



DECISION ON ADMISSIBILITY

Case no. CH/03/12853

Katarina JOZIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 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 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 13 January 2003. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to prevent the signing of a contract on use of an apartment she claims with any other person, and to prohibit the purchase of the apartment by anyone. On 3 March 2003 the Chamber decided not to order the provisional measure requested.

2. The subject matter of the application is the applicant's complaints concerning her eviction from the apartment in Dositejeva St. 4, in Trebinje, Republika Srpska, to which her late mother I.O. held the pre-war occupancy right. The applicant states that she is the only family household member of her late mother, thus she holds the right to have the occupancy right transferred to her name.

II. FACTS

3. At the beginning of the armed conflict in 1993, the applicant fled to the Republic of Croatia. She contends that, as a Croat, she was forced to leave Trebinje; however, her mother continued living in the apartment in question. Her mother died on 28 March 2000.

4. On 16 May 2000, the applicant submitted written information about her mother's death to the Dependent State-Owned Enterprise *Hidroelektrane na Trebišnjici* (owner of the apartment in question) and the Housing "SIZ"* Trebinje. She also informed them that she continued to occupy the apartment as the only member of the family household.

5. On 18 April 2001, the Municipality of Trebinje, Department of Housing and Communal Affairs ("the Municipality"), issued a procedural decision refusing the request by the owner of the apartment for the eviction of the applicant from the apartment in question, finding that the applicant is the legal occupant of the apartment in question pursuant to the contract on life support concluded with her mother.

6. The owner of the apartment appealed against the procedural decision of 18 April 2001.

7. On 12 June 2001, the Ministry of Urbanism, Housing-Communal Affairs, Construction and Environment Protection of the RS ("the Ministry") annulled the 18 April 2001 procedural decision by the Municipality and returned the case to the first instance body for renewed proceedings.

8. On 27 November 2001, having deliberated in the renewed proceedings, the Municipality issued a procedural decision ordering the applicant to vacate the apartment in question within 15 days as of the receipt of the procedural decision.

9. The applicant lodged an appeal against the procedural decision of 27 November 2001.

10. On 18 March 2002, the Ministry refused the appeal. It reasons that the applicant, at the moment of her mother's death, did not permanently live and reside at the apartment in question.

11. On 20 May 2002, the Municipality issued a conclusion on permission of enforcement of procedural decision of 27 November 2001. The eviction was scheduled for 30 May 2002. The applicant was evicted on that date.

12. The applicant instituted an administrative dispute against the procedural decision of 18 March 2002.

13. On 13 November 2002, the Supreme Court, acting in the administrative dispute, refused the suit as ill-founded.

* SIZ (Scr. Samoupravna interesna zajednica) – Autonomous Interest Community – in this case a relict Socialist Federal Republic of Yugoslavia housing organ administering and managing socially- or state-owned apartments.

III. OPINION OF THE CHAMBER

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 complains that the relevant bodies wrongly assessed the facts pertaining to her case. Article 6 of the Convention guarantees the right to a fair hearing. 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 relevant bodies failed to act fairly as required by the Convention. Moreover, the applicant’s allegations in relation to discrimination on the basis of her origin are unsubstantiated. 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

16. 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