



DECISION ON ADMISSIBILITY

Case no. CH/01/7587

Baida BAŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 January 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN,

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, 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 11 June 2001. It is related to a private dispute between the applicant and her ex-husband over the occupancy right of the socially owned apartment located at ul. Mokušnice (former Pionirska) no.9-A in Zenica ("the apartment"), the Federation of Bosnia and Herzegovina. The apartment was used by the applicant and her husband during their marriage. When the applicant divorced her husband, she and her son, born in that marriage, left the apartment. According to the applicant she left the apartment as her ex-husband maltreated her.
2. Eight years after the applicant's marriage was terminated, she requested the Municipal Court in Zenica to determine her as the occupancy right holder over the apartment stating that her housing problems had not been resolved. The applicant's request was rejected on 22 August 2000. On 18 April 2001 the Zenica Cantonal Court, upon the applicant's appeal, confirmed the validity of the procedural decision of 22 August 2000. On 7 June 2001 the applicant filed a proposal for review of the procedural decision of the Cantonal Court, which is an extraordinary remedy.
3. The applicant claims that the courts, which decided upon her request and appeal, misconstrued the facts and misapplied the law in deciding in favour of her ex-husband.
4. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to prevent the sale and purchase of the apartment in question until the proceedings before the Chamber are concluded. On 10 October 2001 the Chamber decided not to order the provisional measure requested.

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: ... (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."
6. The Chamber notes that the applicant complains that the Municipal Court and the Zenica Cantonal Court wrongly assessed the facts pertaining to her case and misapplied the law. The Chamber recalls that it has stated on several occasions that it is not within its competence to substitute its own assessment of the facts and application of the law to 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). Accordingly, the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). It follows that the application may be rejected.

III. CONCLUSION

7. 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