



DECISION ON ADMISSIBILITY

Case no. CH/02/11280

Ljubica BOŽIĆ

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

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

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)(a) and Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of her pre-war apartment located at ul. 9 Maja no. 21 in Lukavac, the Federation of Bosnia and Herzegovina, and her request to prevent her eviction from an apartment located at ul. \general Dra`e no. 29/24 in Doboj, the Republika Srpska, which she temporarily occupied, until such time as she repossesses her pre-war apartment.

II. FACTS

A. Proceedings before the authorities of the Federation of Bosnia and Herzegovina

2. On 25 October 2001, the Municipality Lukavac (the "Municipality") issued a procedural decision refusing the applicant's request for repossession of her pre-war apartment located at ul. 9 Maja no. 21 in Lukavac, the Federation of Bosnia and Herzegovina. The Municipality established that the applicant's request for repossession of the apartment was out of time, as it was submitted on 19 January 2000 through the Doboj Post Office.

3. The applicant's occupancy right was cancelled based on Article 5 of the Law of the Cessation of the application of the Law on Abandoned Apartments (the "new Law"). According to Article 5(1) of the new Law and its Amendments, the deadline for submission of a request for repossession of an apartment which has been declared abandoned is 15 months after that Law came into force, *i.e.* 4 July 1999. According to Article 5(2), the deadline for submission of a request for repossession of an apartment which was not declared abandoned under Articles 2(5) and 18(b) of the new Law and Article 83a of the Law on Amendments of the Law on Housing Relations is 4 October 1999.

4. In addition, the Municipality established that the applicant did not submit evidence that she requested repossession of the apartment before the Commission for Real Property Claims of Refugees and Displaced Persons ("CRPC") nor before the domestic court. Although the applicant is permitted to file an appeal against the procedural decision of 25 October 2001 to the Ministry for Environmental Planning and Protection of Environment of the Tuzla Canton, there is no indication in the case file that she did so.

5. On 5 November 2001, the applicant submitted a request to the Administrative Inspector of the Ministry of Justice of the Federation of Bosnia and Herzegovina asking the Inspector to review the case file and control the proceeding before the Lukavac Municipality. The applicant alleges that she received no response from the Inspector.

B. Proceedings before the Republika Srpska authorities

6. On 29 May 2002, the Ministry for Refugees and Displaced Persons of the Republika Srpska, Department Doboj, issued a procedural decision in which it confirmed the right of the pre-war occupant, A.B., to the apartment located at ul. Đenerala Draže no. 29/24 in Doboj. By the same procedural decision, the Ministry ordered the applicant to vacate the apartment within 15 days. The applicant's temporary right to use the apartment was cancelled with no right to alternative accommodation as she failed to seek repossession of her pre-war apartment in Lukavac. Although the applicant is permitted to file an appeal against the procedural decision of 29 May 2002 to the Ministry for Refugees and Displaced Persons Ministry in Banja Luka, there is no indication in the case file that she did so.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The applicant submitted a letter and documentation to the Chamber on 15 June 2002 that was registered as provisional file on 20 June 2002. The application was introduced to the Chamber on 9 July 2002 and registered on the same date.

8. The applicant requested the Chamber to order the Republika Srpska, as a provisional measure, to take all necessary action to prevent her eviction from the apartment she temporarily occupied in Doboj. On 2 December 2002, the Chamber decided not to order the provisional measures requested.

9. In her application, the applicant complains that she was ordered to vacate the apartment in Doboj although she has not been reinstated into her pre-war apartment in Lukavac. She further complains that the authorities of the Federation of Bosnia and Herzegovina refused her request for repossession of her pre-war apartment in Lukavac as out of time, although she pointed out that her failure to file her request in a timely manner was caused by illness. She alleges that her rights guaranteed under Articles 6 and 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention have been violated.

10. The applicant requests compensation for non-pecuniary damage in the amount of 4,500 KM as she was not reinstated into her pre-war apartment and compensation for her lawyer's fees.

IV. OPINION OF THE CHAMBER

A. As against the Federation of Bosnia and Herzegovina

11. 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"

12. The Chamber notes that the applicant failed to appeal against procedural decision of 25 October 2001 of the Municipality Lukavac to the Cantonal Ministry for Physical Planning and Environmental Protection in Tuzla. The applicant has not shown that this remedy was ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare this part of the application inadmissible.

B. As against the Republika Srpska

13. The applicant did not indicate the Republika Srpska as a respondent Party. However, the Chamber has decided to consider the application as directed also against the Republika Srpska, because the request for provisional measures and proceedings complained of by the applicant regarding the apartment in Doboj falls under the competence of the authorities of the Republika Srpska.

14. 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."

15. The Chamber notes that the applicant was ordered to vacate the apartment pursuant to a lawful decision terminating a right of temporary use. In these circumstances, the Chamber finds that the facts complained of do 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 as well.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel