCTION

1. The applicant complains of being ordered, by the procedural decision of the Ministry for Refugees and Displaced Persons of the Republika Srpska, to move out of the apartment he was allocated.
2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone his eviction from the apartment. On 20 December 2002 the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS AND PROCEEDINGS

3. The application was introduced on 18 December 2002 and registered the same day. The applicant occupied an apartment at Ulica Relje Krilatice no. 19/II in Banja Luka, since 1992. On 12 January 1998 the company "Jelšingrad" which is the owner of the apartment ("the owner") allocated the apartment to the applicant for permanent use.
4. Previously, on 12 December 1997 the First Instance Court in Banja Luka, acting on the action filed by the company "Jelšingrad" against the defendant V.R., issued a decision canceling the contract on use of the mentioned apartment signed on 10 May 1991. In the proceedings a representative appointed by the court represented V.R. because his residence was unknown at that time.
5. On 12 November 1998 the applicant signed the contract on use of the apartment, with the competent company
6. On 19 September 2002, the Ministry for Refugees and Displaced Persons of the Republika Srpska, acting on the request of V.R., issued a procedural decision confirming the occupancy right of V.R. over the mentioned apartment, and allowing him to repossess it. By the same decision the right of the applicant to use the apartment was terminated.
7. On 10 October 2002, the applicant appealed against the procedural decision to the Ministry for Refugees and displaced persons of the Republika Srpska. According to the law the appeal has no suspensive effect on the execution of the decision of the administrative organ. The proceedings before the Ministry are still pending.
8. On 5 December 2002 acting on the request of V.R., the administrative organ allowed a forcible enforcement of its procedural decision, and ordered the eviction of the applicant from the apartment.

III. COMPLAINTS

9. The applicant complains that his right to a fair hearing under Article 6 of the Convention has been violated, because he was not given the opportunity to participate in the proceedings before the administrative organ. The applicant also considers his right to respect of his home, private and family life under Article 8 of the Convention and right to peaceful enjoyment of his possession under Article 1 of Protocol No.1 to have been violated. The applicant requests the Chamber to order the respondent Party to hold legal and regular proceedings, issue a second instance decision and annul the decision of the administrative organ

IV. OPINION OF THE CHAMBER

10. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a)

Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

11. The Chamber notes that the applicant's complaints are premature as the proceedings, upon his appeal, are still pending before the Ministry for Refugees and Displaced Persons of the Republika Srpska. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel