



DECISION ON ADMISSIBILITY

in

CASE No. CH/97/46

Ivica KEVEŠEVIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 16 January 1998 with the following members present:

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

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Ivica Kevešević against the Federation of Bosnia and Herzegovina submitted on 31 July 1997 by the Human Rights Ombudsperson for Bosnia and Herzegovina under Article V paragraph 7 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered under Case No. CH/97/46;

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 Report of the Ombudsperson and the other documents in the file have not been disputed by the respondent Party and may be briefly summarised as follows:

2. The applicant is a citizen of Bosnia and Herzegovina of Croatian descent. He was born in 1944 and resides in Vareš in the Federation of Bosnia and Herzegovina. He is represented by Mr Boško Andrić.

3. In 1982 the applicant was granted the occupancy right over an apartment in Vareš. On 3 November 1993 he and his family left Vareš in order to escape the effects of the war. In July 1995 the applicant's son returned to the apartment. The applicant and his wife returned to the apartment in April 1996. The applicant lived in the apartment with members of his family until they were evicted in November 1996 as mentioned hereafter.

4. On 14 and 21 November 1996 the applicant was served with summonses from the Vareš Municipal Secretariat for General Administration, Urban Planning, Property Law and Geodetic Affairs (hereinafter "the Municipal Secretariat"). He attended at their offices and was informed orally that he had moved into the apartment illegally and must vacate it or be evicted. On 22 November 1996 he was also served with a decision to the effect that, under Article 10 of the Law on Abandoned Apartments (SL RBH 6/92, 8/92, 12/92, 16/92, 13/94, 36/94, 9/95 and 33/95), the apartment had been permanently abandoned and that he had permanently lost his occupancy right over it. In the reasons for the decision the Municipal Secretariat indicated that the apartment had been declared permanently abandoned because the applicant and the members of his household had failed either to return to, or submit a request to return to, the apartment within the time limit laid down in the law, which was seven days after the end of the state of war for persons within Bosnia and Herzegovina and fifteen days for persons elsewhere. On 28 November 1996 the applicant and his family were evicted from the apartment pursuant to this decision. A Bosniak family moved into the apartment on the same day.

5. On 26 November 1996 the applicant appealed against the decision of the Municipal Secretariat to the Ministry of Urbanism and Environmental Protection of the Zenica-Doboj Canton. This appeal was refused by decision dated 29 September 1997 which was received by the applicant on 15 October 1997. The decision stated that administrative court proceedings against the decision could be instituted within thirty days from the date when the decision was received.

II. COMPLAINTS OF THE APPLICANT AND FINDINGS OF THE OMBUDSPERSON

6. In his application to the Ombudsperson the applicant complained of his eviction from the apartment and of the relevant proceedings. The Ombudsperson examined his complaints under Articles 6(1), 8, 13 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"). She concluded that the eviction of the applicant and his family had violated Article 8 of the Convention. She rejected the remaining complaints as being premature or manifestly ill-founded and to the extent that the complaint under Article 13 related to the complaint under Article 8 of the Convention, she decided not to rule on it.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced with the Ombudsperson on 27 November 1996. After drawing up her Report on the merits of the case, she referred it to the Chamber on 31 July 1997. On 10 October 1997 the Chamber decided in accordance with Rule 49 (3) (b) of its Rules of Procedure to give notice of the application to the Federation of Bosnia and Herzegovina as respondent Party, and to

invite it to submit written observations on the admissibility and merits of the case. The respondent Party was requested to include in its observations any comments it wished to make on the facts of the case, and in particular to state whether the findings in fact made by the Ombudsperson in her Report were accepted or not. It was also requested to submit observations on the complaints under Articles 6, 8, 13 and 14 of the Convention which were referred to in the Ombudsperson's Report. A time limit expiring on 16 December 1997 was fixed for the submission of these observations. No observations have been received from the respondent Party.

IV. THE LAW

8. Before considering the merits of the case 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") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

9. Under Article II paragraph 2 of the Agreement the Chamber has jurisdiction to consider:

"(a) alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or

(b) alleged or apparent discrimination on any ground....arising in the enjoyment of any of the rights and freedoms provided for in the international Agreements listed in the Appendix to this Annex."

10. Having made a preliminary examination of the case the Chamber finds that it raises issues within its jurisdiction under the above-mentioned provisions, including in particular issues under Articles 6, 8, 13 and 14 of the European Convention on Human Rights, Article 1 of Protocol No. 1 to the Convention and that issues may also arise under the other international instruments referred to in so far as the case raises the issue of discrimination. The respondent Party has not stated any objection to the admissibility of the application. In particular it has not suggested that any other effective alternative remedy exists which the applicant should exhaust. On the information available to it the Chamber finds that no ground of inadmissibility is established and considers that the case should be declared admissible and examined on its merits.

11. For these reasons, the Chamber, without prejudging the merits, unanimously

DECLARES THIS APPLICATION ADMISSIBLE

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber