



DECISION ON ADMISSIBILITY

Case no. CH/02/10672

Jovana JELISAVAC

against

REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 June 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
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 AND COMPLAINTS

1. The applicant has lived, according to her allegations, with her grandmother in an apartment at Marka Kraljevića St. no. 7 in Banja Luka. She has never been registered at that address with the Ministry of Internal Affairs.
2. After the grandmother's death on 26 December 2000 the applicant initiated proceedings for the transfer of the occupancy right from the deceased grandmother to herself. On 22 June 2001 the Department for Housing and Communal Issues Banja Luka issued a procedural decision rejecting the applicant's request for transfer of the occupancy right from the deceased grandmother to herself.
3. On 12 July 2001 the applicant filed an appeal with the Ministry for Urban Planning, Housing and Communal Issues of the city administration Banja Luka against the procedural decision of the Department for Housing and Communal Issues Banja Luka. On 3 August 2001 this Ministry issued a procedural decision rejecting the appeal of the applicant.
4. On 10 September 2001 the applicant filed a court action before the Supreme Court of the Republika Srpska for annulment of the administrative act of the Ministry of 3 August 2001. On 3 July 2002 the Supreme Court of the Republika Srpska issued a judgement rejecting the court action of the applicant as ill founded.
5. At the same time, the administrative proceedings upon the request by the apartment owner, the Institute for Orthopedic Prosthetics, for the removal of the applicant from the apartment have been conducted. On 17 September 2001 the Department for Housing and Communal Issues Banja Luka issued a procedural decision ordering the applicant to leave the apartment within 15 days, without the right to alternative accommodation.
6. The applicant filed an appeal against the mentioned procedural decision. On 30 July 2002 the Ministry for Urban Planning, Housing and Communal Issues of the city administration Banja Luka rejected the appeal by the applicant as ill founded.
7. The applicant states that her rights protected under Article 8 of the European Convention on Human Rights ("the Convention") and Article 1 Protocol No. 1 to the Convention have been violated.

II. PROCEEDINGS BEFORE THE CHAMBER

8. The application was introduced to the Chamber on 27 August 2002 and registered on the same day. The applicant is represented by Branislav Kosić, a lawyer.
9. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to suspend her eviction until a final decision is reached in this case. On 5 May 2002, the Chamber decided to reject the request for provisional measure.

III. OPINION OF THE CHAMBER

10. 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."
11. The Chamber notes that the applicant complains that the administrative organs and the Supreme Court wrongly assessed the facts pertaining to 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 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 court 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 the application inadmissible.

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