



DECISION ON ADMISSIBILITY

Case no. CH/01/7462

Zdenka SKRAMONČIN

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 January 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Ulrich GARMS, 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)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. Since 1996 the applicant has been the owner of the Company "LBB International" Beauty Studio ("Studio") located at ul. Maršala Tita no. 21 (in the courtyard) in Sarajevo. The owner and lessor of the facility is the Sarajevo Centar Municipality ("Municipality"). In the lease the Studio and the Municipality agreed that the lease shall terminate on 1 January 2002 and/or in some other cases in accordance with the terms of the lease, one being the untimely payment of rent. In case of a dispute relating to the lease, the lease provides that the competent authority is the Court in Sarajevo. To provide financial funds to start the Studio business, the applicant concluded a loan contract with the Gospodarska Banka d.d. ("Bank") in Sarajevo.

2. The applicant claims that the family R. has disturbed her right to use her facility and operate the business of the Studio in various different manners, including that the family R. placed a barrier (metal pole) on the common access route, thereby preventing customers from entering the courtyard and parking their vehicles. The applicant has additionally been disturbed because she is using less of the space of the facility than agreed to in the lease as a result of the Municipality's failure to make the entire leased space available to her and its failure to protect her property rights. In order to press the Municipality to resolve the problems related to the facility, the applicant, on her own initiative, ceased paying rent on 1 January 1998. She claims that the stated events have caused her to lose customers and profits; consequently, the Studio could not fulfil its contractual obligations related to the payment of its rent and loan. As the Studio did not comply with its contracts, the Municipality and the Bank sued the Studio in the Municipal Court I in Sarajevo ("Court"). On the other hand, because of the alleged disturbance, the Studio requested protection of its possessions from the Municipality and the Court. Moreover, the Studio sued one member of the family R. as he had attacked the applicant's daughter, who is an employee of the Studio.

3. The applicant claims that through the behaviour of the family R, she was discriminated against on the basis of her origin, *i.e.*, her family is of Croat origin. She complains that the Court was biased in favour of the family R., and it did not properly proceed upon her complaints. She contends that the Court has been influenced by private connections of the family R. and their private relations with the judge appointed to the case and the official of the Municipality.

4. According to the applicant, the Bank asked her to repay the loan in an illegal manner. She refused to make such payment. The applicant further claims that after her refusal, the Bank learned that she has been a member of the then opposition party, The New Croat Initiative (NOVA HRVATSKA INICIJATIVA), and then the Bank submitted a criminal charge against her for her failure to repay her loan. According to the applicant, the real reason for the charge against her was her membership in the opposition party, rather than her non-compliance with the loan contract. She further states that the Bank has withdrawn the criminal charge against her.

5. On 13 December 2001 the Municipality notified the applicant by letter that the lease would expire on 1 January 2002. The Municipality asked her to return possession of the facility to it. The Municipality specifically pointed out that the pre-war lessee had submitted a request to be reinstated into the facility in question.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 3 May 2001. The application is directed against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The applicant requested that the Chamber order the respondent parties, as provisional measures, to take all necessary action to suspend the proceedings before domestic bodies until after the Chamber has considered and issued its final decision in this case. On 6 December 2001 the Chamber decided not to order the provisional measures requested.

III. OPINION OF THE CHAMBER

7. 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 ...” and “(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

8. In regard to the two respondent Parties, the Chamber notes that the Court and the Municipality responsible for the proceedings complained of by the applicant are both organs of the Federation of Bosnia and Herzegovina. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

9. As to the applicant’s complaint that she has been prevented from using the entire leased facility for her Studio business because the Municipality failed to fulfil its lease obligations, the Chamber notes that the applicant could have protected her contractual rights by initiating a civil proceeding before the Court. However, so far the applicant has not initiated any such civil proceeding before the competent court in respect of any of the lease provisions or violations of the lease. In addition, the proceedings initiated by the Municipality and the Bank before the Municipal Court I in Sarajevo about which the applicant complains, are still pending. Therefore, the Chamber finds the applicant’s complaints in that respect premature. The applicant has neither shown the non-existence of domestic remedies, nor that she exhausted them, nor that these remedies would be ineffective, and they do not appear so to the Chamber. Accordingly, for these reasons, the applicant has not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

10. As to the applicant’s claims that she has been discriminated against on the basis of her political association with the opposition party, the Chamber notes that the Bank, according to the applicant’s statement, has withdrawn the criminal charge against her. As to the applicant’s claim that she has been discriminated against by the domestic authorities on the basis of her Croat origin, the Chamber notes that the Municipality has issued a procedural decision in her favour that protects her possessions. In addition, according to the applicant’s statement, the family R. has removed the barrier that was disturbing her possessions. The Chamber considers that the applicant has failed to substantiate her allegation of discrimination. The allegation itself is not sufficient proof, absent other corroborating evidence, that the applicant has in fact suffered from discrimination. Therefore, the Chamber finds that these allegations do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. Accordingly, these claims are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel