



DECISION ON ADMISSIBILITY

Case no. CH/99/2412

Slavka ZEC

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 October 2000 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. Peter KEMPEES, 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)(c) and XI of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant, who is of Croat origin and lives in Prijedor in the Republika Srpska, was the owner of a house there. On 10 August 1995 she entered into a contract for exchange of properties with Mr. B.V., who was the owner of a house in Brač, Croatia. The applicant claims that she entered into this contract because she was pressured to do so, as at the time a large number of Serb refugees and displaced persons came to Prijedor, as the Republika Srpska Krajina had collapsed and the Republika Srpska lost a lot of territory. She claims that she felt that she had no choice but to enter into the contract.

2. On 8 March 1996, the applicant initiated proceedings before the Court of First Instance in Prijedor against B.V., seeking the annulment of the contract for exchange. This was refused on 27 December 1996. At the same time, deciding on a counterclaim brought by B.V. against the applicant, the court ordered the applicant to vacate the property within 15 days, under threat of forcible execution.

3. The applicant filed an appeal to the Regional Court in Banja Luka, which refused it on 25 September 1997.

4. On 26 May 1999 the Supreme Court of the Republika Srpska refused her request for review of the lower instance decisions. Conclusions have been issued by the Court of First Instance scheduling the eviction. The applicant has lodged objections to these conclusions, which have not been carried out. The applicant claims that she did not receive a fair hearing due to the lack of impartiality of the courts.

5. On 21 October 1999 (i.e. before the case was submitted to the Chamber) the applicant applied to the Constitutional Court of Bosnia and Herzegovina, where the case is registered under number U 15/99. On 3 December 1999 the Constitutional Court issued a provisional measure in the case, staying the execution of the decision of the Court of First Instance until the final decision of the Constitutional Court. The Republika Srpska has submitted observations in the proceedings on a number of occasions. A public hearing is to be held in the case, the date for which has not yet been set.

II. COMPLAINTS

6. The applicant complains that her right to a fair hearing, her right to property and her right to liberty and safety have been violated. Further, she states that she was discriminated against on the grounds of her national origin in the proceedings before the courts.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was lodged with the Chamber on 8 November 1999 and registered on the same day. The applicant requested the Chamber to order the Republika Srpska, as a provisional measure, to take all necessary steps to prevent her eviction from the property concerned in the application.

8. On 11 November 1999 the Chamber refused the request to order a provisional measure. The applicant was informed of this refusal on 12 November 1999 and on 17 November 1999 she informed the Chamber that she wished to proceed with her application before it.

9. On 27 December 1999 the application was transmitted to the Republika Srpska for observations on its admissibility and merits, which were received on 28 February 2000. These

observations do not mention the fact that the case is pending before the Constitutional Court. The further observations of the applicant were received on 18 April 2000 and transmitted to the Republika Srpska for information.

IV. OPINION OF THE CHAMBER

10. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. In the present case the Chamber has considered whether it should accept an application concerning a matter which has been brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber and is pending before that Court.

11. The Chamber recalls that pursuant to Article II.2 of the Constitution of Bosnia and Herzegovina, set forth in Annex 4 to the General Framework Agreement, the rights and freedoms enumerated in the European Convention and its Protocols apply directly in Bosnia and Herzegovina.

12. Pursuant to Article VI.3.b of the Constitution the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgement of any other court in Bosnia and Herzegovina. These "issues under this Constitution" in Article VI.3.b include alleged violations of human rights, as guaranteed by Article II of the Constitution, and the Constitutional Court has jurisdiction under Article VI.3.b to determine such issues upon appeal against the decisions of other courts.

13. The Chamber notes that in the specific circumstances of the present application its jurisdiction overlaps with that of the Constitutional Court. The application to the Chamber concerns the same matter and involves the same parties as the case pending before the Constitutional Court.

14. Under Article VIII(2) of the Agreement:

"The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:
(a)..."

As the Chamber noted in the case of *Sjarić v. Federation of Bosnia and Herzegovina* (Case No. CH/00/4441, Decision of 6 June 2000, paragraph 13) the wording of this provision clearly implies that the admissibility criteria in sub-paragraphs (a) and (d) of Article VIII(2), i.e. exhaustion of domestic remedies, the six-month rule, *res judicata*, incompatibility with the Agreement, manifestly ill-founded and *lis alibi pendens*, are not the only criteria it may apply in deciding whether to accept a case. Accordingly, under Article VIII(2) the Chamber enjoys a certain discretion not to accept cases on grounds other than those expressly spelled out in that provision.

15. In the light of these considerations and considering further that the applicant has brought the matter before the Constitutional Court before she lodged her application with the Chamber, the Chamber finds it appropriate to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept the application.

V. CONCLUSION

16. For these reasons, the Chamber, by 5 votes against 2

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

