



DECISION ON ADMISSIBILITY

Case no. CH/03/12797

Elizabeta KRIVOŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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)(a) of the Agreement and Rule 49(2) of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 30 December 2002 and registered on 2 January 2003.
2. The applicant is the legal heir of her deceased sister. She complains of being deprived of her rights to finalise her sister's contract on purchase of an apartment with an occupancy right.

II. FACTS

3. On 17 November 1999, the Municipal Court II in Sarajevo issued a procedural decision establishing that Elizabeta Krivošić was the sole inheritor of her sister, and the inheritance consists of her claim before the Pension and Insurance Fund of Bosnia and Herzegovina.
4. On 10 October 2000, the applicant filed a lawsuit before the Municipal Court I in Sarajevo in order to enforce the contract on purchase of the apartment concluded by her deceased sister. She based her right to file the lawsuit upon the legal authorisation given to her by her sister before her death. In a decision issued on 27 February 2001, the Municipal Court I rejected her claim as her legal authorisation ceased upon the death of her sister. The Court noted that the applicant's right to take further actions, on behalf of her sister, regarding the purchase of the apartment had ceased.
5. The applicant appealed against the judgment of the Municipal Court I to the Cantonal Court, which rejected the appeal and confirmed the first instance judgment. The applicant filed a request for revision before the Supreme Court of the Federation of Bosnia and Herzegovina, which was also rejected.
6. On 19 February 2003, the Municipal Court II in Sarajevo issued an additional procedural decision on inheritance establishing that Elizabeta Krivošić inherits all the rights and obligations arising from the contract on purchase of the apartment in question of her deceased sister. Therefore, as of 19 February 2003, the applicant has the right to initiate proceedings to realise her rights under the purchase contract in her own name (and not as the legal representative of her sister). According to the information submitted to the Chamber, the applicant has not initiated these proceedings.

III. OPINION OF THE CHAMBER

7. 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".
8. The Chamber notes that the applicant has not initiated proceedings to realise her rights under the purchase contract in her own name, in accordance with the procedural decision of 19 February 2003. The applicant has not shown that this remedy will be 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 the application inadmissible.

IV. CONCLUSION

9. 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