HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

# DECISION ON ADMISSIBILITY

**Case no. CH/01/6792**

**Ljubinka NIKOLIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 2 July 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER, Vice-President
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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## I. FACTS

1. The application was introduced on 31 January 2001. The background of the case concerns the efforts of the applicant to regain possession of an apartment in Tuzla, located at Ulica Sjenjak Kula F/V/33. On 25 July 1995, the applicant concluded a contract on exchange of her apartment with that of Mr. Mirsad Mešković, which is also located in Tuzla, at Ulica Blagoje Parovića 53/III. It appears that at the same time, Mr. Mešković gave a certain amount of money to the applicant as a loan.

2. On 3 September 1998, the applicant initiated civil proceedings before the Municipal Court in Tuzla with a view to nullify the exchange contract. On 8 February 2000, the Municipal Court issued a judgment declaring the exchange contract null and void. The applicant was allowed to re-enter her former apartment and Mr. Mešković was ordered to vacate it. However, the same judgment ordered the applicant to pay back to Mr. Mešković the sum of 2,000 KM plus interest as of 1995, which amounts to a total of 6,600 KM. The applicant appealed against the judgment insofar as it ordered her to pay interest in the amount of 4,600 KM. However, on 6 October 2000, the Cantonal Court in Tuzla confirmed the first instance decision.

3. The applicant paid the sum of 6,600 KM to Mr. Mešković and entered into possession of her pre-war apartment on 18 December 2000.

## II. COMPLAINTS

4. The applicant objects to the lawfulness of the judgment of the Municipal Court in Tuzla ordering her to pay the amount of 4,600 KM as interest on the loan of 2,000 KM. Moreover, she alleges that the judge at the Municipal Court deliberately delayed the proceedings in her case. The applicant requests that the Chamber annul both the judgment of the Municipal Court and that of the Cantonal Court in Tuzla and that the amount of 4,600 KM be paid back to her.

## III. 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: (c) The Chamber shall also dismiss any application which it considers incompatible with the Agreement, manifestly ill-founded, or an abuse of the right to petition."

6. The Chamber notes that the applicant mainly complains that the courts misapplied the substantive law in 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 court (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. 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.

7. The Chamber further notes that the applicant complains that the length of the proceedings in her case were unreasonably long. The applicant initiated her civil proceedings on 3 September 1998, the Municipal Court issued its judgment on 8 February 2000, and the Cantonal Court upheld this judgment on 6 October 2000. Taking these facts into account, the Chamber cannot find that the applicant's proceedings lasted an unreasonably long time, within the meaning of Article 6 of the Convention. Therefore, the Chamber finds that this part of the application also does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the

Agreement. The Chamber therefore decides to declare the remainder of the application inadmissible as well.

## IV. CONCLUSION

8. For these reasons, the Chamber, by 6 votes to 1,

**DECLARES THE APPLICATION INADMISSIBLE.**

| | |
|---|---|
| (signed)<br>Ulrich GARMS<br>Registrar of the Chamber | (signed)<br>Mato TADIĆ<br>President of the Second Panel |