



DECISION ON ADMISSIBILITY

Case no. CH/02/12273

Mira TANASIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 January 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. FACTS

1. On 7 November 1990 the marriage of the applicant and her husband was dissolved by the judgment of the First Instance Court in Lukavac. The applicant's ex-husband is the occupancy right holder over an apartment in Ratka Perića Street C-6/10 in Lukavac.
2. On 15 March 1999 the applicant's husband filed a claim for repossession of the apartment concerned with the competent administration for housing issues. On 29 March 2000 the applicant's husband submitted a signed and verified statement on withdrawing the claim for repossession of the apartment with the Municipal Court Lukavac because his house at Parjik in Lukavac Municipality, in which he intends to live, was under reconstruction. On 29 March 2000 the Department for Public Utilities, Housing Affairs and Affairs of the Local Communities–Municipality Lukavac issued a conclusion suspending the proceedings on the claim for repossession of the apartment filed by the applicant's husband.
3. On 22 May 2000 the applicant initiated proceedings before the Municipal Court in Lukavac to establish the occupancy right holder of the apartment concerned.
4. On 6 July 2001 the Municipal Court in Lukavac issued a procedural decision refusing the request to establish the applicant as the occupancy right holder of the apartment concerned.
5. The applicant appealed against the procedural decision. On 18 January 2002 the Cantonal Court in Tuzla refused the appeal and upheld the first instance procedural decision. The reasoning of the Cantonal Court procedural decision states that neither the applicant, nor her husband, are in possession of the apartment—the applicant's husband since the divorce in 1990 and the applicant since 1992—and moreover that her husband withdrew his claim for repossession. The applicant has never filed a claim for repossession of the apartment pursuant to the Law on Cessation of Application of the Law on Abandoned Apartments, and both parties' occupancy right over the apartment concerned has ceased.
6. On 4 July 2002 the Supreme Court of the Federation of Bosnia and Herzegovina refused the applicant's request for review of the procedural decision of the Cantonal Court, referring to the reasons stated in the Cantonal Court procedural decision.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMPLAINTS

7. The application was submitted to the Chamber on 23 September 2002. The applicant is represented by Vinka Gutić, a lawyer from Lukavac.
8. The applicant requests the Chamber to order the respondent Party, as a provisional measure, to take all necessary measures to prevent the temporary occupant from purchasing the apartment and to order his eviction from the apartment concerned, as well as to set aside the conclusion of the administrative body. On 4 November 2002 the Chamber rejected the provisional measure requested.
9. The applicant complains that her rights protected under Article 6 and 8 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention have been violated. She claims that after the divorce the competent administrative body failed to establish who was the occupancy right holder of the apartment. She also alleges that the court reached an incorrect conclusion that her husband could withdraw the claim for repossession without her consent. The applicant states that she would like to return to her pre-war home.

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 applicant, who was in possession of the apartment concerned from 1990 until 1992, was entitled to submit a request for repossession of the apartment under the Law on Cessation of the Law on Application of the Law on Abandoned Apartments. However, the applicant failed to submit a request for repossession of the apartment in accordance with the Law before the expiry of the deadline on 4 October 1999. The applicant initiated proceeding before domestic court in 2000, asking the court to declare that she is the occupancy right holder over the apartment. The Chamber notes that domestic court established that applicant had failed to submit a request for repossession and had lost her occupancy right. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. 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)
Michèle PICARD
President of the First Panel