



DECISION ON THE ADMISSIBILITY

of

CASE No. CH/96/22

Milivoje BULATOVIĆ

against

the State of Bosnia and Herzegovina

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 10 April 1997 with the following members present:

Peter GERMER, President
Jakob MÖLLER, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Manfred NOWAK
Michèle PICARD
Vitomir POPOVIĆ
Viktor MASENKO-MAVI

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the Application by Milivoje BULATOVIĆ against (1) the State of Bosnia and Herzegovina and (2) the Federation of Bosnia and Herzegovina submitted on 5 November 1996 by the Human Rights Ombudsperson for Bosnia and Herzegovina under Article V paragraph 5 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and **registered** on 6 November 1996 under Case No. CH/96/22;

Takes the following decision on the admissibility of the Application under Article VIII paragraph 2 of Annex 6 to the General Framework Agreement.

I. THE FACTS

1. The facts of the case, as they appear from the Decision of the Ombudsperson referring the case to the Chamber and from the documents in the case-file, may be summarised as follows:

2. The applicant is a citizen of Bosnia and Herzegovina of Montenegrin descent. He is a retired member of the Yugoslav National Army ("JNA"). He held the occupancy right in an apartment in Sarajevo. The apartment was social property over which the JNA exercised jurisdiction. On 10 February 1992 the applicant entered into a written contract for the purchase of the apartment under the Law on Securing Housing for the JNA of 29 December 1990, (Official Gazette 84/90). This law gave the holders of occupancy rights in JNA apartments the right to purchase their apartments subject to certain conditions. On 13 February 1992 the applicant paid the purchase price of 532,526 Yugoslav Dinars which was due for the apartment under the contract. On 15 February 1992 a temporary prohibition on the sale of such apartments was imposed by Decree with legal force of the Socialist Republic of Bosnia and Herzegovina, (Official Gazette 4/92).

3. On 11 April 1992 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with legal force (Official Gazette 2/92) in which *inter alia* it was provided that the Republic was not bound by purchase contracts entered into for the purchase of real property from the JNA. On 15 June 1992 the Presidency issued a Decree with legal force (Official Gazette 6/92) providing that all property belonging to the JNA within the territory of the Republic should be considered as belonging to the Republic.

4. On 15 July 1994 a Decree with legal force was issued by the Presidency of the Republic of Bosnia and Herzegovina laying down the conditions for the validity of contracts for the purchase of real estate. Written contracts concluded before the Decree entered into force were to be valid either if the contracting parties had completely or predominantly fulfilled their obligations arising from the contract or if the parties' signatures were verified by a competent court within six months after the Decree came into force.

5. On 21 October 1994 the applicant instituted civil proceedings in the Court of First Instance in Sarajevo (Osnovni Sud I) seeking recognition that he was the legal owner of the apartment and an order for the registration of the transfer of title to the property from the JNA to him. On 3 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with legal force (Official Gazette 5/95) requiring courts and other organs of the state to adjourn all proceedings relating to purchase contracts for *inter alia* JNA apartments under the above-mentioned Law on Securing Housing for the JNA. On 20 March 1995 the Court of First Instance issued a decision adjourning the applicant's action under this law.

6. On 22 December 1995 the Presidency issued a Decree with legal force (Official Gazette 50/95) which declared invalid contracts for the sale of apartments concluded under the Law on Securing Housing for the JNA. This was adopted as law by the Preliminary Assembly of the Republic of the Bosnia and Herzegovina on 8 and 9 January 1996.

7. By decision dated 22 November 1995 the Ministry of Health of the Federation of Bosnia and Herzegovina authorised the applicant and his wife to travel abroad to obtain medical treatment. According to the applicant he went abroad with his wife in December 1995. He arranged for another family, the "T" family, to occupy the apartment during their absence, it being arranged that the "T" family would move out when the applicant and his wife returned. The applicant returned to Sarajevo in July 1996 and it appears that he has occupied the apartment from then onwards together with his wife.

8. Since his return to Sarajevo, the applicant has been threatened by the army authorities with eviction from his apartment under legislation relating to abandoned apartments. It appears that two decisions relating to the apartment were taken during his absence abroad. In particular on 10 December 1995 the General Staff of the Army of the Republic of Bosnia and Herzegovina took a decision declaring that the apartment was abandoned. On 26 May 1996 a further decision was taken

to the effect that the apartment was permanently abandoned, the effect of this decision being that the applicant lost his occupancy right in the apartment.

9. It appears that both the above-mentioned decisions were taken under the Law on Abandoned Apartments (Official Gazette 6/92, 8/92, 16/92, 13/94, 36/94, 36/94, 9/95, and 33/95). Article 3 of this law provides *inter alia* that an apartment is not to be considered as abandoned if the holder of the occupancy right has left the apartment within the terms of a formal approval of a stay abroad having been sent by a medical institution for the purpose of receiving medical treatment. It also provides that an apartment is not to be considered as abandoned if the holder of the occupancy right starts to use the apartment within a time-limit of 7 days after the entry into force of the law if he is within the territory of the Republic of Bosnia and Herzegovina, or 15 days after the entry into force of the law if he is not within that territory. Article 10 of the law makes provision to the effect that if the holder of the occupancy right does not start to use the apartment within the time-limit cited in Article 3 of the law after the date on which a Decree on the cessation of the state of war is issued, he or she will be considered to have abandoned the apartment permanently and will lose the occupancy right on the date of expiry of the time-limit.

10. On 11 July 1996 the army authorities issued an eviction order under which the applicant was required to leave the apartment within seven days. A number of attempts to enforce the applicants' eviction have been made since but have not been carried through following interventions by the Office of the High Representative and the International Police Task Force in support of requests made by the Ombudsperson and the Chamber to the effect that the applicant should not be evicted pending the proceedings before them. The applicant remains in the apartment. He alleges that the army authorities have subjected him to persecution and harassment in various attempts to persuade him to leave the apartment.

II. COMPLAINTS

11. The applicant complains that his right to the apartment which he bought has been violated, that he is threatened with confiscation of the apartment and that the courts have been prevented from deciding on his complaints relating to his property rights. He invokes Articles 6 and 13 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention. In her Decision referring the case to the Chamber the Ombudsperson finds that the case raises issues under the Articles of the Convention invoked by the applicant and also under Article 8 of the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

12. The case was referred to the Chamber by Decision of the Ombudsperson dated 5 November 1996. On 8 November 1996 the Chamber considered the case and decided to bring it to the notice of the Federation of Bosnia and Herzegovina as the respondent Party named by the applicant, and to request them not to evict the applicant from the apartment in question pending the Chamber's consideration of the case. By letter dated 22 November 1996 the applicant made certain further allegations regarding attempts to evict him from the apartment. The Chamber again considered the case on 11 December 1996. It decided to bring the case to the notice of the State of Bosnia and Herzegovina and to invite both the State and the Federation to submit written observations on the admissibility and merits of the case. The Chamber also decided again to request the Federation not to evict the applicant from the apartment pending its consideration of the case and also to ensure that the applicant was not harassed or disturbed in his possession of the apartment by the army or other authorities.

13. On 12 December the Chamber received a letter dated 3 December 1996 from the Federal Minister of Justice making certain comments on the case. On 13 December the applicant submitted a decision by the army authorities requiring him to leave the apartment or face forcible eviction on 19 December 1996. The Agent for the Federation was requested on the same day to draw the

Chamber's request for interim measures to the attention of all competent authorities as a matter of urgency with a view to securing the applicant against the threatened eviction.

14. Details of the Chamber's request for observations, including specific questions, were communicated to the parties on 14 January 1997. The respondent Parties were requested to submit their observations before 26 February 1996. No response to that invitation has been received from either respondent Party.

IV. OBSERVATIONS OF THE FEDERATION

15. In his letter dated 3 December 1996, the Minister of Justice of the Federation submits that the Federation and the Republika Srpska should both be treated equally in proceedings before the Chamber. He further points out that the laws referred to in the application are not laws of the Federation and that under Article III paragraph 4(d) of the Federal Constitution, cantons and districts, not the federation, are responsible for housing policy. On these grounds, and since Federal legislation on housing matters does not exist, the Federation is not responsible for the violation of human rights complained of and the application in relation to the Federation should be rejected.

V. THE LAW

16. The applicant complains that his right to the apartment which he contracted to purchase has been violated and also complains of his threatened eviction from the apartment and the alleged absence of any effective remedies.

17. Before considering the case on its merits the Chamber must decide whether to accept the case taking into account the admissibility criteria set out in Article VIII paragraph 2 of the Human Rights Agreement ("the Agreement") contained in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

18. The Chamber first notes that the applicant's complaints relate in part to events which took place before 14 December 1995, when the Agreement came into force. In accordance with generally accepted principles of law the Agreement cannot be applied retroactively (see Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision of 13 September 1996). The Chamber must therefore confine its examination of the case to considering whether the applicant's rights have been violated since that date.

19. In so far as the applicant's complaints arise from the alleged retroactive nullification of his contract for the purchase of his apartment by Decree dated 22 December 1995 and the continuing compulsory adjournment of the court proceedings instituted by the applicant, they raise issues which are within the Chamber's competence *ratione temporis* and which, in the Chamber's opinion, are essentially the same as the issues which arise in the cases of *Medan*, *Bastijanović* and *Marković*, which the Chamber has declared admissible, (see Cases Nos. CH/96/3, CH/96/8 and CH/96/9 v. the State and Federation of Bosnia and Herzegovina, Decisions of 4 February 1997). The Chamber notes, however, that the applicant's rights under the contract for the purchase of his apartment may already have been affected by legislation passed before 14 December 1995. It will therefore be a matter for determination as part of the merits of the case what effect, if any, the Decree of 22 December 1995 or other acts or omissions of the relevant authorities since the coming into force of the Agreement, have had on the applicant's position, and whether there has been any violation of his human rights since the relevant date. In this connection it appears to the Chamber that the following questions arise under the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is referred to in Articles I and II (a) of the Agreement, namely:

-whether the length of proceedings since 14 December 1995 in the civil action brought by the applicant has exceeded a "reasonable time" for the purposes of Article 6 (1) of the European Convention;

-whether the continued adjournment of the proceedings since 14 December 1995 has involved a denial of the applicant's right of access to court under Article 6 (1) for the purpose of having his civil claim determined on its merits;

-whether the alleged retroactive nullification of the applicant's contract for the purchase of his apartment by Decree dated 22 December 1995, and the continuing denial of the competent court to order the applicant's registration as owner in the public book, infringed his rights under Article 1 of Protocol No. 1 to the Convention, which guarantees *inter alia* the right to "peaceful enjoyment of his possessions...;"

-whether any "effective remedy" is available to the applicant, for the purposes of Article 13 of the Convention in respect of (a) the alleged retroactive nullification of the applicant's contract and (b) the continuing adjournment of the civil proceedings.

20. Furthermore the applicant's complaints arising from the threatened eviction under the abandoned property legislation also raise issues under the above-mentioned Articles of the Convention and also under Article 8 of the Convention. In particular the following issues arise from these complaints:

-whether the applicant has had access to a fair hearing before a tribunal under Article 6 (1) of the Convention for the purpose of contesting the lawfulness of the decision declaring his apartment to be abandoned;

-whether the threatened eviction of the applicant from his apartment infringes his right to respect for his home under Article 8 of the Convention;

-whether the threatened eviction infringes any property right of the applicant protected by Article 1 of Protocol No. 1 to the Convention;

-whether any "effective remedy" has been available to the applicant in relation to any of these matters as required by Article 13 of the Convention.

21. The Federation has argued that it is not responsible for the matters complained of in respect that the laws in question are laws of the Republic of Bosnia and Herzegovina and furthermore that housing matters are the responsibility of Cantons and Districts under the Federal Constitution and not that of the Federation. The Chamber notes that the case is concerned at least in part with the application of the relevant laws by the authorities within the Federation. It further notes that in proceedings before it the Parties may be held responsible, under Article II paragraph 2 of the Agreement, for any violation of human rights which "is alleged or appears to have been committed by the Parties including by any official or organ of the Parties, Cantons, Municipalities...." Even if the alleged violation arises from the application of laws which were passed by the legislative authorities of the (former) Republic of Bosnia and Herzegovina, the Federation may still be responsible. In the Chamber's view, and having regard to the respective responsibilities of the two Parties under the Constitution of Bosnia and Herzegovina, complex questions of fact and law may therefore arise in relation to the question of the responsibility of the two respondent Parties for the matters at issue. It does not therefore consider that the application against the Federation can be rejected at this stage on the basis suggested. It reserves, however, for consideration as part of the merits of the case the question whether either or both of the respondent Parties is responsible for any violation of human rights that may be found, (see also the Chamber's Decisions of 4 February 1997 in Cases Nos. CH/96/8 and CH/96/9, Bastijanović and Marković v. State & Federation of Bosnia and Herzegovina).

22. The Chamber notes that neither of the respondent Parties has raised any other objection to the admissibility of the application under the criteria set out in Article VIII paragraph 2 of the Agreement. In particular neither Party has argued that any other "effective remedy" was available to the applicant for the purposes of Article VIII paragraph 2 (a) of the Agreement. On the information before it the Chamber does not consider that the existence of any such remedy is established.

CH/96/22

23. In the Chamber's opinion the case raises issues of fact and law which should be examined on the merits. No ground of inadmissibility is established and the case should therefore be declared admissible.

24. For the above reasons the Chamber, without prejudging the merits, decides unanimously:

TO DECLARE THIS APPLICATION ADMISSIBLE

in so far as it relates to alleged violations of the Applicant's human rights since 14 December 1995.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Peter GERMER
President of the Chamber