



DECISION ON THE ADMISSIBILITY

of

CASE No. CH/96/18

“A.C.”

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 9 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 POPOVIC
Viktor MASENKO-MAVI

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the Application by “A.C.” against the Federation of Bosnia and Herzegovina submitted on 23 October 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 29 October 1996 under Case No. CH/96/18;

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 the other documents in the case-file, may be summarized as follows:
2. The applicant is a citizen of Bosnia and Herzegovina of Serbian descent. She resides in Hadzici in the territory of the Federation of Bosnia and Herzegovina. In March 1996 she and her family moved to the Republika Srpska. Thereafter the applicant moved back to the family house at Hadzici. This house belongs to her father. The applicant registered herself as resident there with the municipal authorities on 19 April 1996. On 22 April 1996 her father gave her a written authority in terms of which she was authorized to act in her father's name in all matters connected with the house. This included authority to use, rent or sell the house. This document was endorsed by the Court of First Instance of Sarajevo on 23 April 1996.
3. On 24 May 1996 a Mr. C.Z. came to the applicant's place of work and showed her a Decision of the Hadzici Municipality dated 8 May 1996 temporarily allocating the house to him. This decision states that it was taken under Article 9 of the Law on Abandoned Apartments ("Official Gazette R. BiH" No. 6/92, 16/92, 13/94, 36/94 & 9/95). It describes the property to which it relates as "the apartment-weekend house, the owner of which is unknown". The street number of the property is given as "bb" and the specific number of the property occupied by the applicant is not given. The name of the street given in the decision corresponds to the street in which the applicant's property is situated. The decision states that "the apartment is allocated during the period of immediate danger of war and the state of war, at the longest for a year after the cessation of immediate danger or the state of war...". It further states that the person to whom the apartment is allocated must move in at the latest within three days after receipt of the decision, failing which he will lose the right to the apartment. No reasons are given as to why the property is considered to have been abandoned. The decision states that an appeal against it can be submitted to the chief of the Municipality within eight days after receipt. The decision further states that an appeal has no suspensive effect.
4. The Law on Abandoned Apartments under which the decision was taken applies to socially owned property in which the occupier holds an occupancy right. According to the information supplied by the applicant the property in question is privately owned by her father.
5. According to the applicant, Mr. Z.C. asked the applicant to give him the keys of the property and threatened to break down the door with an escort of Federal Police.

II. COMPLAINTS

6. The applicant complains that she was not informed about the proceedings before the municipality and was thus unable to protect her rights. She alleges the breach of Article 6(1) of the European Convention on Human Rights in this respect. She further complains that the decision concerning her moving out of her house violated Article 8 of the Convention and that in so far as her house was pronounced abandoned as social property, whereas it was private property occupied by her, there has been a breach of Article 1 of Protocol No. 1 to the Convention. Finally she alleges the breach of Article 13 of the Convention in respect that no remedies are available to her.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced with the Ombudsperson on 5 June 1996 and referred to the Chamber by the Ombudsperson on 23 October 1996. The case was received in the Chamber's Registry and registered on 29 October 1996. The Chamber considered the case on 4 and 8 November 1996 and decided to request the respondent Party not to evict the applicant from the property in question pending the Chamber's consideration of the case. On 10 December 1996 the Chamber decided to invite the respondent Party, in accordance with Rule 49 (3) (b) of its Rules of Procedure, to submit written observations on the admissibility and merits of the application, including observations on a number of specific questions. On 12 December 1996 a letter dated 3 December

from the Minister of Justice of the respondent Party commenting on the case was received. The time limit for submission of the observations requested by the Chamber expired on 28 February. No response to that request has been received.

IV. OBSERVATIONS OF THE RESPONDENT PARTY

8. In his letter of 3 December 1996 the Minister of Justice first pointed out that the Federation of Bosnia and Herzegovina expected that the Federation and the Republika Srpska should receive equal treatment in proceedings before the Chamber.

9. The Minister next observed that the Federation had not issued the laws referred to in the application. The case concerned laws of the Republic of Bosnia and Herzegovina. Furthermore under Article III para. 4 (d) of the Federation Constitution Cantons and Districts, not the Federation, had authority in respect of housing policy. On these grounds, and since Federal legislation in the field of housing matters does not exist, the Federation was not responsible for the violations of human rights complained of and the application should be rejected.

V. THE LAW

10. The applicant complains that she is threatened with eviction from the house occupied by her and that no remedy is available to her. She invokes Articles 6, 8, and 13 of the European Convention on Human Rights and Article 1 of Protocol 1 to the Convention.

11. 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 Agreement on Human Rights ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

12. The respondent Party has argued that the case should be rejected on the ground 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 not the Federation. The Chamber notes that the case concerns the application of the relevant laws by authorities within the Federation. 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 present case the applicant complains of acts of the Municipality for which the Federation is responsible. The Chamber does not therefore consider that the application can be rejected at the present stage on the basis suggested by the respondent Party, (see also the Chamber's Decisions of 4 February 1997 in Cases Nos. CH/96/8, Bastijanović and CH/96/9, Marković v. State and Federation of Bosnia and Herzegovina).

13. In the Chamber's opinion the applicant's complaints raise issues under Article I of the Human Rights Agreement set out in Annex 6 and under Articles 6, 8 and 13 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to that Convention. In particular the following questions arise:

1. Whether the applicant has been denied the right "In the determination of (her) civil rights and obligations...to a hearing before a tribunal..." under Article 6(1) of the Convention for the purpose of contesting the decision allocating the property in question to another person;
2. Whether the threatened eviction of the applicant would infringe her right to "respect for her home" under Article 8 of the Convention and in particular whether the decision allegedly allocating the property to another person was "in accordance with the law" for the purposes of Article 8 (2) of the Convention given that the decision was apparently taken under legislation

relating to socially owned property and whether the decision was justified as being “necessary in a democratic society” for any of the purposes set out in Article 8(2);

3. Whether the threatened eviction of the applicant would infringe her right to “peaceful enjoyment of her possessions” as guaranteed by Article 1 of Protocol No. 1 to the Convention;
4. Whether the applicant has had access to any “effective remedy” in relation to any of the above matters as required by Article 13 of the Convention.

14. The Chamber notes that, apart from arguing that it is not responsible for the matters complained of, the respondent Party has not argued that the application is inadmissible under any of 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.

15. 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

16. For the above reasons the Chamber, without pre-judging the merits, decides unanimously:

TO DECLARE THIS APPLICATION ADMISSIBLE

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Peter GERMER
President of the Chamber