



DECISION ON ADMISSIBILITY

Case no. CH/03/13372

Lutvija SEFERČEHAJIĆ

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. Giovanni GRASSO
Mr. Mehmed DEKOVIĆ
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 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 submitted on 19 March 2003 and registered on the same date. The applicant complains that she was ordered, by a procedural decision of the competent body, to vacate the apartment in which she resides.

2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone the enforcement of the procedural decision of the administrative body and her eviction until the Chamber's final decision. On 31 March 2003, the Chamber decided not to order provisional measure requested.

II. STATEMENT OF FACTS AND PROCEEDINGS

3. On 13 December 2001, the Administration for Housing Affairs of Sarajevo Canton (the "administrative body") issued a procedural decision rejecting the applicant's request for a procedural decision to replace the contract on use of the apartment situated at Mustajbega Fadilpašića St. no. 7/II in Sarajevo, over which her late mother, who died in 1996, was the occupancy right holder. The same procedural decision established that the applicant occupied the apartment in question with no legal grounds; thus, she was ordered to hand over the apartment to the owner, the Chamber of Commerce of Bosnia and Herzegovina, within 15 days of receipt of the procedural decision. In its procedural decision, the administrative body found that the applicant was the occupancy right holder of an apartment situated at Olimpijska St. no. 17 in Sarajevo, which was purchased by her husband in 2000, after obtaining the applicant's consent. The applicant lodged an appeal against the aforementioned procedural decision to the Federal Ministry of Urban Planning and Environment (the "Ministry") due to incorrectly established factual background and misapplication of the substantive law.

4. On 13 March 2003, the Ministry issued a procedural decision rejecting the applicant's appeal as ill-founded. The applicant initiated an administrative dispute against the procedural decision before the Supreme Court of the Federation of Bosnia and Herzegovina.

5. On 13 February 2003, the Supreme Court issued a judgment rejecting the applicant's administrative dispute proceedings as ill-founded.

6. The applicant claims that she was only formally an occupancy right holder of the apartment situated at Olimpijska St. no. 17 and that she actually lived with her mother in the apartment situated at Mustajbega Fadilpašića St. no. 7/II.

III. COMPLAINTS

7. The applicant alleges that her right to a fair hearing under Article 6 of the European Convention on Human Rights (the "Convention") has been violated because she was not allowed to participate in the proceedings before the competent body due to the fact that the Ministry, as well as the Supreme Court, did not hold a public hearing in relation to her complaint, *i.e.* administrative dispute proceedings. The applicant also considers that her right to respect for her home and private and family life, under Article 8 of the Convention, have been violated.

IV. OPINION OF THE CHAMBER

8. 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."

A. Complaint under Article 8 of the Convention

9. As to the complaint of a violation of her right protected under Article 8 of the Convention, the Chamber notes that the competent national bodies, deciding the applicant's case, have established that the applicant does not live in the apartment over which she claims to be the occupancy right holder. Accordingly, the apartment in question cannot be considered as the applicant's home, within the meaning of Article 8 of the Convention. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights 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 this part of the application inadmissible.

B. Complaint under Article 6 of the Convention

10. The Chamber also notes that the applicant complains that the administrative bodies and the Supreme Court wrongly assessed the facts pertaining to her case and misapplied the law. 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 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 competent national bodies 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.

11. As to the applicant's complaint that she was not allowed to participate in the proceedings before the competent body because the Ministry, as well as the Supreme Court, did not hold a public hearing in relation to her complaint, the Chamber notes that in the first stage of the administrative proceedings the applicant had the opportunity to take part and to present her case, as well as to introduce and comment upon all evidence adduced or observations filed by the opposing party. The Chamber also notes that the applicant complains of violation of her right to a public hearing only in regard to the second instance of the administrative proceedings and the administrative dispute proceedings before the Supreme Court. The European Commission of Human Rights has held that in civil cases, an oral hearing at the appeal level is unnecessary (see, e.g., Eur. Commission HR, *K v. Switzerland*, decision on admissibility of 4 December 1984, 41 Decisions and Reports 242). Therefore, the Chamber finds that the application 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 this part of the application inadmissible, as well.

IV. CONCLUSION

12. 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