



DECISION ON ADMISSIBILITY

Case no. CH/02/11022

Minja MIRKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 September 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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 Articles VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was filed with the Chamber on 20 May 2002. The applicant is a granddaughter of Simha and Avram Levi. On 27 October 1969 Avram Levi obtained from the former JNA, Command Garrison in Sarajevo, a procedural decision allocating to him the use of an apartment at ulica Skerlićeva no. 21/III (now ulica Josipa Vancaša). Avram Levi died in 1993. The applicant claims that she lived with her grandparents in the apartment until 1992.

2. On 27 January 1998 the Joint Command of the Army of FBiH concluded with the applicant's grandmother a contract on exchange of apartments. Under the contract, the applicant's grandmother renounced her occupancy right to the apartment on ul. Josipa Vancaša and in exchange the Army of FBiH allocated another apartment, located at ulica Grbavička no. 68/1, for the permanent use of the applicant's grandmother. The contract also provided that the Army of FBiH had to provide a different apartment in Sarajevo in case legal difficulties arose in relation to such permanent use. On 30 January 1998 the applicant's grandmother concluded a contract on use of the apartment at ulica Grbavička no. 68/1 with the Headquarters of Army of RBiH. The applicant claims that she and her grandmother invested DM 8,640 into the renovation of the apartment in question.

3. On 22 May 2001 the Joint Command of the Army of FBiH issued a procedural decision allocating to the applicant's grandmother an apartment at ul. Aleja lipa no. 39, since the return of the pre-war occupant of the apartment at ul. Grbavička prevented her from purchasing that apartment. On 28 May 2001 a contract on use was concluded between the applicant's grandmother and the Army of FBiH for the apartment at ul. Aleja lipa no. 39.

4. On 24 September 1999 the applicant's grandmother filed a request to the Administration for Housing Affairs of Sarajevo Canton for repossession of her pre-war apartment located at ulica Josipa Vancaša. The request listed her as the only member of her household. On 12 December 2001 the Administration for Housing Affairs issued a procedural decision allowing the applicant's grandmother to repossess the apartment in question and terminating the temporary occupancy right of the occupant, M.K., within 15 days from day of delivery. The Federal Defense Ministry and the temporary occupant appealed the procedural decision.

5. The applicant's grandmother died on 14 April 2002. On 6 May 2002 the Ministry of Housing Affairs of Sarajevo Canton issued a procedural decision annulling the prior procedural decision of the Administration for Housing Affairs of Sarajevo Canton of 12 December 2001 and returning the case to the first instance organ.

6. The applicant complains of a violation of her right to peaceful enjoyment of possessions, protected under Article 1 of Protocol No. 1 to the Convention, and seeks to be reinstated in the prewar apartment on ulica Vancaša and to receive compensation for renovation work done to the apartment on ulica Grbavička.

II. OPINION OF THE CHAMBER

7. 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"

8. The Chamber notes that, since the Ministry of Housing Affairs of Sarajevo Canton returned the applicant's case to the first instance organ, the proceedings for the disputed apartment are still pending. The applicant may be reinstated in the prewar apartment by domestic organs if she is able to prove, in these proceedings, that she was a member of her grandmother's household before her grandmother's death.

9. The applicant can also request compensation for the renovation expenses in domestic proceedings pursuant to Article 18a of the Law on Cessation of the Application of the Law on

Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01 and 15/02), which provides:

“A person whose occupancy right was cancelled under Article 2 of this Law, who spent his/her personal funds on necessary expenses for the apartment, shall be entitled to recover those funds from the previous occupancy right holder under the Law on Obligations (Official Gazette SFRJ, 29/78 and 39/85, Official Gazette RbIH 2/92, 13/93 and 13/94). Proceedings under the Law on Obligations may be commenced from the date when the previous occupancy right holder regains possession of the apartment.”

10. The applicant has not shown that these remedies are ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

11. 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