



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/99/1522

Gorjana TANOVIĆ

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 5 June 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 Articles VIII(2)(a), VIII(2)(c) and VIII(3)(b) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to repossess her pre-war apartment located at Ulica Trampina 6/IV in Sarajevo and to be registered as the owner of her apartment, which she had purchased from the former JNA (Yugoslav National Army) Housing Fund prior to the armed conflict.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 4 February 1999 and registered on the same day.

3. On 1 June 2000, the applicant requested that the Chamber order the respondent Party, the Federation of Bosnia and Herzegovina (the "Federation"), as a provisional measure, to take all necessary action to permit her to immediately enter into possession of her apartment, to register her ownership of the apartment in the land registry books, and to prohibit any reconstruction works by the current occupant.

4. On 7 June 2000, the Chamber decided not to order the provisional measure requested.

5. The application was transmitted on 12 June 2000 to the respondent Parties for their observations on the admissibility and merits.

6. The Chamber received the Federation's observations on the admissibility and merits on 27 July 2000 and the Federation's additional written observations on 6 December 2000 and 11 April 2003.

7. On 20 May 2003, the applicant's representative informed the Chamber that she had repossessed the apartment and had received an order to be registered as the owner of the apartment. The representative stated that the applicant had also repossessed the garage; however, she wishes to continue with her case insofar as she has not been able to register her ownership of the garage.

III. OPINION OF THE CHAMBER

A. Claim for repossession and registration as the owner of the pre-war apartment

8. In accordance with Article VIII(3) of the Agreement, "the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights."

9. The Chamber notes that the applicant has informed it that she has succeeded in repossessing her pre-war apartment and that an order to be registered as the owner has been issued. That being so, the Chamber considers that the main issues raised in the application have been resolved. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require examination of this part of the application to be continued. The Chamber therefore decides to strike out this part of the application pursuant to Article VIII(3)(b) of the Agreement.

B. Claim for repossession and registration of the garage

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 repossessed the garage, but that she has not yet received the order from the Federation Ministry of Defence to be registered as the owner of the garage. However, the applicant has informed the Chamber that the proceedings are still pending in this regard. Accordingly, the Chamber considers that the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

C. Claim as against Bosnia and Herzegovina

12. 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.”

13. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton responsible for the proceedings complained of by the applicant is an organ of the Canton, 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.

IV. CONCLUSION

14. For these reasons, the Chamber, unanimously,

**STRIKES OUT THE APPLICATION IN PART and
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel