



DECISION ON ADMISSIBILITY

Case no. CH/ 02/11282

Mirjana TRGOVČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
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 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 submitted to the Chamber on 10 July 2002. The applicant's complaint concerns the failure of the Municipal Court in Tuzla to recognize her as the occupancy right holder over an apartment located at Narodnog Fronta Street no. 89/II in Tuzla. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent her eviction from the apartment which she occupies. On 5 November 2002, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

2. The owner of the apartment in question is the Social Fund for Pension and Disability Insurance of Bosnia and Herzegovina – Branch Office Tuzla (hereinafter: the owner). The original occupancy right holder over the apartment was I.M. After his death in 1985, the occupancy right was transferred to his wife, D.M., who later died.

3. The applicant alleges that I.M. is her father, although a third person, G.T., is registered as her father on her birth certificate. She also states that after I.M.'s death, she lived in a common household with his wife, D.M.

4. On 15 November 1993, the owner of the apartment in question decided to allocate the occupancy right over the apartment to the applicant. On 28 January 1994, on the basis of such decision, the applicant concluded a contract on use of the apartment with the Basic Housing Community (currently the Public Housing Company Tuzla).

5. On 15 June 1998, N.M. further filed a request for repossession of the apartment with the Municipal Secretariat for Housing–Public Utilities Affairs Tuzla.

6. On 20 October 1998 N.M., the divorced wife of D.M.'s son, filed a lawsuit with the Cantonal Court in Tuzla against the owner of the apartment as the first-defendant, the Basic Housing Community as the second-defendant, and the applicant as the third-defendant. N.M. requested the annulment of the decision of 15 November 1993 and termination of the contract on use of the apartment of 28 January 1994. She further requested the eviction of the applicant from the apartment.

7. On 1 July 1999, the Municipal Secretariat issued a conclusion refusing N.M.'s request of 15 June 1998, stating that it was not the competent body. However, on 23 November 2000, upon N.M.'s request, the Municipal Secretariat for Housing Affairs of the Tuzla Municipality issued a conclusion suspending the proceedings for reinstatement until resolution of the preliminary issues before the competent court in accordance with Articles 142 and 217 of the Code on Administrative Procedure.

8. On 30 January 2001, the Municipal Court issued a judgment declaring null and void both the owner's decision of 15 November 1993 and the contract on use of the apartment of 28 January 1994. The applicant was obliged to move out of the apartment and to hand over the empty premises to N.M. within 15 days under threat of forcible execution.

9. On 14 February 2001 both the applicant and N.M. filed appeals against the conclusion of 23 November 2000. The Ministry of Physical Planning and Protection of Environment issued a procedural decision annulling the contested conclusion and returning the case to the first instance body for renewed proceedings. The Ministry ordered the first instance body to conduct the renewed proceedings in accordance with Articles 140 and 141 of the Law on Administrative Procedure, to decide on N.M.'s right and the applicant's status, and, after precisely establishing the facts, to issue a new procedural decision in accordance with the law.

10. On 9 March 2001, the Municipal Secretariat, in the renewed proceedings, issued a procedural decision refusing N.M.'s request for reinstatement into the apartment. The decision was based on

the fact that N.M., by divorcing the late D.M.'s son (in court proceedings in Germany in 1996), forfeited her right to repossess the apartment.

11. N.M. filed an appeal against the procedural decision of 9 March 2001 and the Ministry refused the appeal on 13 April 2001.

12. On 18 May 2001, the applicant filed an appeal against the judgment of the Municipal Court dated 30 January 2001. On 3 November 2001, the Cantonal Court in Tuzla refused the appeal and upheld the first instance judgement.

13. The applicant filed a request for review. On 31 May 2002, the Supreme Court of the Federation of Bosnia and Herzegovina refused the request for review as ill-founded.

III. COMPLAINTS

14. The applicant complains that during the proceedings, the court committed a number of procedural violations to her detriment. The applicant also alleges that the judges were corrupt. The applicant requests the Chamber to annul the decisions issued by the Municipal Court in Tuzla, and to uphold the procedural decisions of the Municipal Department of 9 March 2001, which were, according to the applicant, issued in proceedings conducted before the competent body for deciding on the matter.

IV. OPINION OF THE CHAMBER

15. 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."

16. The Chamber notes that the applicant complains that the Municipal Court in Tuzla wrongly assessed the facts pertaining to her case and misapplied the law. 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 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 court failed to act fairly as required by Article 6 of the Convention; further, the Municipal Court findings were subsequently upheld on appeal by both the Cantonal and Supreme Courts. 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.

V. CONCLUSION

17. 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