



DECISION ON ADMISSIBILITY

Case no. CH/02/12495

Dobriła DRENJANIN

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 DEMEO, 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 4 December 2002. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to evict her son-in-law, M.R., within 15 days from the family house and business premises belonging to the children and grandchildren of the deceased S.L. and to order M.R. to return the keys and moveable property of such family house to her. The applicant requested that this order for a provisional measure stay in force until certain court and inheritance proceedings have been concluded. On 7 January 2003, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS AND COMPLAINTS

2. On 10 October 1986, S.L. (the applicant's mother), as the donor, concluded a contract on gift of the real estates in question with J.R. (the applicant's sister), as the donee. By this contract on gift S.L. transferred to J.R. her part of the co-ownership right over the real estates located at k.č. 8/110 registered in the land registry file no. 1196 in the Cadastre of the Municipality of Vlasenica. The applicant states that neither she nor her brother knew about this contract on gift.

3. In 2000, after the death of S.L. and J.R., J.R.'s husband M.R. initiated inheritance proceedings before the Municipal Court in Vlasenica. The court established that he and his daughter N.R. are the inheritors of the late J.R., with the right to co-ownership over the real estates in question.

4. On 26 May 2000, the applicant filed an action with the First Instance Court in Vlasenica against her brother-in-law M.R. to annul the contract on gift of 10 October 1986. The applicant alleges that the contract in question has been falsified. She notes that as a result of the contract on gift, by which S.L. left all her property to her daughter J.R., the applicant and her brother are deprived of their legal portion of their inheritance. The applicant requested the First Instance Court to issue an order for provisional measures ordering the defendant M.R. immediately to vacate the real estates in question until the civil proceedings before the First Instance Court have been concluded.

5. On 2 April 2001, the First Instance Court in Vlasenica issued a judgment rejecting the applicant's action as ill-founded. The judgment states that the disputed contract on gift is registered in the land registry office of that court, that it had legal effect, and that in the inheritance proceedings, M.R. and N.R. were declared the inheritors of the real estates in question with a 1/2 share. The First Instance Court points out that the applicant did not state any legal basis for the invalidity of the contract on gift (Articles 103 and 111 of the Law on Contractual Obligations), nor did she confirm her allegations with any evidence. The court did not decide upon the applicant's request for provisional measures because it rejected her action as ill-founded.

6. On 7 July 2001, the applicant filed an appeal against the judgment of 2 April 2001 before the District Court in Srpsko Sarajevo, which rejected the appeal as ill-founded on 21 May 2002.

7. The applicant claims that there are "doubts about the impartiality of the courts and individual judges". In particular, she alleges that the judges working in the first and second instance courts, as well as in the Supreme Court of the Republika Srpska, are related to one another. The applicant claims that M.R. caused her "unforgettable moral and irreparable pecuniary damage by his actions".

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 complains that the First Instance Court in Vlasenica and the District Court in Srpsko Sarajevo wrongly assessed her case. 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. Moreover, the Chamber notes that the applicant has failed to substantiate her allegations that the courts, as well as the individual judges involved in the proceedings, were not impartial. 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.

IV. CONCLUSION

10. 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