DECISION ON ADMISSIBILITY

Cases nos. CH/02/8647 and CH/02/8649

Nehru GANIĆ and Šaćir ARNAUTOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 March 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Andrew GROTRIAN

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 to Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

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I. INTRODUCTION

1. The applicants are a serving and a retired officer of the Army of the Federation of Bosnia and Herzegovina. In the years 2000 and 2001 respectively, the two applicants purchased from the Ministry of Defence of the Federation of Bosnia and Herzegovina (hereinafter "the MoD") the apartments they were using in Sarajevo on the basis of contracts on use they had previously concluded with the MoD. The same apartments had been purchased immediately before the armed conflict in Bosnia and Herzegovina by two members of the Yugoslav National Army (hereinafter "JNA"), M.B. and D.R.. D.R. was retired from military service in the JNA in May 1991, while M.B.'s service in the JNA was terminated in June 1992. During the conflict, M.B. and D.R. were displaced to the Federal Republic of Yugoslavia. In 1998 M.B. and D.R. applied to the Administration for Housing Affairs of the Canton Sarajevo to reinstate them into their apartments. They also applied to the Human Rights Chamber, complaining amongst others of a violation of their right to peaceful enjoyment of their possessions. On 7 December 2001 the Chamber delivered its decision in the cases of M.B. and D.R. (CH/97/60 et al. *Miholić & Others* v. *Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, hereinafter "the *Miholić & Others* case", see paragraphs 13-16 below). Having found a violation of the applicants' rights, the Chamber ordered their reinstatement into possession of their apartments. As of the date of the present decision, it does not appear that the Federation has taken any steps to implement the *Miholić & Others* decision, nor have the dead-lines for implementation set in the decision expired.

2. The cases concern the applicants' complaint that, by implementing the Chamber's decision in *Miholić & Others* case, the Federation will violate their rights to their home and to peaceful enjoyment of possessions, depriving them of their apartments which they acquired *bona fide.*

II. THE FACTS

A. Particular facts regarding the applicant Ganić (CH/02/8647)

3. The applicant Ganić was an officer of the JNA from 1979 to January 1992, when he left the JNA because, as he states, of its attacks on Slovenia and Croatia and because the Socialist Federative Republic of Yugoslavia (SFRY) was in dissolution. On 8 April 1992 he joined the Army of the Republic of Bosnia and Herzegovina. He is currently serving in the Army of the Federation of Bosnia and Herzegovina with the rank of a general.

4. On 15 February 1997 the applicant Ganić concluded a contract on use of an apartment at Ulica Topal Osman Paše 16 in Novo Sarajevo with the BiH Republic Army Headquarters Logistics Administration. On 25 October 2000 the MoD revalidated his contract on use of the apartment. On 27 October 2000 he concluded a contract on purchase of the apartment with the MoD. The purchase price of the apartment amounted to DEM 27,735.22, which he paid off by certificates. The Municipal Court II of Sarajevo verified the contract on purchase on 24 November 2000.

5. The pre-war occupancy right holder over this apartment is D.R., to whom the apartment had been allocated by the JNA on 30 January 1981. On 14 February 1992 D.R. concluded a contract on purchase of the apartment and paid off the purchase price, as reduced by his contributions to the JNA Housing Fund, in accordance with the Law on Securing Housing to the JNA.

6. The applicant Ganić states that D.R.'s request for the repossession of the apartment was finally rejected in the administrative proceedings by the competent housing authorities. In these circumstances, the MoD confirmed the contract on use of the apartment, which the applicant subsequently purchased in accordance with the Law on Sale of Apartments with an Occupancy Right.

7. However, according to the Chamber's decision in *Miholić et al.* (paragraphs 42-46):

> "42. On 30 January 1981 the JNA allocated an apartment to the applicant [D.R.] at Ulica Topal Osman Paše (then Ulica Milutina Đuraškovica) 16 in Novo Sarajevo. On 14 February 1992 the applicant purchased the apartment pursuant to the Law on Securing

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Housing for the JNA. … The applicant was in military service with the JNA until 8 May 1991, when he was retired.
43. The applicant left the apartment in 1992 and settled in the Federal Republic of Yugoslavia together with his family.
44. On 13 July 1998 the applicant requested the Administration for Housing Issues in Novo Sarajevo ("the Administration") to reinstate him into his apartment. On 12 July 2000 the Administration issued a decision refusing the applicant's request because he was in active service of the JNA on 30 April 1991, he was not a citizen of Bosnia and Herzegovina according to the citizenship records and he did not have residence approved to him in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995.
45. On 18 October 2000 the Ministry of Housing Affairs of Canton Sarajevo upheld the decision of 12 July 2000. On 7 December 2000 the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo. The case is still pending.
46. Presently, the applicant and his wife live in their daughter's apartment in Sarajevo Novi Grad, together with her family."

B. Particular facts regarding the applicant Arnautović (CH/02/8649)

8. The applicant Arnautović was an officer of the JNA from 1978 to April 1992, when he left the JNA because, as he states, of its attacks on Slovenia and Croatia and because the JNA had lost its credibility as a national liberation army. He subsequently joined the Army of the Republic of Bosnia and Herzegovina and was wounded several times during the armed conflict in Bosnia and Herzegovina. He is now retired as a disabled war veteran with 100 percent invalidity.

9. On 17 April 2001 the applicant Arnautović concluded a contract on use of an apartment at Trg Merhemića no. 9 in Sarajevo with the MoD. On 8 June 2001 he concluded a contract on purchase of the apartment with the MoD. This purchase contract was revalidated by the MoD on 18 June 2001. On 5 July 2001 the Military Attorney confirmed the purchase contract's legal validity.

10. The pre-war occupancy right holder over this apartment is M.B., to whom the apartment had been allocated on 16 June 1981. On 14 February 1992 M.B. concluded a purchase contract for the apartment and paid off the purchase price, as reduced by his contributions to the JNA Housing Fund, in accordance with the Law on Securing Housing to the JNA.

11. The applicant Arnautović states that M.B.'s request for the repossession of the apartment was finally rejected in the administrative proceedings by the competent housing authorities. Under these circumstances, the MoD verified the contract on purchase of the apartment in question, which the applicant Arnautović purchased in accordance with the Law on Sale of Apartments with Occupancy Right.

12. However, according to the Chamber's decision in *Miholić et al.* (paragraphs 48-52):

"48. On 16 June 1981 the JNA allocated to the applicant [M.B.] an apartment at Merhemića trg (then Trg nesvrstanih Zemalja) 9 in Sarajevo Centar. On 7 December 1981 he concluded a contract on use of the apartment. On 14 February 1992 the applicant purchased the apartment. … The applicant, upon an order of the General Staff of the JNA, was dislocated to Belgrade on 7 May 1992. The applicant's family remained in the apartment until 1994. The applicant's service in the JNA was terminated on 2 June 1992.
49. On 3 February 1994 the applicant's representative requested the Court of First Instance I in Sarajevo to confirm his ownership over the apartment. On 14 November 1994 the Court of First Instance I issued a decision granting the applicant's request. The Court of First Instance I found that the applicant had met all legal conditions to be registered as an owner of the apartment before the Decree on Temporary Prohibition on Sale of Socially Owned Apartments entered into force on 17 February 1992 (see paragraph 68 below). The Republic of Bosnia and Herzegovina, represented by the Military Attorney's Office, appealed this decision to the Court of Second Instance in Sarajevo. The case is still pending.

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50. On 25 June 1998 the applicant requested the Administration for Housing Issues in Sarajevo Center ("the Administration") to reinstate him into the apartment. On 22 December 1999 the Administration issued a decision refusing the applicant's request because he was in the active military service of the JNA on 30 April 1991, he was not a citizen of the Socialist Republic of Bosnia and Herzegovina according to the citizenship records and he did not have residence approved to him in the capacity of a refugee, or other equivalent protective status, in a country outside of the former Socialist Federal Republic of Yugoslavia before 14 December 1995. The procedural decision further provides that further disposal of the apartment shall be issued by the Federal Ministry of Defence and that an appeal does not have suspensive effect. On 2 March 2000 the Administration issued another decision of the same content as the 22 December 1999 decision.

51. On 9 November 2000 the Ministry of Housing Affairs of Canton Sarajevo ("the Ministry") upheld the decision of 22 December 1999. On 10 November 2000 the Ministry annulled the decision of 2 March 2000 since the matter had already been decided by the procedural decision of 22 December 1999.

52. On 15 January 2001 the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo. This case is still pending."

C. The Human Rights Chamber's decision in cases nos. CH/97/60 et al. *Miholić & Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*

13. On 7 December 2001 the Chamber delivered its decision on admissibility and merits in the cases nos. CH/97/60 et al. *Miholić & Others* v. *Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*. These cases concerned the attempts of the five applicants who were members of the JNA, among them M.B. and D.R., to regain possession of apartments in Bosnia and Herzegovina. All of the applicants entered into purchase contracts with the JNA for apartments sometime between November 1991 and March 1992.

14. All of the applicants in *Miholić & Others* case had initiated administrative proceedings before the relevant authorities to regain possession of the respective apartments. In all of these cases, the relevant administrative authorities had denied their requests for repossession. In three cases, among them those of M.B. and D.R., the applicants had appeals pending before cantonal courts. The applicants were not able to repossess the apartments as a result of the application of Article 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right. Article 3a came into force on 1 July 1999.

15. Article 3a essentially prevents persons who were in active military service with the JNA on 30 April 1991, who were not citizens of Bosnia and Herzegovina as of that date, and who had not been granted refugee or other equivalent protective status in a country outside of the former Socialist Federal Republic of Yugoslavia ("SFRY") from repossessing apartments in Bosnia and Herzegovina. Additionally, persons who remained in active military service of any armed forces outside the territory of Bosnia and Herzegovina after 14 December 1995 are barred from repossessing apartments in Bosnia and Herzegovina. The applicants in the *Miholić & Others* case complained that the application of this law violates their right to possession of their property. They further complain that they have been discriminated against on the ground of their status as former members of the JNA.

16. In its decision on admissibility and merits of 7 December 2001 the plenary Chamber found that the Federation of Bosnia and Herzegovina had violated the applicants' right to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights and discriminated against them in the enjoyment of that right. The Federation of Bosnia and Herzegovina was ordered to take all necessary steps swiftly, and in any event not later than 7 June 2002, by way of legislative or administrative action, to render ineffective the annulments of the purchase contracts of all five applicants and to swiftly, and in any event not later than 7 March 2002, allow three of the applicants, among them M.B. and D.R., to regain possession of their apartments (*Miholić & Others* decision, paragraph 179, conclusions nos. 10-13).

17. On 7 January 2002, the Federation lodged a "Motion for the renewal of proceedings" against the decision on admissibility and merits. On 8 February 2002 the Chamber adopted its decision on

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motion for the renewal of proceedings and on request for review, rejecting the challenge to its decision on admissibility and merits, which, having been adopted by the plenary Chamber, was already final and binding on the date of its delivery.

III. COMPLAINTS

18. The applicants state that their rights to respect for their home, their right to property, their right to effective legal remedies and their right not to be discriminated against, guaranteed by Articles 8, 13 and 14 of the Convention and by Article 1 of Protocol no. 1 to the Convention have been violated. They claim that by implementing the Chamber's decision in the *Miholić and Others* case, the Federation would retroactively cancel their rights over the apartments. They assert that they acquired these rights *bona fide* and confiding in the rule of law.

IV. PROCEEDINGS BEFORE THE CHAMBER

19. Both applications were introduced on 4 January 2002.

20. The applicant Ganić requested the Chamber to order the respondent Party, as a provisional order, to suspend the implementation of the Chamber's decision in *Miholić et al.*. On 4 February 2002 the Chamber rejected the applicant's request.

21. The Chamber considered the admissibility of the applications on 4 February and 8 March 2002. On the latter date it decided to join the applications and adopted the present decision.

V. OPINION OF THE CHAMBER

22. 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: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

23. The Chamber notes that the application is directed against the Federation of Bosnia and Herzegovina as a respondent Party. However, in essence, the applicants' complaints concern the Chamber's decision on admissibility and merits and the remedies ordered in the *Miholić and Others* case. In so far as the applicants' complaints do not concern an interference with their rights under the Agreement by the Federation of Bosnia and Herzegovina, and, insofar as they appear to be directed against an order issued by the Chamber, they are incompatible *ratione personae* with the provisions of the Agreement (see *Hido v. Federation of Bosnia and Herzegovina*, decision on admissibility of 12 October 2001, paragraphs 4-5). The Chamber therefore decides to declare the applications inadmissible in this respect.

24. On the other hand, insofar as the applications are directed against the future compliance by the Federation of Bosnia and Herzegovina with the Chamber's orders in the *Miholić and Others* case, in particular with conclusions nos. 10 and 12 in paragraph 179 of that decision (see paragraph 16 above), the applications are premature, as the Federation yet has to take any steps to comply with the Chamber's order to reinstate M.B. and D.R. into the apartments currently occupied by the applicants. Similarly, the Federation yet has to take any step to render ineffective the annulment of the purchase contracts of M.B. and D.R.. It is true that in the case of the applicant Ganić, the MoD concluded the purchase contract 9 days after the final decision rejecting D.R.'s claim to the apartment in the administrative proceedings, when the 30-day dead-line to file an administrative dispute had not yet expired. Moreover, when, on 8 June 2001, the MoD sold the apartment to the applicant Arnautović, the Federation was not only aware of the claims on the apartment brought by M.B. before the Cantonal Court Sarajevo, it also was aware of the application to the Chamber of M.B., which had been transmitted for its observations on admissibility and merits only three weeks earlier. Finally, the Military Attorney confirmed the legal validity of the purchase contract concluded

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with the MoD by the applicant Arnautović on 5 July 2001, the day following the public hearing in the *Miholić and Others* case, at which the Military Attorney and the Deputy Minister of Defence of the Federation had appeared on behalf of the Federation. This highly reckless conduct by the MoD could possibly involve responsibility of the respondent Party under the Agreement. However, it remains to be seen how the respondent Party will seek to resolve the matter, for example by offering the applicants adequate compensation. In this respect, therefore, the applications are premature.

25. Finally, the Chamber notes that compliance with the Chamber's orders in the *Miholić & Others* decision in respect of the cases of M.B. and D.R. will result in the reinstatement and registration as owners of the pre-war owners of the apartments. When they concluded contracts on use and purchase contracts for the apartments, the present applicants were aware of the existence of claims on these apartments by their pre-war occupants (see paragraphs 6 and 11 above). Although the applicants claim to have purchased the apartments *bona fide* and confiding in the rule of law, as officers of the Army of the Federation and citizens of Bosnia and Herzegovina living in Sarajevo, they must have been aware of the serious legal problems surrounding ownership over the apartments in the housing stock of the MoD. Especially as they knew of the claims on the apartments by the pre-war occupants, the applicants cannot be seen to have been totally unaware of the possible unlawfulness of the purchase contracts they concluded with the MoD.

26. For the above reasons, the Chamber decides to declare the applications inadmissible.

VI. CONCLUSION

27. For these reasons, the Chamber, by 10 votes to 1,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

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