



DECISION ON ADMISSIBILITY

Case no. CH/02/11272

Jasminka VOJNIKOVIĆ

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 April 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ

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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 9 July 2002. It concerns the occupancy right over an apartment situated at Omera Stupca no. 15/1 in Sarajevo. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent the purchase of the apartment by its current user, V.H. On 5 November 2002, the Chamber decided not to order the provisional measure requested.

2. The applicant and her husband were married on 31 July 1965 and subsequently divorced on 14 September 1990. Their son reached the age of majority before their divorce. The applicant's husband concluded a contract on use of apartment in question on 16 August 1978. According to the applicant, after their divorce, they continued to live in the apartment in question, together with their son. They attempted to exchange it for two smaller apartments, but due to the beginning of the armed conflict, they were not successful.

3. In 1993 the applicant left Sarajevo and moved to Germany, where she obtained refugee status and remained until 1996, when she returned to Sarajevo. However, upon her return, her ex-husband did not allow her to enter their apartment. On 9 November 2000, the Municipal Court I, on the proposal of V.H., issued a procedural decision establishing the applicant's ex-husband as the occupancy right holder over the apartment in question. On 9 September 2001, the applicant submitted an appeal against that procedural decision. The Cantonal Court rejected the appeal and confirmed the procedural decision of the Municipal Court I of 9 November 2000. The reasoning of the procedural decision states that the Court obliged V.H. in its additional procedural decision of 4 May 2001 to secure alternative accommodation for the applicant in accordance with Article 20 paragraph 2 of the Law on Housing Relations.

4. The applicant complains of the decisions of the Municipal Court I and Cantonal Court determining her husband as the occupancy right holder over the apartment in question. She alleges a violation of her right to respect for home, as guaranteed by Article 8 of the European Convention on Human Rights (the "Convention"). She also alleges a violation of Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions) and Article 13 of the Convention (right to an effective remedy).

II. OPINION OF THE CHAMBER

5. 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) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken."

6. The Chamber notes that the application was lodged on 9 July 2002. It finds that the final decision for the purposes of Article VIII(2)(a) of the Agreement was issued by the Cantonal Court in Sarajevo on 10 October 2001. This date is more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

7. 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