



DECISION ON ADMISSIBILITY

Case no. CH/01/7759

Semina KNEŽEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 January 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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 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. INTRODUCTION

1. The application was introduced on 3 August 2001. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent her stepmother, Z.B., from purchasing the apartment located in ulica Šabana Zahirovića no. 1 in Tuzla from the allocation right holder, KHK-Boris Kidrič, Lukavac. On Monday 6 May 2002 the Chamber decided not to order the provisional measure requested.
2. Z.B. is the occupancy right holder over the apartment in question, on the basis of a contract on use of the apartment concluded after the death of her husband, the applicant's father. The applicant benefits from the occupancy right as a member of the family household.
3. On 18 August 1997 the applicant filed a lawsuit with the Municipal Court in Tuzla against her stepmother, Z.B., requesting the Court to establish that she, as member of the family household, is entitled to undisturbed use of the apartment in question.
4. At the hearing on 28 October 1998, Z.B. raised a counterclaim requesting the applicant's eviction from the apartment in question.
5. On 3 March 1999 the Municipal Court in Tuzla issued its judgment accepting the counterclaim filed by Z.B. The Court ordered, *inter alia*, the applicant's eviction from the apartment in question within 8 days from the date on which the judgment became valid and compensation to Z.B. for expenses incurred during the proceedings in the amount of KM 952.00. The applicant's lawsuit was rejected as ill-founded. The Court stated that relations between the applicant and her stepmother were so full of conflict that it was impossible for them to live together; it further established that this unsustainable situation was caused by the applicant's behaviour and that Z.B. did not provoke conflicts with the applicant but rather tried to avoid them by being absent from the apartment very often and staying with her sister or daughter.
6. The applicant filed an appeal to the Cantonal Court in Tuzla.
7. On 10 August 2000 the Cantonal Court in Tuzla issued a judgment partly accepting the applicant's appeal. It altered the first instance judgment in that it increased the time limit for the applicant's eviction from 8 days to 15 days. In all other parts the first instance decision was confirmed and remained unchanged.
8. The applicant then filed a request to the Supreme Court of the Federation of Bosnia and Herzegovina for a review of the mentioned judgment.
9. On 22 March 2001 the Supreme Court of the Federation issued a judgment rejecting the request for review.
10. By a conclusion dated 29 January 2001, the Municipal Court in Tuzla scheduled the forcible eviction of the applicant from the apartment in question for 20 March 2001.
11. The applicant states that on 20 March 2001 she was evicted from the apartment in question together with her minor son. She also states that she is a single mother without employment. The applicant further alleges that her stepmother has not lived in the apartment in question for almost three years because she has a family house in the Tuzla Canton where she currently lives.

II. OPINION OF THE CHAMBER

12. 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."

13. The Chamber notes that the applicant complains that the courts 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 and application of the law 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 courts 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 the application inadmissible.

III. CONCLUSION

14. 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