DECISION ON ADMISSIBILITY

Case no. CH/02/12333

Jadranka ZORIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 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 Articles 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 registered on 14 October 2002. The applicant complains of a decision of the Secretariat for General Administration of the Zenica Municipality (Općinski sekretarijat za opću upravu općine Zenica) ("Secretariat") not allowing her to be established as the occupancy right holder over an apartment previously possessed by her late mother, who was once the occupancy right holder of the apartment.

2.   The applicant requested the Chamber to order the respondent Party, as a provisional measure, to prevent the current user and occupancy right holder from purchasing her late mother's apartment. On 5 November 2002 the Chamber decided not to order provisional measure requested.

II.   STATEMENT OF FACTS

3.   The applicant lived in the apartment located at the Jalimanov put no. 6 in Zenica together with her mother, husband and two children until May 1992. Her mother, Jozefina Đorđević, was the occupancy right holder over the apartment. After the outbreak of hostilities in Bosnia and Herzegovina, the applicant, her husband and two children left the apartment and obtained refugee status in Serbia. The applicant's mother remained in the apartment, and she died on 23 October 1998.

4.   After the death of her mother, the applicant initiated an administrative procedure before the competent administrative organ of the Municipality Zenica (the "Secretariat") for the transfer of the occupancy right from her mother to herself. At the same time, the owner of the apartment, the Business System RMK Zenica initiated a procedure before the same organ and requested that the applicant be ordered to vacate the apartment in question and that the apartment be handed over to the owner. On 12 July 1999 the Secretariat issued a procedural decision rejecting the applicant's request and accepting the owner's request. The Secretariat considered that the applicant was not a member of the family household at the moment of the death of the occupancy right holder, the applicant's mother. It further considered that, although it was not possible for the applicant to return to the apartment during the armed conflict, she could have returned after the end of the armed conflict and before the death of her mother on 23 October 1998.

5.   The applicant submitted an appeal against the Secretariat's decision. On 12 October 1999, the Ministry for Urbanism, Physical Planning and Environment of the Ze-Do Canton (the "Ministry") issued a procedural decision rejecting the applicant's appeal as ill-founded.

6.   The applicant initiated an administrative dispute against the procedural decision of the Ministry, but on 10 January 2000, the Cantonal Court in Zenica rejected her complaint as ill-founded.

7.   The applicant appealed against the judgement of the Cantonal Court. On 22 March 2001, the Supreme Court of the Federation of Bosnia and Herzegovina rejected her appeal as ill-founded.

8.   The applicant submitted a request for confirmation of her occupancy right to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), and, on 24 July 2001, the CRPC confirmed in its decision that Jozefina Đorđević, the applicant's mother, was the occupancy right holder over the apartment in question on 1 April 1992. The current user of the apartment later submitted a request for reconsideration of the decision. The CRPC accepted that request and in its decision of 22 January 2002, rendered the decision of 24 July 2001 out of force.

9.   The owner of the apartment allocated it for use to the current user, who concluded a contract on use of apartment. Currently, the current user's procedure to purchase the apartment is ongoing.

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 competent administrative bodies and the 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 administrative bodies and courts 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)   (signed)
Ulrich GARMS   Michèle PICARD
Registrar of the Chamber   President of the First Panel