



DECISION ON ADMISSIBILITY

in

CASE No. CH/97/40

Saša GALIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 21 February 1998 with the following members present:

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

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Saša Galić against the Federation of Bosnia and Herzegovina submitted on 28 April 1997 under Article VIII paragraph 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered under Case No. CH/97/40;

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 documents in the file may be summarised as follows:
2. The applicant is citizen of Bosnia and Herzegovina. He is holder of the occupancy right over the apartment in Branilaca Sarajeva Street No. 19-a. in Sarajevo. The apartment was social property over which the Yugoslav National Army (hereinafter "JNA") exercised jurisdiction. The applicant entered into a written contract to purchase the apartment under the Law on Securing Housing for the JNA (SL SFRJ 84/90), and on 14 February 1992 paid the whole purchase price for the apartment in question.
3. The applicant was abroad when the war started. Members of his family remained in the apartment after which it was leased to another family (the Lika family).
4. On 17 June 1997 the Court of first Instance in Sarajevo issued a decision under which the family who leased the apartment should leave it and return the applicant into possession of it. On the basis of the court decision the Lika family and the applicant entered into an agreement under which the Lika family were to relinquish the apartment to the applicant and the applicant would help the Lika family to move to another apartment. The applicant entered the apartment on 3 October 1997 together with his fiancée but the army authorities evicted him on 4 October 1997.
5. The Army Housing Fund of the General Staff of the Army of Bosnia and Herzegovina proclaimed the apartment abandoned on 22 April 1995. After the applicant found out about this decision he submitted an appeal to the authorised organ on 27 April 1996, and on 5 June 1996 he requested the authorised organ to decide on his appeal. Since no answer had been received, he started administrative court proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina for the "silence of the administration". On 13 November 1997 the Supreme Court issued a decision by which his appeal was refused as not in time.

II. COMPLAINTS OF THE APPLICANT

6. In his application, the applicant alleges that his rights recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention") relating to the respect for home and family life, as well as his right to possession of the apartment which he purchased in 1992 as the civilian person working for JNA were violated.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The applicant submitted the case to the Chamber on 28 April 1997 in accordance with Article VIII paragraph 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina. On 19 May 1997 the applicant submitted to the Chamber a request for a provisional measure by which the decision of the General Staff of the Army of Bosnia and Herzegovina proclaiming the apartment abandoned would be suspended. The Chamber considered the request on 6 June 1997 and decided to refuse it.
8. On 9 October 1997 the applicant submitted to the Chamber another request for a provisional measure by which the Chamber would order the restoration of the applicant into possession of his apartment. According to the information submitted together with the request, the applicant got the decision from the Court of First Instance in Sarajevo under which the Lika family, that lived in his apartment as tenants, is obliged to vacate it, and that he can return. On 3 October 1997, after the family left the apartment, the applicant and his fiancée entered on the same day, but he was evicted by the army authorities on 4 October 1997.

9. On 10 October 1997 the Chamber decided, in accordance with Article X paragraph 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and with the Rule 36 of its Rules of Procedure, to order the Federation of Bosnia and Herzegovina, as a provisional measure, to return the applicant back to his apartment in Branilaca Sarajeva No. 19 - a, pending consideration of the case. This provisional order has been sent to the Agent of the Federation, who has been asked to forward it to all relevant authorities and to secure the immediate application of the request. Respondent Party submitted to the Chamber copy of a letter from the Ministry of Justice to the Federal Ministry of Defence by which they forwarded for implementation the Chamber's decision for provisional measures.

10. The Chamber also decided, in accordance with the Rule 49 (3) (b) of its Rules of Procedure, to invite the Federation of Bosnia and Herzegovina to submit written observations on the admissibility of the application under Article VIII paragraph 2 of Annex 6 to the Agreement, and also on the merits of the case as it was presented by the applicant. In accordance with Rule 51 of its Rules of Procedure the Chamber fixed a time-limit for submission of these observations expiring on 10 November 1997. No answer has been submitted yet.

11. The respondent Party submitted to the Chamber a copy of a letter dated 8 December 1997 by which the Federal Ministry of defence - Army Attorney's Office reports to the Federal Ministry of Justice on the implementation of the Chamber's decision on provisional measures. Beside other issues it is stated in the letter that the respondent Party should be the State of Bosnia and Herzegovina, because the State issued all relevant legislation concerning army apartments. They considered that the Federal Ministry of Justice should cooperate with the Federal Ministry of Defence and the Army of the Federation who has been given the authority to exercise jurisdiction over the apartments, in order to allow them to protect their interests and prove that they carried out the procedure in each case and that it was in accordance with the law.

12. On 15 February 1998 the applicant submitted written observations in response to the document submitted by the respondent Party.

13. On 19 February 1998 the Chamber received a document from the respondent Party in which it was stated that the respondent Party was unable to carry out the Chamber's order for provisional measures (see paragraph 9 above) because the apartment had in the meanwhile been lawfully allocated to a person or persons other than the applicant.

IV. THE LAW

14. The applicant complains that his right to respect for his home and his property right over the apartment he contracted to purchase were violated. By the court decision his apartment, for which he paid the full purchase price, was returned to him but the army authorities evicted him.

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

16. The Chamber first notes that the application partly refers to events which occurred before 14 December 1995 which is the date of coming into force of the Agreement. In accordance with generally recognised principles of the law, the Agreement can not be applied retroactively (see case No. CH/96/1, Matanović v. Republika Srpska, the Decision of 13 September 1997). Therefore the Chamber, considering the case, should deal with the question whether the rights of the applicant were violated since that date.

17. The applicant's complaints concerning his eviction from the apartment, on which he does not only have the occupancy right but also entered into the contract to purchase the apartment as well as the complaint concerning the proclamation the apartment abandoned, raise issues under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

18. This application raises the following issues in particular:

- whether the eviction of the applicant from his apartment threatened his right to respect for the home under Article 8 of the Convention;
- whether the eviction of the applicant violated his right on possessions guaranteed by Article 1 of Protocol No. 1 to the Convention;
- whether any effective remedy was available to the applicant in connection to any of these issues as required by Article 13 of the Convention;

19. Although the respondent Party informed the Chamber that it could not carry out the provisional order, it did not contest the admissibility of the application in any way under the criteria set out in Article VIII paragraph 2 of the Agreement. The respondent Party also did not suggest that there was any effective remedy available to the applicant under Article VIII paragraph 2 (a) of the Agreement. On the basis of the information available to it, the Chamber considers that it is not established that any effective remedy was available to the applicant.

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

21. The Chamber observes that the provisional order is still in force and notes with serious concern that it has not been carried out.

22. 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