



DECISION ON ADMISSIBILITY

Case no. CH/02/12191

Dragana SIMIĆ

against

THE FEDERATION BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 November 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 applicant is the owner of an apartment on the basis of a purchase contract concluded on 17 May 2000, and she was registered as the owner of the apartment in the registry of the contracts of the Municipal Court Tuzla. However, on 16 May 2000 the Municipal Court Tuzla decided that the applicant's contract on use of the apartment which is the basis for the purchase is not valid. The applicant requests the Chamber to prevent the enforcement of the procedural decision of the Municipal Court Tuzla of 16 May 2000 in which she was ordered to vacate the apartment.

II. FACTS

2. M.Z., as an employee of the "Proleter – Clothing Factory Tuzla" (the owner of the apartment), was allocated the apartment on 5 November 1986 and she moved in. On the request of R.K., also an employee of "Proleter – Clothing Factory", the First Instance Court of Associated Labour issued a provisional measure forbidding M.Z. to move into the apartment concerned. The owner of the apartment was ordered neither to hand over the keys of the apartment to her nor to conclude the contract on use of the apartment.

3. On 6 April 1988 the Appeals Court of Associated Labour of Bosnia and Herzegovina decided on the appeal of M.Z. against the procedural decision of the First instance Court of Associated Labour Tuzla and issued the decision refusing M.Z.'s appeal as ill founded.

4. It appears from the judgement issued by the Municipal Court in Tuzla on 16 May 2000 that in the new proceeding the owner of the apartment allocated the apartment to M.Z.. R.K. appealed again and initiated court proceeding. For this reason M.Z. was unable to conclude a contract on use of the apartment. In 1994 M.Z. left the apartment and the applicant moved in the apartment. The Court proceeding initiated by R.K. was validly finished on 11 July 1996 when R.K. withdrew the lawsuit.

5. On 9 July 1996 the owner of the apartment issued a decision allocating the apartment to the applicant. On 24 March 1997 the applicant concluded the contract on use of the apartment.

6. On 25 March 1999, M.Z. initiated proceeding before the Municipal Court Tuzla in order to establish her occupancy right over the apartment and evict the applicant from the apartment.

7. On 16 May 2000, the Municipal Court Tuzla issued the judgement establishing that the procedural decision by which M.Z. was allocated the apartment became valid on 11 July 1996. The same judgement established that both the decision on allocating the apartment to the applicant and the contract on use of the apartment, which was concluded with the applicant, became ineffective. Accordingly, the applicant was obliged to move out of the apartment concerned.

8. On 17 May 2000 the applicant concluded a contract on purchase of the apartment with the owner of the apartment and registered herself as the owner of the apartment in the deposited registry entries of the Municipal Court in Tuzla.

9. The applicant, the owner of the apartment and R.K. (see paragraph 2) filed appeals against the judgement of the Municipal Court Tuzla. The Cantonal Court Tuzla issued the decision on 4 April 2001, refusing the appeals and upheld the first instance judgement.

10. The Cantonal Court based its decision upon the following reasoning: R.K. initiated court proceeding against the decision of the owner of the apartment by which the apartment is allocated to M.Z. This proceeding was concluded by valid judgement of the Tuzla Court issued on 11 July 1996. In this proceeding R.K. withdrew his action and gave up his statement of claim, because he was allocated another apartment for use. The court further stated that it did not accept the complaint of the applicant because, at the moment when she was allocated the apartment for use in 1996, M.Z. did not have the valid procedural decision on use of the apartment.

11. After having received the valid judgement M.Z. initiated proceeding for the enforcement of the judgement. The Municipal Court Tuzla issued the procedural decision on enforcement of the judgement on 5 September 2001 against which the applicant filed a petition.
12. On 6 September 2001, the applicant filed a request for revision of the Cantonal Court decision. The Supreme Court has not decided on revision yet.
13. The applicant's petition was refused by the procedural decision of the Municipal Court Tuzla on 9 November 2001. The proposal to postpone the enforcement of the judgement of the Municipal Court was rejected by the same procedural decision as ill founded.
14. The applicant filed an appeal on 29 November 2001.
15. On 18 March 2002, the Cantonal Court Tuzla issued a procedural decision partly accepting the appeal in relation to the request for the postponement of the enforcement. The remaining part of the procedural decision remained in force.
16. On 20 May 2002, the Municipal Court Tuzla, acting on the instructions of the Cantonal Court, issued a procedural decision refusing the applicant's proposal for the postponement of the enforcement as ill founded.
17. On 5 June 2002, the applicant filed an appeal, which was refused by the Cantonal Court on 9 July 2002 and the first instance procedural decision was upheld.

III. ALLEGED VIOLATIONS AND COMPLAINS

18. The applicant alleges that her right provided under Article 6 and Article 8 of the Convention and the right to private property have been violated.
19. According to the applicant's allegations, the court misinterpreted the provisions of Articles 6 and 11 of the Law on Housing Relations, and deciding on the appeal against the first instance decision of the Municipal Court Tuzla, the Cantonal Court Tuzla violated Articles 6 and 8 of the Convention.
20. The applicant alleges that the judge S.M. took part in the appellate proceeding both in the civil case and in the enforcement proceedings, which raises doubts concerning his impartiality.

IV. PROCEEDINGS BEFORE THE CHAMBER AND REMEDIES SOUGHT

21. The application was submitted to the Chamber on 29 August 2002 and was registered on the same day.
22. The applicant requests the Chamber to order, as a provisional measure, to stop her eviction until decision on revision will be issued.
23. On 8 October 2002 the First Panel decided to reject the request for provisional measures.

V. OPINION OF THE CHAMBER

24. 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 (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."

25. The Chamber notes that the applicant complains that the Municipal and Cantonal Courts 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. It follows that in this respect 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 in this respect.

26. With regard to the applicant's complaint that the judge S.M. was not impartial as he took part in the appellate proceeding both in the civil case and in the enforcement proceedings, the Chamber finds that this fact in itself is not sufficient to raise objective doubts about his impartiality. Both the absence of any personal interest of the judge and the fact that the judge decided as member of a panel of judges in the civil and the executive proceedings contribute to the fact that the judge appears impartial. Therefore, the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this complaint of 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 in this respect as well.

VI. CONCLUSION

27. 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