



DECISION ON ADMISSIBILITY

Case no. CH/02/12290

Hana VELAGIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 November 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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 Articles VIII(2)(a) and 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 introduced on 27 September 2002. It concerns a dispute over exchanged property consisting of a house, other space and land registered as a cadastral plot no. 2664/4 and land registered as a cadastral plot no. 2662/2, located in Ilidža, the Federation of Bosnia and Herzegovina (the "property"). The applicant requested that the Chamber order the respondent Parties, as a provisional measure, to suspend implementation of a conclusion on enforcement of 30 August 2002 of the Ilidža Municipality, ordering her eviction from the property. On 11 October 2002, the Chamber decided not to order the provisional measure requested.

II. FACTS AND COMPLAINTS

2. According to the applicant, she is a co-owner of the property with a 2/6 share; the remainder of the property is owned by other members of the Velagić family. The applicant alleges that she became a co-owner and possessor of the exchanged property based on a contract of 10 July 1994 (the "contract") concluded with M.K., the pre-war owner/possessor of the property. On 21 October 1998 the First Instance Court in Bijeljina cancelled the contract, allegedly with no knowledge of the applicant or her family, as they did not authorise their lawyer to take any steps regarding cancellation of the contract of 10 July 1994. The applicant claims she initiated civil proceedings before the Municipal Court II in Sarajevo against her lawyer. These civil proceedings are still pending. The applicant further alleges that M.K. hid documentation on the exchange of the property. Thereafter, M.K. obtained a new registration of ownership over the property in Ilidža in her favour. However, on 3 June 2002 the Court issued a judgment refusing review of the cancellation proceedings, as both parties stated that they have no legal interest to pursue the proceedings.

3. On 10 June 1999 the immovable property constructed on cadastral plot no. 2664/4 was expropriated. A dispute on the amount of compensation for the expropriated property is still pending before the Ilidža Municipality between the parties, as both have claimed the right to compensation for the exchanged property. At a hearing held on 23 September 2002, the applicant stated that she has the right to compensation as a legal possessor of the property based on the contract of 10 July 1994. At the same hearing, M.K. stated that the contract of 10 July 1994 had been concluded under force and duress and it was cancelled on 21 October 1998.

4. On 28 October 1999 M.K.'s husband obtained a decision from the Commission for Real Property Claims ("CRPC") which recognises him as the legal possessor of the property in question. There is no indication in the case file that proceedings on enforcement or pursuant to Article 12a of the Law on Enforcement of CRPC Decisions (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/99) have been initiated regarding the contract on exchange of the property.

5. On 23 December 1999, the Ilidža Municipality (the "Municipality") issued a procedural decision ordering the real estate located at ul. Lužanska no. 44, in Ilidža, to be returned into the possession of the pre war owner/possessor, M.K. The applicant was ordered to vacate the property in 15 days, with no right to alternative accommodation. According to the Municipality, the house had neither been declared abandoned nor allocated to the applicant and she had been using the property in question with no legal basis. The applicant's appeal against this procedural decision was refused on 26 October 2000 by the Ministry for Physical Planning and Communal Affairs of the Sarajevo Canton (the "Ministry"), as manifestly ill-founded because the applicant failed to prove that she is the legal possessor of the property. Although no appeal is allowed against this decision, an administrative dispute may be initiated against it before the Cantonal Court in Sarajevo.

6. On 30 August 2002 the Municipality approved enforcement of the procedural decision of 23 December 1999 and scheduled the applicant's eviction on 17 October 2002. According to the Municipality, for future accommodation the applicant may address the Ministry for Work, Social Policy, Health, Displaced Persons and Refugees of the Sarajevo Canton. Although an appeal has no suspensive effect, the applicant submitted an appeal against the procedural decision on 16 September 2002.

7. The applicant alleges that her right to home has been violated. The applicant further contests the right of M.K. to the property in question.

III. OPINION OF THE CHAMBER

8. 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.”

A. As against Bosnia and Herzegovina

9. With regard to the two respondent Parties, the Chamber notes that the Ilidža Municipality responsible for the proceedings complained of by the applicant is the first instance administrative organ, the conduct of which engages the responsibility of the Federation, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

B. As against the Federation of Bosnia and Herzegovina

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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

11. The Chamber notes that the applicant has failed to substantiate that she initiated an administrative dispute against the procedural decision of 26 October 2000. The applicant has not shown that this remedy was ineffective and it does not appear so to the Chamber. The Chamber further notes that the applicant’s complaints are premature as the appeal proceeding against the conclusion of the Ilidža Municipality of 30 August 2002, the proceedings on compensation for the expropriated property before the Ilidža Municipality, and the civil proceedings before the Municipal Court II in Sarajevo are all still pending. Accordingly, the Chamber finds that the applicant has not exhausted domestic remedies as required by Article VIII (2)(a) the Agreement. The Chamber therefore decides to declare the application inadmissible as against the Federation Bosnia and Herzegovina as well.

IV. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel