



DECISION ON THE ADMISSIBILITY

of

CASE No. CH/96/31

Cecilija TURČINOVIĆ

against

the State of Bosnia and Herzegovina

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 9 May 1997 with the following members present:

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

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the Application by Cecilija TURČINOVIĆ against (1) Bosnia and Herzegovina and (2) the Federation of Bosnia and Herzegovina submitted on 17 December 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 the same day under Case No. CH/96/31;

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 summarized as follows:
2. The applicant is a citizen of Bosnia and Herzegovina of Croat descent. She was born in 1934 and resides in Sarajevo. She had the occupancy right in respect of an apartment in Sarajevo, which is located in Grbavica II, Rave Jankovića Street No. 19/IV. From the beginning of the war in Bosnia and Herzegovina, Grbavica was under the control of the Bosnian Serb forces. In the course of 1992, the applicant left Grbavica and moved into the apartment of her son-in-law, a member of the former Yugoslav National Army (hereinafter referred to as "JNA"), who had the occupancy right in respect of an apartment in Sarajevo, Đorđa Andrejevića Kuna Street No. 6 (hereinafter the "apartment"). On 5 November 1991, the applicant's son-in-law concluded a written purchase contract for the apartment with the Federal Secretariat for National Defense of the Socialist Federative Republic of Yugoslavia. Within the following 15 days, as specified in the contract, he paid 333.665 Yugoslav dinars as the purchase price. In September 1992 her son-in-law and his wife left Sarajevo. In March 1994 he gave the applicant written authority to use his apartment.
3. On 19 March 1996, in accordance with the General Framework Agreement for Peace in Bosnia and Herzegovina, Grbavica became a part of the Federation of Bosnia and Herzegovina. The applicant visited her apartment in Grbavica and realized that it is, due to hostilities, destroyed and not suitable for living in.
4. On 19 September 1996, the General Staff of the Army in the Federation of Bosnia and Herzegovina issued a decision according to which the applicant uses the apartment of her son-in-law illegally. The decision states that the apartment at issue is considered as abandoned, and the applicant is ordered to leave it voluntarily within seven days of receiving the decision. Finally, the decision states that, if she does not comply with the order, she will be forcibly evicted. The decision was served on the applicant on 3 October 1996. The applicant has appealed against the decision to the Army General Staff. As at the date of the Ombudsperson's decision the appeal was still pending. It has no suspensive effect.
5. This decision appears to have been taken under Articles 30 and 47 of the "Law on Abandoned Apartments" (Official Gazette of RBiH 6/92 and etc.). That law has only fourteen Articles, however. It is thought that a reference to the Law on Housing Relations may have been intended. Article 30 of this law provides for the eviction of persons who have illegally entered an apartment and Article 47 provides for the termination of an occupancy right if the holder of the right and members of his family living there with him have been absent for six months.
6. On 14 October 1996, the General Staff of the Army requested the Federal Police for assistance in carrying out the applicant's eviction. The eviction was scheduled for 24 October 1996. On 21 October 1996, a Federal Police Officer informed the applicant that she would be evicted.
7. On 24 October and 18 December 1996, officials of the Army attempted to evict the applicant from the apartment. The applicant requested IPTF officials to come to the apartment, and the Army official responsible for the eviction of the applicant decided not to carry it out.
8. According to information received from the Office of the High Representative and the Federation Ombudsmen, the applicant was evicted from the apartment on 10 April 1997, a seal being placed on the door whilst she was out. Following representations to the relevant authorities she was allowed back into the apartment the following day.

II. COMPLAINTS

9. In her application the applicant complains of her threatened eviction and alleges the violation of her right to respect for her home, her right to access to court and her right to peaceful enjoyment of her possessions. In her decision the Ombudsperson has found that the case raises issues under Articles 6, 8 and 13 of the European Convention and Article 1 of Protocol No. 1 to the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

10. The case was referred to the Chamber by decision of the Ombudsperson dated 17 December 1996. In her letter referring the case to the Chamber the Ombudsperson stated that she had, on 4 and 21 October 1996, requested the respondent Party, by way of interim measure, not to evict the applicant. She suggested that the Chamber should consider a similar request under Rule 36 of its Rules of Procedure.

11. The President considered the matter on 17 December 1996 and decided to request both the State of Bosnia and Herzegovina as the respondent Party named by the applicant, and the Federation of Bosnia and Herzegovina, as the Party apparently responsible for applying the relevant legislation, not to evict the applicant pending the Chamber's consideration of the case. This decision was communicated to both Parties.

12. On 3 and 7 February the Chamber considered the case and decided to invite the Governments of both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to submit written observations on the admissibility and merits of the case. The Chamber also decided to order both respondent Parties not to evict the applicant from the apartment pending its consideration of the case. The Chamber considered the state of proceedings in the case on 21 March 1997 and noted that the time limit for the submission of observations on the admissibility and merits of the case by the respondent Parties had expired on 17 March 1997 without any observations having been received. It decided to inform the Parties that it would consider the admissibility of the case at its next session, on the basis of the documents in the file, if no observations were received. No response has been received from either respondent Party.

IV. OBSERVATIONS OF THE RESPONDENT PARTIES

13. By letter dated 18 December 1996 the Agent of the State of Bosnia and Herzegovina submitted that this case, and others of a similar kind, are not within the jurisdiction of the institutions of Bosnia and Herzegovina according to the Constitution.

V. THE LAW

14. The applicant complains of her threatened eviction and alleges the violation of her right to respect for her home, her right of access to court and her right to peaceful enjoyment of her possessions. In her decision the Ombudsperson has found that the case raises issues under Articles 6, 8 and 13 of the European Convention and Article 1 of Protocol No. 1 to the Convention.

15. 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.

16. In the Chamber's opinion the applicant's complaints arising from the threatened eviction under abandoned property legislation raise issues under the above-mentioned Articles of the Convention. In particular the following issues arise from these complaints:

1. 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 the apartment of her son-in-law to be abandoned;
2. Whether the threatened eviction of the applicant from the apartment infringes her right to respect for her home under Article 8 of the Convention;

3. Whether the threatened eviction infringes any property right of the applicant protected by Article 1 of Protocol No. 1 to the Convention;
4. 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.

17. The State of Bosnia and Herzegovina has argued that it is not responsible for the matters complained of because they are not responsibilities under its jurisdiction, under the Constitution of Bosnia and Herzegovina.

18. The Chamber notes that the applicant's complaints, as set out in her application, appear to relate to the application of property legislation, and in particular the legislation on abandoned property, by the Army and the police and to the alleged lack of any effective remedy in respect of these matters. It does not appear that she is complaining about legislation passed by the authorities of the (former) Republic of Bosnia and Herzegovina which affected the rights of persons who had contracted to purchase apartments owned by the Yugoslav National Army, including in particular the Decree of 22 December 1995 (OG 50/95) issued by the Presidency of the Republic of Bosnia and Herzegovina which purported to annul such contracts. In any event the applicant's son-in-law was the person who contracted to purchase the apartment in question. The applicant herself merely had his permission to live in it. It does not appear to the Chamber that in these circumstances any property right of the applicant's was affected by the legislation referred to. The present case therefore differs from other cases relating to Yugoslav National Army flats which the Chamber has declared admissible as against the State of Bosnia and Herzegovina on the basis that the responsibility of the State may be engaged by such legislation, (See in particular the Chamber's Decision of 4 February 1997 in Cases Nos. CH/96/3, 8 & 9, Medan, Bastijanović and Marković v. State & Federation of Bosnia and Herzegovina).

19. In the present case the Chamber finds that the matters complained of fall within the jurisdiction of the Federation and that the application discloses no appearance of any violation of human rights for which the State of Bosnia and Herzegovina could be held responsible. The application so far as directed against the State is therefore manifestly ill-founded and must be dismissed under Article VIII paragraph 2 (c) of the Agreement.

20. The Chamber notes that the Federation has not raised any objection to the admissibility of the application under the criteria set out in Article VIII paragraph 2 of the Agreement. In particular it has not 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.

21. In the Chamber's opinion the case so far as directed against the Federation raises issues of fact and law which should be examined on the merits. No ground of inadmissibility is established and it should therefore be declared admissible.

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

TO DECLARE THE APPLICATION INADMISSIBLE

in so far as it is directed against the State of Bosnia and Herzegovina

TO DECLARE THIS APPLICATION ADMISSIBLE

in so far as it is directed against the Federation of Bosnia and Herzegovina.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Peter GERMER
President of the Chamber