



DECISION ON ADMISSIBILITY

Case no. CH/01/8515

Nevena ĐURIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 June 2003 with the following members present:

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

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 concerns the applicant's request to enter into possession of an apartment located at Mjedenica no. 19, in Sarajevo, over which the applicant has the ownership right. It is a privately-owned apartment burdened with an occupancy right.

II. FACTS

2. The original owner of the apartment concerned was Bosiljka Mičić (B.M.). On 6 August 1981, she concluded a contract on use of the apartment with Hajrija Rašidagić (H.R.).

3. In the meantime, the applicant purchased the apartment concerned from B.M. and completed the entire procedure for registering her ownership right in the land book excerpt no. CXXIV/66. The occupancy right holder of the apartment, H.R., died in January 1990, and her husband died in 1992. Their granddaughter Neira Anković (N.A.) is currently using the apartment concerned.

4. On 4 May 1998, N.A. submitted a proposal to the housing authority of Sarajevo Centar Municipality to issue a procedural decision to replace the contract on use of the apartment concerned. N.A. stated that she lived in the apartment in a common household with her grandmother and grandfather.

5. On 19 October 2000, the Administration for Housing Affairs of Sarajevo Canton (hereinafter "the Administration") issued a procedural decision refusing N.A.'s proposal as ill-founded. It established that N.A. was using the apartment concerned without any legal basis. The Administration ordered her to move out of the apartment concerned within 15 days and to hand it over to the applicant. N.A. was not provided with emergency accommodation.

6. N.A. filed an appeal against the Administration's procedural decision. On 10 January 2001, the Federal Ministry of Physical Planning and Environment (hereinafter "the Ministry") issued a procedural decision refusing N.A.'s appeal.

7. On 23 January 2001, the applicant submitted a proposal to the Administration to allow the enforcement of the procedural decision of 19 October 2000.

8. N.A. initiated an administrative dispute against the procedural decision of 10 January 2001 by filing an action with the Supreme Court of the Federation of Bosnia and Herzegovina.

9. On 24 May 2001, the Supreme Court issued a judgment accepting the action, annulling the contested procedural decision of the Ministry as well as the first instance procedural decision of the Administration, and returning the case to the first instance body for renewed proceedings. In the reasoning, the Supreme Court pointed out that the administrative bodies were obliged primarily to establish with certainty whether H.R. was the actual occupancy right holder on the basis of the contract on use of the apartment concluded in 1981, because, according to Article 2 of then applicable Law on Housing Relations (Official Gazette of SRBiH, nos. 23/74 and 34/83), the right to an apartment owned by a citizen could only be acquired prior to entering into force of that Law.

10. Following the Supreme Court's judgment, on 30 May 2002, the Administration issued a procedural decision refusing N.A.'s request for issuance of a procedural decision to replace the contract on use of the apartment. It established that N.A. unlawfully used the apartment concerned, and it ordered her to vacate it within 15 days and to hand it over to the owner of the apartment.

11. N.A. filed an appeal. On 31 July 2002, the Ministry refused the appeal.

12. On 26 August 2002, the applicant submitted a proposal to the Administration for enforcement of the procedural decision of 30 May 2002. As the procedural decision was not yet enforceable, on 10 September 2002, the Administration issued a conclusion refusing the proposal for enforcement as premature. According to the respondent Party, this conclusion was duly delivered to the applicant's representative, and the applicant filed no appeal against it.

13. According to the respondent Party, N.A. has initiated administrative dispute proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina. On 20 December 2002, the Administration transmitted to the Federal Ministry of Physical Planning and Environment N.A.'s file for such administrative dispute proceedings. These proceedings are still pending.

III. PROCEEDINGS BEFORE THE CHAMBER

14. The application was submitted to the Chamber on 5 December 2001.

15. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action against N.A. to immediately enable the applicant to move into part of the apartment concerned. On 7 January 2002, the Chamber decided to refuse the provisional measure requested.

16. On 20 June and 12 November 2002, the applicant submitted additional information to the Chamber. On 22 April 2003 the respondent Party submitted additional information to the Chamber.

17. On 13 May 2003, the Chamber transmitted the respondent Party's information of 22 April 2003 to the applicant for her information.

IV. OPINION OF THE CHAMBER

18. 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) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...."

19. The Chamber notes that it appears that the applicant initiated enforcement proceedings too early, before the procedural decision of 30 May 2002 became enforceable. Therefore, the applicant can still now request enforcement of the procedural decision of 30 May 2002. Furthermore, accordingly to the respondent Party's information, N.A. has initiated administrative dispute proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina, which are still pending. Therefore, the Chamber finds that the domestic remedies have not been exhausted, as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

20. 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