



DECISION ON THE ADMISSIBILITY

of

CASE No. CH/96/23

Fatima KALINČEVIĆ

against

the State of Bosnia and Herzegovina

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 6 June 1997 with the following members present:

Peter GERMER, President
Jakob MÖLLER, Vice-President
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOVIĆ
Želimir JUHA
Mehmed DEKOVIĆ
Manfred NOWAK
Miodrag PAJIĆ
Michèle PICARD
Vitimir POPOVIĆ

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the Application by Fatima KALINČEVIĆ against (1) Bosnia and Herzegovina and (2) The Federation of Bosnia and Herzegovina submitted on 11 November 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/96/23;

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 Bosniak descent, born in 1940, and residing in Sarajevo. In the proceedings before the Chamber, the applicant is represented by Mr. Ismet Mehić, a lawyer practising in Sarajevo.
3. Together with her husband, who is of Serbian descent and a retired member of the former Yugoslav National Army, (hereinafter referred to as the "JNA"), the applicant held an occupancy right for an apartment in Sarajevo (hereinafter the "apartment") which was considered to be social property over which the Yugoslav National Army exercised jurisdiction. On 10 February 1992, the applicant's husband concluded a written purchase contract for the apartment with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. The JNA apartments have been purchased under the Law on Securing Housing for the JNA ("Official Journal SFRJ" No. 84/90) which provides that the holder of the occupancy right residing in an apartment of the Housing Fund of the JNA can purchase that apartment under certain conditions. On 12 February 1992, the applicant's husband paid 504,442 dinars as the purchase price. In the course of 1992, the applicant's husband, together with their two children, left Sarajevo for the United Kingdom.
4. On 15 January 1993, the applicant and her husband started civil proceedings before the Court of First Instance of Sarajevo, requesting the court to issue a declarative judgement recognizing them as the legal owners of the apartment and to direct the Land Registry to register the transfer of the deed to the property from the JNA to the applicants. On 3 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with legal force (Official Journal No. 15/95) requiring courts and other organs of the state to adjourn all proceedings relating to purchase contracts for *inter alia* JNA apartments under the Law on Securing Housing for the JNA. To date, the Court of First Instance has not issued any decision in the case. On 15 June 1992, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with legal force on the transfer of the resources of the ex-Socialist Federal Republic of Yugoslavia into the property of the Republic of Bosnia and Herzegovina ("Official Journal RB&H" No. 6/92). This Decree became the Law as it was ratified by the Assembly of the Republic of Bosnia and Herzegovina on 1 June 1994. On 22 December 1995 this Law was supplemented by the Decree with legal force on the Amendments of the Law on the transfer of resources of the ex-Socialist Federal Republic of Yugoslavia into the property of the Republic of Bosnia and Herzegovina. Article 1 of this Decree provides that: "the contract of purchase of the apartments, office space and garages, concluded on the ground of the provisions of the Law on the rights and obligations of the federal bodies in respect of the resources which they use ("Official Journal RB&H," No. 2/92 and 13/94) and Law on Securing Housing in Yugoslav National Army ("Official Journal RB&H," No. 2/92 and 13/94) have been annulled. The questions related to the purchase of real property which were the subject matter of these contracts, as well as the rights of the citizens issuing of these contracts shall be regulated by the law." This Decree was published in the "Official Journal of RB&H," No. 50/95. On 18 January 1996 the Assembly of the Republic B&H issued the Law on ratification of the Decrees with legal force by which is provided *inter alia* that this Law enters into force on the day following the publication in the "Official Journal RB&H." This law was published in the "Official Journal RB&H" No. 2/96 of 25 January 1996.
5. On 30 April 1996, the applicant left Sarajevo with the intention of visiting her husband and children in the United Kingdom. While in Slovenia awaiting the issuance of a visa for the United Kingdom, she was informed that the person to whom she had temporarily entrusted the apartment had been evicted from the apartment by the military authorities on 12 July 1996. The applicant returned to Sarajevo on 20 July 1996. Upon her return, the applicant learned that, during her absence, the apartment had been declared abandoned and had been allocated to Mr. S.D., a member of the Army in the Federation of Bosnia and Herzegovina. She states that she has not received a copy of any decision declaring the apartment abandoned. On 25 July 1996, the applicant was invited to appear before the General Staff of the Army. When she appeared before the Army officials, she was asked to leave the apartment. On 26 July 1996, the applicant lodged an appeal against the decision to declare the apartment abandoned with the General Staff of the Army. To date,

the General Staff of the Army has not decided the applicant's appeal. The applicant is still living in the apartment under the threat of being evicted at any moment.

II. COMPLAINTS

6. The applicant complains that the treatment described by her involved violation of her rights under Articles 6, 8 and 13 of the European Convention and Article 1 of Protocol No. 1 to the Convention.

The Ombudsperson finds in her decision that the case raises issues under the Articles of the Convention invoked by the applicant, and that important preliminary questions also arise as to the exhaustion of domestic remedies.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The case was referred to the Chamber by decision of the Ombudsperson dated 6 November 1996, received on 11 November 1996. On 5 August 1996 the Ombudsperson applied an interim measure under Rule 16 of her Rules of Procedure and requested the respondent Party not to evict the applicant from her apartment. In her letter referring the case to the Chamber she suggested that the Chamber should consider issuing an interim measure. By letter dated 20 November 1996 the applicant's lawyer stated *inter alia* that no further attempts had been made to evict the applicant.

8. On 12 November 1996 the President of the Chamber requested the State of Bosnia and Herzegovina not to evict the applicant from the apartment in question pending the Chamber's consideration of the case. On 12 December 1996 the Chamber decided to communicate the case to the State and the Federation of Bosnia and Herzegovina and invited them to submit written observations on the admissibility and merits of the case. It also requested the Federation of Bosnia and Herzegovina not to evict the applicant from the apartment pending its consideration of the case. The time limit set by the Chamber for submission of the observations of the respondent Parties on the admissibility and merits of the case expired on 3 March 1997. By letter of 5 March 1997 the respondent Parties were reminded of the time limit set. On 21 March 1997 the Chamber considered the state of proceedings and noted that the time limit had expired on 3 March 1997 without any observations having been received. It decided that if no observations were received it would consider the admissibility of the case on the basis of the documents in the case file.

IV. THE LAW

9. The applicant complains of her threatened eviction from the apartment which her husband contracted to purchase and on which they have the occupancy right, and also complains of the alleged absence of any effective remedies.

10. 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.

11. The Chamber first notes that the applicant's complaints relate in part to events which took place before 14 December 1995, when the Agreement came into force. In accordance with generally accepted principles of law the Agreement cannot be applied retroactively (see Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision of 13 September 1996). The Chamber must therefore confine its examination of the case to considering whether the applicant's rights have been violated since that date.

12. In so far as the applicant's complaints arise from the alleged retroactive nullification of the contract for the purchase of her apartment and the compulsory adjournment of the court proceedings instituted by the applicant, they raise issues which are within the Chamber's competence *ratione temporis* and which, in the Chamber's opinion, are essentially the same as the issues which arise in the cases of Medan, Bastijanović and Marković, which the Chamber has declared admissible, (see Cases Nos. CH/96/3, CH/96/8 and CH/96/9 v. the State and Federation of Bosnia and Herzegovina, Decisions of 4 February 1997). In particular the following questions arise under the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is referred to in Articles I and II (a) of the Agreement, namely:

1. -whether the continued adjournment, during the period since 14 December 1995, of the civil proceedings instituted by the applicant and her husband has infringed the applicant's right to a hearing of her case before a tribunal within a "reasonable time" for the purposes of Article 6 (1) of the European Convention;
2. -whether the alleged retroactive nullification of the contract entered into by the applicant's husband for the purchase of the apartment by Decree dated 22 December 1995 infringed the applicant's rights under Article 1 of Protocol No. 1 to the Convention, which guarantees *inter alia* the right to "peaceful enjoyment of his possessions...";
3. -whether any "effective remedy" is available to the applicant, for the purposes of Article 13 of the Convention in respect of (a) the alleged retroactive nullification of the applicant's contract and (b) the continuing adjournment of the civil proceedings.

13. Furthermore the applicant's complaints arising from the threatened eviction under the abandoned property legislation also 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 decisions declaring the apartment to be abandoned, and allocating it to another person;
2. -whether the threatened eviction of the applicant from her 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.

14. The Chamber notes that neither of the respondent Parties has raised any objection to the admissibility of the application under the criteria set out in Article VIII paragraph 2 of the Agreement. In particular neither Party has 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 prejudging the merits, decides unanimously:

TO DECLARE THIS APPLICATION ADMISSIBLE

in so far as it relates to alleged violations of the Applicant's human rights since 14 December 1995.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Peter GERMER
President of the Chamber