



DECISSION ON ADMISSIBILITY

Case No. CH/01/7664

Radija VOLIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 February 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Manfred NOWAK
Mr. Vitimir 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. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. The case concerns the applicant's allegations that the respondent Party illegally deprived her of the right to use the apartment she owns, located in Sarajevo, at ul. Bolnička no. 17, in order to allow the pre-war occupancy right holder to repossess the apartment in question.

II. FACTS

2. The applicant is the owner of the apartment in Sarajevo, ul. Bolnička no. 17. She inherited the apartment from her parents but the apartment was burdened with an occupancy right. I.H. was the occupancy right holder and lived there with his wife S.H. since 1950. I.H. and S.H. divorced and S.H. continued to reside in the apartment.

3. S.H. left the apartment at the beginning of 1992, so the owner, i.e. the applicant, moved into the apartment at issue. She even renovated it with the approval of the competent municipal bodies of 28 October 1999 and expanded the apartment's surface area. The applicant alleges that the building in which the apartment is located is almost a hundred years old and she invested about 20,000 KM in repairing it.

4. On 17 December 1998 the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming that the applicant is the owner of the apartment and allowing her to repossess the apartment, within 60 days from the submission of the request for entering into the possession.

5. The occupancy right holder over the apartment, S.H., also received a decision of CRPC on 9 September 1999 confirming her right to enter into the possession of the apartment at issue.

6. The applicant alleges that on 12 October 1999 the Municipal Court I in Sarajevo issued a judgement ordering the applicant to leave the apartment at issue and hand it over to the occupancy right holder, S.H. The applicant filed an appeal against this judgement with the Cantonal Court Sarajevo, which issued a judgement on 25 May 2000 refusing the appeal and upholding the first instance judgement. The reasoning of this second instance judgement states that it was established from the CRPC decision that the occupancy right holder had the status of a refugee and that it was established in the first instance proceedings that S.H. lived in the apartment since 1950 in the capacity of a protected occupant and, therefore, the court correctly established that S. H. was still the occupancy right holder over the apartment and was entitled to undisturbed use of it.

7. On 14 February 2001, in executive procedure, the Municipal Court I in Sarajevo ordered the enforcement of the judgement of the Municipal Court I in Sarajevo of 12 October 1999. The applicant filed objections on several occasions against the procedural decision on the enforcement, primarily because she carried out considerable construction work at the apartment at issue, so she claimed that the apartment at issue, due to the construction work done, was not identical to the apartment described in the operative section of the judgement of 12 October 1999. Thus the court carried out the procedure of the apartment identification and established that it was the same apartment but with a larger floor surface.

8. On 24 July 2001 CRPC issued another decision, vacating its decision of 17 December 1998.

9. On 15 February 2002, the court refused the proposal for postponement of the enforcement of the procedural decision having found that the applicant was duly summoned to attend the on-site visit, but she did not respond, although being the one that initiated the procedure of the apartment identification.

10. Finally, on 7 March 2002, the applicant was forcibly evicted from the apartment at issue and the occupancy right holder, S.H., moved into the apartment.

III. PROCEEDINGS BEFORE THE CHAMBER

11. The application was introduced to the Chamber on 3 July 2001 and registered on the same day. The applicant requested the Chamber to issue a provisional measures preventing her eviction from the apartment she owns. The Chamber considered the case at its session of 5 July 2001 and decided to refuse the request for provisional measure and transmitted the case to the respondent Party under Article 6(1) of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention, for its observation on admissibility and merits.

12. On 14 September 2001 the case was transmitted to the respondent Party. On 15 October 2001 the respondent Party submitted its written observations to the Chamber. On 18 October 2001 the respondent Party's written observations were transmitted to the applicant for her reply. On 5 November 2001 the applicant submitted her reply to the Chamber.

13. On 23 May 2002, the Chamber sent a letter to the respondent Party and the applicant requesting additional information. The Chamber requested from the respondent Party information as to whether the applicant was duly informed of the scheduled hearings, in the lawsuit filed by S.H. for the repossession of the apartment in question and whether she justified her absence. At the same time the Chamber requested the respondent Party to be provided with copies of all delivery receipts from the court file. The respondent Party was also requested to submit potential evidence as to whether the applicant was duly informed of the scheduled hearing for the identification of the apartment.

14. On 23 May 2002, the Chamber sent a letter to the applicant requesting her to provide information on whether she requested the postponement of the hearing scheduled on 12 October 1999 during the first instance proceedings before Municipal Court I Sarajevo. The Chamber also requested the applicant to provide information as to whether she was delivered summons for other hearings and to inform the Chamber who was currently in the apartment. The Chamber requested the applicant to submit the CRPC decision of 24 July 2001 rendering this Commission's decision of 17 December 1998 ineffective. On 26 July 2002 the applicant submitted her reply to the Chamber's letter of 23 May 2002.

IV. COMPLAINTS

15. The applicant considers that her right to a fair trial under Article 6(1) of the Convention has been violated, as she did not take part in the procedure because she was not delivered the summons personally and she did not have a lawyer. She further states that, during the proceedings, the court was partial, as she was a Bosniak and the occupancy right holder a Croat. The applicant alleges that her apartment was forcibly taken away from her without any public interest. Therefore, the applicant considers that her rights under Article 1 of Protocol No. 1 to the Convention have been violated.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

16. With regard to the admissibility of the application, the respondent Party does not dispute that the applicant exhausted all domestic remedies. The respondent Party points out that the Cantonal Court judgement upholding the Municipal Court judgement was issued on 25 May 2000 and the applicant addressed the Chamber on 3 July 2001. Therefore, the respondent Party points out that the application was not submitted to the Chamber within six months from the issuance of the final decision and that the six-month time limit was not complied with and proposes to the Chamber to declare the application inadmissible.

17. With regard to the merits of the application, the respondent Party alleges that the applicant received timely the lawsuit initiated by S.H. on 4 September 1998 and she did not submit any reply to the lawsuit. Furthermore, although she was duly informed about the scheduled hearings, she did not justify her absence. Thus, the applicant's allegations of the court's partiality are incorrect. The respondent Party remarked that during the proceedings before the court, the applicant carried out the finalising construction work at the apartment concerned, disregarding the lawsuit for the occupancy right holder's repossession of the apartment and the outcome of the proceedings. Taking all these

facts into account, the respondent Party considers that Article 6(1) of the Convention has not been violated in the specific case.

18. In the context of Article 1 of Protocol No. 1 to the Convention, the respondent Party alleges that the applicant's right to peaceful enjoyment of property, in terms of the case law of the Strasbourg bodies, has not been violated by the domestic organs. To support this claim, the respondent party points out that it is indisputable that S.H. is the occupancy right holder over the apartment concerned and she used it until the beginning of the hostilities. Thus, she is enabled by the legislation of the respondent Party to repossess the apartment at issue. It follows, that the respondent Party considers that Article 1 of Protocol No. 1 to the Convention has not been violated.

19. In reply to the Chamber's letter of 23 May 2002 the respondent Party submits that the applicant was duly informed about the scheduled hearings in the proceedings on S.H.'s lawsuit. The respondent Party also alleges that the court file contains the applicant's medical documentation and that the court on two occasions postponed the hearings on the applicant's request due to the fact that her health deteriorated. The court held a hearing on 12 October 1999 in the absence of the applicant who was duly informed, as it was obvious that the applicant intended to delay the proceedings. As evidence of such allegations the respondent Party submitted delivery receipts that were in the file from which it is obvious that the applicant was informed about the hearings. The respondent Party submitted a copy of the medical documentation provided by the applicant during the first instance proceedings as justification for her absence from the scheduled hearings.

20. The respondent Party alleges that in addition to the fact that the applicant was duly informed about the court's intention to carry out the identification, she was not present when the apartment was opened. The apartment at ul. Bolnička no. 17 was forcibly opened on 7 March 2002 in the presence of two witnesses and with assistance of the police. Finally, the respondent Party alleges that in the applicant's case the courts decided within a reasonable time limit and the applicant was duly informed about each action of the courts of the respondent Party in the procedure of the establishment of the right over the apartment concerned. For these reasons the respondent Party maintains its proposals presented in the written observations on admissibility and merits.

B. The applicant

21. The applicant challenges the respondent Party's allegations with regard to exceeding the six-month time limit and she states that the executive procedure is still pending.

22. The applicant also points out that in the proceedings on S.H.'s lawsuit, she was not able to reply to the lawsuit or attend the hearings for medical reasons. The applicant also alleges that she did not receive the lawsuit filed by S.H or the first three summons on the scheduled hearings and therefore she was not able to give her reply to the lawsuit or hire a lawyer. For these reasons and for the first instance court's judgement being issued in the applicant's absence, the applicant alleges that Article 6 of the European Convention has been violated in her case. The applicant also alleges that in the proceedings before the court she was discriminated against on ethnical grounds as a Bosniak.

23. In her observations, the applicant alleges that the pre-war occupancy right holder S.H. left the apartment of her own will and moved into her daughter's apartment. Consequently, there was no public interest in ordering the applicant to vacate the apartment she owns, as the pre-war occupancy right holder voluntarily moved to another suitable apartment. Therefore, the applicant considers that her rights under Article 1 of Protocol No. 1 to the Convention have been violated.

24. In her reply to the Chamber's letter of 23 May 2002, the applicant alleges that she submitted to the court her medical documentation and requested postponement of the hearing scheduled on 12 October 1999. The applicant also alleges that the summons for the hearings were sent to the name Radija Volić-Vranešić at the address Zelenih Beretki, although she never used the Vranešić surname and she never received any lawsuit to which she could reply or potentially hire a lawyer. The applicant claims that she did not have a copy of the CRPC decision of 24 July 2001 (see paragraph 8, above) rendering ineffective the decision of 17 December 1998 allowing her to repossess the apartment concerned.

VI. OPINION OF THE CHAMBER

25. 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. The right to fair trial

26. The Chamber notes the applicant complains of the fact that she was not afforded the possibility to participate in the proceedings before the Municipal Court I in Sarajevo and to engage a lawyer, and that the courts were biased during the proceeding because of her Bosniak origin. The Chamber notes that during the civil and executive proceedings the applicant had ample time to participate actively in those proceedings, or to engage a lawyer to represent her before the court, which she failed to do. The Chamber notes that the court took into account the applicant's illness, which was the reason for postponing the scheduled hearings on two separate occasions. The Chamber also notes that one of the main principles of civil proceedings is to conduct those proceedings within a reasonable time and without unnecessary delay. The issuance of the first instance judgement in the applicant's absence, who was nonetheless properly informed about the final hearing, was in keeping with this principle to prevent further delays. As to the other allegations, the applicant has failed to submit any evidence to substantiate her allegation that the courts were biased because of her Bosniak origin. Therefore, the Chamber finds that there is no evidence to show the court has failed to act fairly as required under Article 6 of the Convention. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. Accordingly, the Chamber decides to declare this part of the application inadmissible.

B. The right to property

27. The applicant alleges a violation of her right to property because she was forcibly evicted from her apartment in Sarajevo, ul. Bolnička no. 17, in order to return it into the possession of S.H., despite the fact that such action was not “in the public interest”.

28. The Chamber notes that the disputed apartment is in the ownership of the applicant and that S.H. has lived in that apartment in the capacity of a protected tenant since 1950, and at the beginning of 1992 she abandoned the disputed apartment. At that time, the applicant entered into physical possession of the disputed apartment. Under the CRPC Decision of 17 December 1998, the applicant was allowed to return into the possession of the apartment. However, the CRPC by its new decision of 24 July 2001 annulled its decision of 17 December 1998. The occupancy right holder S.H. obtained the right to repossess the apartment on the basis of two decisions: the CRPC Decision of 9 September 1999 and the final judgment of the Municipal Court I in Sarajevo of 12 October 1999. On 14 February 2001, in the executive procedure, the Municipal Court I in Sarajevo ordered the enforcement of the judgement of the Municipal Court I in Sarajevo of 12 October 1999. The applicant was, as a result, ordered to vacate the apartment.

29. In the present case, the real estate owned by the applicant is burdened by the existence of an occupancy right since 1950. In the period of armed conflicts in Bosnia and Herzegovina the occupancy right holder left the apartment and the applicant moved into her apartment.

30. The Chamber notes that the applicant complains that there was no public interest in returning the disputed apartment into the possession of the occupancy right holder and that, therefore, her right to property under Article 1 of Protocol No. 1 to the Convention has been violated. The Chamber notes that Article 1 of Protocol No. 1 contains three rules. The first rule is the general principle of peaceful enjoyment of possessions. This rule is contained in the first sentence of the first paragraph. The second rule refers to deprivation of property and subjects it to the requirements of public interest and conditions laid out in law and general principles of international law; this rule is contained in the second sentence of the same paragraph. The third rule recognises the right of the states, *inter alia*, to control the use of property and subjects this to the requirement of the general interest, passing such laws they consider to be necessary for that purpose. That is contained in the second paragraph

(see, e.g., case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions January-July 1999). As to the meaning of public interest, the European Court held in *James v. United Kingdom* (European Court for Human Rights, judgement of 21 February 1986, Series A no. 98, pages 30 and 31, paragraphs 40 and 45) that the “deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be “in the public interest”. Nonetheless, the compulsory transfer of property from one individual to another may, depending upon the circumstances, constitute a legitimate aim for promoting the public interest.... taking of property effected in pursuance of legitimate social, economic or other policies may be “in the public interest”, even if the community at large has no direct use or enjoyment of the property taken.”

31. The Chamber recalls that under Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: the Agreement) the respondent Party agreed that all refugees and displaced persons have the right freely to return to their homes of origin, and that the protection of refugees and displaced persons is of vital interest for facilitating permanent peace. In accordance with that, the CRPC and the domestic courts established the right of return of the disputed apartment to the pre-war occupancy right holder S.H..

32. The Chamber is of the opinion that the applicant's eviction from the apartment she owns is a specific situation, caused by the intention and obligation of the respondent Party to permit the return of refugees and displaced persons to their pre-war homes. It also considers that, in the present case, it was made possible for the occupancy right holder S.H., who had lived in the disputed apartment since 1950 until the outbreak of the armed conflict, to regain possession. Therefore, the restriction of the applicant's rights pursues a legitimate aim, which is the policy of implementation of return of refugees and displaced persons to their pre-war homes. Furthermore, the Chamber notes that the applicant entered into possession of the apartment due to the fact that S.H. abandoned the apartment during the armed conflict in Bosnia and Herzegovina. The Chamber is of the opinion that the applicant's possession of the apartment due to that fact, can not be a legal ground for recognition to her of more rights than she had before the outbreak of the armed conflict. The Chamber in the present case, considers the limitation of the applicant's use of the property is in accordance with Article 1 of Protocol No. 1 to the Convention. Accordingly, the Chamber finds the application does not reveal that there has been a violation of rights and freedoms guaranteed under the Agreement. It follows the application is manifestly ill founded, within the meaning of Article VIII(2)(c) of the Agreement. Therefore, the Chamber decides to declare this part of the application inadmissible as well.

VII. CONCLUSION

33. 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