



DECISION ON ADMISSIBILITY

Case no. CH/02/8635

Suada AHMETOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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) and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. On 14 May 1998, the applicant was allocated an apartment to use permanently by the Union banka dd Sarajevo, the owner of the apartment, located at ulica Himze Polovine 1/II in Sarajevo. She moved into it on 21 May 2001. On 6 June 2001, she was evicted from that apartment.
2. On 7 June 2001, the pre-war occupancy right holder, Džemal Hrelja, moved into the apartment in question.
3. The applicant states that Džemal Hrelja is a multiple occupant because he possesses the apartment in social ownership and owns a private house at ulica Bistričak 25 in Zenica. The applicant alleges that none of the members of the Hrelja family has had a registered place of residence at ulica Himze Polovine 1/II in Sarajevo since 30 April 1991.
4. The applicant alleges that in the period 1993 through 18 December 2000, temporary occupants were living in the apartment in question. The apartment was empty during the period of 18 December 2000 through 21 May 2001, when the owner of the apartment delivered possession of it to the applicant.
5. According to the applicant, Džemal Hrelja has been at the same time also the occupancy right holder of an apartment in Zenica located at ulica Mejdandžik 9 c since 1967.
6. On 2 March 2000, Džemal Hrelja submitted a request to purchase the apartment in Zenica.
7. The daughter of the occupancy right holder, Dženita Hrelja, as a member of the family household, applied to the Administration for Housing Affairs of Canton Sarajevo (the "Administration") with a request to repossess the apartment in question. The applicant states that Dženita Hrelja has been married since 1998 and lives in her own family household at ulica Karpuzova 10 in Sarajevo and that she has been falsely registered at the address on Himze Polovine since 1997 to date.
8. On 13 July 2000, the Administration issued a procedural decision refusing the request of Dženita Hrelja for repossession of the apartment in view of the fact that it had been established that her father was also the occupancy right holder over the two-room apartment in Zenica at ulica Mejdandžik 9 c.
9. Dženita Hrelja filed an appeal against the aforementioned procedural decision to the Ministry of Housing Affairs (the "Ministry"), which issued a procedural decision on 6 November 2000 setting aside the procedural decision of the Administration and returned the case to the first instance body for renewed proceedings.
10. On 24 April 2001, the Administration issued a procedural decision confirming that Dženita Hrelja, the daughter, was a member of the family household of the occupancy right holder over the apartment in question and she was allowed to regain possession of the apartment.
11. On 28 May 2001, the applicant filed an appeal against the procedural decision of 24 April 2001. On 29 May 2001, the owner of the apartment in Sarajevo, Union banka, also appealed against that procedural decision.
12. On 14 July 1997, the owner of the apartment in Sarajevo, Union banka, filed an action before the Municipal Court I Sarajevo against Džemal and Vasvija Hrelja requesting the annulment of the contract on use of the apartment in question in Sarajevo. On 15 December 1999, the Municipal Court I Sarajevo issued a judgment entirely rejecting the plaintiff's lawsuit. The Union banka lodged an appeal against the judgment of the Municipal Court I Sarajevo of 15 December 1999. On 26 April 2001, the Cantonal Court in Sarajevo issued a procedural decision accepting the appeal, annulling the first instance decision, and returning the case to the first instance court for renewed proceedings.

13. The owner of the apartment (Union banka) was provided an agreement by the JP (Public Company) "Zavod za izgradnju i uređenje grada Zenica" Zenica pursuant to which Džemal Hrelja would surrender the apartment in Zenica to its owner on 26 June 2001. However, the applicant alleges that there was a bogus document-record submitted as an attachment to the agreement, stating that Džemal Hrelja had surrendered the apartment in Zenica, being the temporary occupant, to the Department of General Administration of the Municipality Zenica.

II. COMPLAINTS

14. The applicant alleges that the respondent Party has violated Article 6 of the European Convention on Human Rights (the "Convention"), as well as Article 1 of Protocol No. 1 to the Convention. She also alleges that the respondent Party has violated its own laws, thereby violating the applicant's human rights and that Dženita Hrelja actively participated in that, being a member of the local staff of the Office of the High Representative (the "OHR"). She complains that Dženita HRELJA caused the issuance of the procedural decision of 24 April 2001, although she is not a member of the family household of her father, Džemal Hrelja, with respect to the apartment in question. The applicant, therefore, proposes that the OHR be invited as *amicus curiae* to assist in the establishment of the truth in this dispute.

15. The applicant considers that her case raises discrimination on economic grounds because Dženita Hrelja is an employee of the OHR with a good income and her father is a pensioner with a house in his private ownership, while also being an occupancy right holder of an apartment since 1967, and now, he is further obtaining an apartment in Sarajevo. On the other hand, the applicant earns her living by working at a domestic bank.

III. REQUESTED REMEDIES AND PROCEEDINGS BEFORE THE CHAMBER

16. The application was introduced on 3 January 2002. The applicant requests that the Chamber order the respondent Party, as a provisional measure, to evict the Hrelja family from the apartment at ulica Himze Polovine 1/II apt. 5 and to deliver possession of that apartment to the applicant and her family. Taking into account the various pending administrative and court proceedings, the applicant further requests the Chamber to order the domestic court to issue a judgment in her favour in accordance with the law.

17. The applicant seeks compensation for various pecuniary and non-pecuniary damages, as well as legal and administrative costs and expenses.

18. On 4 February 2002 the Chamber refused the provisional measure requested.

IV. OPINION OF THE CHAMBER

19. 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"

20. The Chamber notes that the applicant's complaint is premature as the proceedings are still pending before both administrative and court organs. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

21. 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