



DECISION ON ADMISSIBILITY

Case no. CH/01/8316

Senija BEŠIREVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 January 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice President
Mr. Jakob MÖLLER
Mr. Manfred NOWAK
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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is the temporary occupant of an apartment located in Sarajevo. The pre-war occupancy right holder initiated a proceeding before the Administration for Housing Affairs requesting repossession of the apartment in question.

2. On 19 January 2001, the Administration for Housing Affairs issued a procedural decision granting repossession of the apartment to D.B.K, a member of the occupancy right holder's family household. The applicant was ordered to vacate the apartment in question. The applicant filed an appeal against the procedural decision in question and the proceedings on the appeal are still pending.

3. The Administration for Housing Affairs issued a Conclusion scheduling the applicant's eviction for 2 November 2001. On 18 October 2001, the applicant filed an appeal against the Conclusion ordering her eviction. This appeal has no suspensive effect.

4. On 9 December 1999, the Commission for Property Claims of Refugees and Displaced Persons (CRPC) issued a decision establishing that the holder of the occupancy right over the apartment in question was B.B. and permitting D.B.K. to regain possession the apartment. On 9 April 2001, the applicant submitted a request for review of the CRPC decision, but the request was rejected as ill-founded.

5. The applicant alleges that the first instance body issued the procedural decision without first holding a hearing and on the basis of wrongly and incompletely established facts. In her appeal against the aforementioned procedural decision, the applicant pointed out that there was no evidence that D.B.K. had been a member of B.B.'s family household, which would constitute a violation of Article 3 of the Law on Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, and 27/99). The applicant also states that the CRPC decision was issued on the basis of incorrectly established facts: the applicant agrees that B. B. was the holder of the occupancy right over the apartment in question, but she disputes that D.B.K. was a member of B.B.'s family household on 30 April 1991.

6. The applicant alleges a violation of Article 8 of the European Convention on Human Rights. She also alleges that her right to a fair hearing guaranteed by Article 6 of the Convention has been violated.

II. PROCEEDINGS BEFORE THE HUMAN RIGHTS CHAMBER

7. The application was submitted to the Chamber on 25 October 2001 and registered on the same day. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to suspend her eviction in order to prevent harmful consequences which may result in case of her eviction. On 30 October 2001 the President of Second Panel rejected the request for provisional measures.

III. OPINION OF THE CHAMBER

8. 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: ... (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."

9. The Chamber notes that the applicant's eviction was ordered in order to reinstate the pre-war occupancy right holder into possession of the apartment in question. In these circumstances, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is 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.

10. The Chamber further notes that the applicant complains that the administrative organ wrongly assessed the facts pertaining to her case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the court failed to act fairly as required by Article 6 of the Convention. It follows that the application is 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