



DECISION ON THE MERITS

DELIVERED ON 11 MARCH 1998

in

CASE No. CH/96/31

Cecilija TURČINOVIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 17 February 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
Giovanni GRASSO
Miodrag PAJIĆ
Vitimir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the merits of the Application by Cecilija TURČINOVIĆ against the Federation of Bosnia and Herzegovina registered under Case No. CH/96/31;

Adopted the following Decision on the merits of the Application in accordance with Article XI of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rules 57 and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina (hereinafter "BiH") of Croatian descent. Since 1992 she has lived, with the consent of her son-in-law, in an apartment at Đorđa Andrejevića Kuna 6, Novi Grad, Sarajevo (hereinafter "the apartment"). The applicant's son-in-law held an occupancy right over the apartment, which was under the jurisdiction of the Yugoslav National Army (hereinafter "the JNA"). In 1991 he concluded a contract to purchase the apartment from the JNA. From 1996 onwards the army authorities have attempted to evict the applicant from the apartment on the basis that it is abandoned. The case concerns the attempted eviction of the applicant and raises issues under Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The applicant introduced her application to the Human Rights Ombudsperson for BiH (hereinafter "the Ombudsperson") on 4 October 1996. The application was directed against BiH. The application was referred to the Chamber by Decision of the Ombudsperson dated 17 December 1996 taken under Article V paragraph 5 of the Human Rights Agreement (hereinafter "the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in BiH. In her letter referring the case to the Chamber the Ombudsperson suggested that the Chamber should consider issuing a request for provisional measures preventing the eviction of the applicant from the apartment.

3. On 17 December 1996 the President of the Chamber requested both BiH and the Federation of BiH (hereinafter "the Federation") not to evict the applicant from the apartment pending the Chamber's consideration of the case. By letter dated 18 December 1996 the Agent of BiH submitted that the case was not under the jurisdiction of the institutions of BiH. The Chamber considered the case at its next session, on 3 and 7 February 1997. The Chamber noted that the applicant's complaints, whilst formally directed against BiH, appeared also to involve matters within the responsibility of the Federation and decided to treat the application as one directed against both the State and the Federation. It decided, in accordance with Rule 49 (3) (b) of its Rules of Procedure, to invite both respondent Parties to submit written observations on the admissibility and merits of the application. Both respondent Parties were requested to deal with a number of specific questions in their observations. A time limit expiring on 17 March 1997 was fixed for the submission of these observations. The Chamber also decided, in accordance with Article X paragraph (1) of the Agreement and Rule 36 of its Rules of Procedure, to order both respondent Parties not to evict the applicant from the apartment pending its consideration of the case.

4. Neither respondent Party submitted any observations in response to the Chamber's request. The Chamber again considered the case on 21 March 1997 and decided to inform the Parties that it would consider the admissibility of the case on the basis of the documents in the file if no observations were received before the start of its next session, on 7 April 1997. It also reminded the respondent Parties that the orders for provisional measures which it had made remained in force. On 11 April 1997 the Registry of the Chamber received information from the Office of the High Representative to the effect that the applicant had been evicted from the apartment. Similar information was received from the Office of the Federation Ombudsmen. Thereafter information was received to the effect that the applicant had been reinstated in the apartment on the following day after representations by the Office of the High Representative to the relevant authorities.

5. On 9 May 1997 the Chamber again considered the case. It noted that no observations had been received from either respondent Party. It declared the application admissible in so far as it was directed against the Federation and inadmissible in so far as directed against the State of BiH. It further decided to convey to the Federation a strong protest at the apparent violation of its provisional order reported to it by the Office of the High Representative. By letter dated 20 May 1997 the Chief of Cabinet in the office of the Prime Minister of the Federation informed the Chamber that the policy of

the Federation was of strict application of the Dayton Agreement and in particular of Annex 6 and that the Prime Minister had ordered an investigation of the problem.

6. Pursuant to Rule 53 paragraph 1 of its Rules of Procedure the Chamber invited the Federation, as the remaining respondent Party, to submit written observations on the merits of the case before 18 August 1997. The Federation did not respond to this invitation. On 4 November 1997 the Chamber decided to give the respondent Party a further opportunity to submit written observations on the merits of the case, taking into account its decision on the merits of the case of Bulatović v. the State and Federation of BiH, which had been adopted on 3 November 1997 and was delivered on 7 November 1997. The respondent Party was invited to submit such observations before 28 November 1997 and was informed that if no observations were received the Chamber might decide to proceed with its examination of the case on the basis of the documents in the file. No observations were submitted in response to this invitation.

7. The Chamber again considered the case on 1 December 1997 and decided to draw up its decision on the merits of the case on the basis of the information in the file. On 17 February 1998 it further deliberated on the merits of the case and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

8. The facts of the case as they appear from the submissions of the applicant, the Decision of the Ombudsperson and the documents in the case-file have not been contested by the respondent Party and may be summarised as follows.

9. Until 1992 the applicant lived in an apartment in Grbavica, Sarajevo, over which she held an occupancy right. In about April 1992 the applicant left Grbavica because of the hostilities and moved into the apartment of her son-in-law. The son-in-law had an occupancy right over the apartment, which was social property over which the JNA exercised jurisdiction. On 5 November 1991 he had concluded a written contract to purchase the apartment from the JNA. Within the following fifteen days, as specified in the contract, he had paid the purchase price of 333.665 Yugoslav Dinars. In September 1992 the son-in-law and his wife left Sarajevo, leaving the applicant in the apartment. In March 1994 he gave the applicant written authority to use the apartment. The applicant stated in an appeal to the Army General Staff that her son-in-law had registered the contract in the land book (see paragraph 12 below), but no evidence of such registration has been produced.

10. On 19 March 1996, in accordance with the General Framework Agreement for Peace in Bosnia and Herzegovina, Grbavica, which had been under the control of Bosnian Serb forces, became part of the Federation. The applicant visited her apartment in Grbavica and discovered that it had been seriously damaged in the hostilities, and was not habitable.

11. On 19 September 1996 the General Staff of the Army in the Federation made a decision to the effect that the applicant was using the apartment (of her son-in-law) illegally. The decision states that the apartment is considered as abandoned and the applicant is ordered to leave it voluntarily within seven days of receiving the decision. It also states that the applicant will be forcibly evicted if she does not comply with the order. The decision bears to have been taken under "Articles 30 and 47 of the Law on Abandoned Apartments (Sl. List RBiH 6/92, 8/92, 16/92, 13/94 and 9/95)". That Law has only fourteen Articles. It is possible that a reference to the Law on Housing Relations (SL 14/84, 12/87, 36/89) was intended. Article 30 of that Law provides for the eviction of persons who have illegally entered an apartment and Article 47 provides for the termination of an occupancy right if the holder of the right and members of his family living there with him have been absent for six months.

12. The decision of 19 September 1996 was served on the applicant on 3 October 1996. On the same day she appealed against the decision to the Army General Staff. In her appeal she pointed out that she had had to leave the Grbavica apartment in April 1992 and had gone to live with her son-in-law and daughter. She had remained in the apartment since. The apartment was the property of her son-in-law, who had purchased it under the contract in 1991, which was registered in the land book of

the Sarajevo Court of First Instance No. I. She considered that the apartment had not been abandoned and she had not entered it illegally. Her own apartment was not habitable due to war damage. She was a pensioner and would be on the street if she had to leave the apartment. This appeal was still pending as at the date when the case was referred to the Chamber. No information as to its outcome has been submitted to the Chamber. The appeal has no suspensive effect.

13. On 14 October 1996 the General Staff of the Army requested the Federal police for assistance in carrying out the eviction. The eviction was scheduled for 24 October 1996. On 21 October 1996 a Federal police officer informed the applicant that she would be evicted. On 24 October and 18 December 1996, officials of the army attempted to evict the applicant. The applicant requested IPTF officials to come to the apartment, and the Army official responsible for the eviction decided not to carry it out. According to information received from the Office of the High Representative and the Federation Ombudsmen, which has not been contested by the respondent Party, the applicant was evicted from the apartment for a short time on 10 - 11 April 1997. A seal was placed on the door of the apartment while she was out on 10 April, preventing her entry. Following representations to the relevant authorities, she was allowed back into the apartment on the following day.

IV. FINAL SUBMISSIONS OF THE PARTIES

A. The Applicant

14. In her application to the Ombudsperson the applicant complained of her threatened eviction from the apartment and maintained that there had been violations of her right to her home, access to court and peaceful enjoyment of the apartment.

B. The Respondent Party

15. The Federation of BiH, as the remaining respondent Party, has not made any submissions regarding the case.

C. The Ombudsperson

16. In her decision referring the case to the Chamber the Ombudsperson found that the case raised issues under Articles 6, 8 and 13 of the Convention and under Article 1 of Protocol No. 1 to the Convention.

V. OPINION OF THE CHAMBER

17. In terms of Article XI paragraph 1 (a) of the Agreement the Chamber must, in the present decision, address the question whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement.

A. The Issues Arising

18. The Chamber first recalls that in paragraph 16 of its decision of 9 May 1997 on the admissibility of the case it found that the applicant's complaints concerning her threatened eviction from the apartment raised the following issues under the Convention:

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 decision declaring the apartment to be abandoned;
2. Whether the threatened eviction of the applicant from the 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.

B. Article 8 of the Convention

19. In the Chamber's opinion the primary issue in the present case is whether the threatened eviction of the applicant from the apartment infringes her right to respect for her home as guaranteed by Article 8. It will therefore first examine the case under this provision, which, so far as relevant, is in the following terms:

- "1. Everyone has the right to respect for ... his home
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

20. The Chamber first notes that the applicant has lived in the apartment since 1992 and has not occupied the apartment in Grbavica, over which she herself holds or held the occupancy right, since she moved out in 1992. The Grbavica apartment is, according to the applicant, unfit for habitation. In the circumstances of the case the Chamber finds that the apartment in issue, which is occupied by the applicant, must be regarded as her "home" for the purposes of Article 8 of the Convention, and that this provision is therefore applicable. It further finds that the threatened and attempted eviction of the applicant from the apartment by the army authorities constitutes an "interference by a public authority" with the exercise of her right to respect for her home. Such an interference involves a violation of Article 8 unless it can be justified under Article 8 (2) as being "in accordance with the law" and also "necessary in a democratic society" for one of the purposes there set out.

21. As to whether the interference with the applicant's rights is "in accordance with the law" the Chamber notes that the decision of 19 September 1996, on which the threatened eviction has been based, refers to legislative provisions which do not exist and does not therefore disclose any legal basis for the decision (see para. 11 above). In inviting the respondent Party to submit written observations on the admissibility and merits of the case (see para. 3 above) the Chamber (amongst other questions) expressly requested it to state whether there was "any legal basis for the threatened eviction of the applicant given that the decision of 19 September 1996 refers to legal provisions which apparently do not exist". Despite its obligation under Article X paragraph 5 of the Agreement to co-operate fully with the Chamber", the respondent Party did not reply to this or any of the other questions put by the Chamber. No legal basis for the decision has thus been identified. In these circumstances the Chamber finds that it is not established that the threatened eviction of the applicant is "in accordance with the law" and that for this reason there has been a violation of Article 8 of the Convention.

22. The Chamber has also considered whether the interference with the applicant's rights, even if there is a proper basis for it in domestic law, is "necessary in a democratic society" for any of the purposes set out in Article 8 (2). In this context the Chamber must consider whether the decision in question had a legitimate aim and whether it was necessary in a democratic society for such aim (see e.g. the judgment of the European Court on Human Rights in the case of *Dudgeon v. United Kingdom*,

1981 Series A No. 45 para. 43). The respondent Party has not informed the Chamber what the aim of the decision in question was. However, from the information available it appears that the aim was to recover possession of the apartment for use by the army authorities on the basis that the applicant was occupying the apartment illegally. In pursuing that aim the military authorities did not take into account the fact that the applicant's son-in-law had contracted to purchase the apartment and that the applicant was occupying the apartment with his consent.

23. It is possible that the military authorities considered that the contract entered into by the applicant's son-in-law had been annulled by the Decree of 22 December 1995 promulgated by the Presidency of the Republic of BiH which annulled certain contracts for the purchase of JNA flats (SL RBH 50/95). The Chamber recalls, however, that it has held in previous cases that the annulment of such purchase contracts infringed the rights of the purchasers to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention (see Decisions delivered on 7 November 1997 in *Medan and Others v. State and Federation of BiH* and *Bulatović v. State and Federation of BiH*). In the Chamber's view the annulment of the contract entered into by the applicant's son-in-law would, for the reasons which it stated in those decisions, also violate his rights under Article 1 of Protocol No. 1. This is so whether or not the purchase contract had been registered in the land book. In the *Bulatović* case the Chamber also held that the threatened eviction of the applicant from his apartment, being a consequence of the authorities' refusal to recognise his purchase contract, constituted a further violation of his rights under Article 1 of Protocol No. 1 (see paras 45 - 48 of the *Bulatović* Decision).

24. In the context of the present case the Chamber considers that in so far as the authorities' actions may have been based on their refusal to recognise the purchase contract entered into by the applicant's son-in-law as valid, they cannot be regarded as pursuing a legitimate aim. The authorities are attempting to recover possession of the apartment on the basis that they are entitled to ownership of it. However the applicant's son-in-law would have been entitled to such ownership but for the fact that he was deprived of his contractual rights by legislation which violated Article 1 of Protocol No. 1 to the Convention. The attempt to evict the applicant, who has occupied the apartment at all relevant times with his consent and as a member of his family, is a consequence of, and designed to make effective, the violation of the son-in-law's rights. The Chamber finds therefore that the measures in question do not pursue a legitimate aim and cannot be regarded as being necessary in a democratic society for any of the purposes mentioned in Article 8 (2) of the Convention. For this reason also, independently of whether the authorities actions were "in accordance with the law", there is a breach of the applicant's rights under Article 8 of the Convention.

C. Other Articles of the Convention

25. Having found that the threatened eviction of the applicant violated her rights under Article 8 of the Convention, the Chamber finds it unnecessary in the particular circumstances of the case, where the legal issues have not been fully debated, to decide whether it also violated any property right of the applicant protected by Article 1 of Protocol No.1 to the Convention or whether the procedures followed were compatible with Articles 6 and 13 of the Convention.

VI. REMEDIES

26. Under Article XI paragraph 1 (b) of the Agreement the Chamber must address in its Decision the question what steps shall be taken by the respondent Party to remedy the breach of the Agreement which it has found.

27. In the circumstances of the present case the Chamber considers it appropriate to order the respondent Party to revoke the Decision of 19 September 1996 and not to evict the applicant from the apartment. It will also order the respondent Party to report to it before 11 May 1998 on the steps taken by it to give effect to the present decision.

28. The Chamber further considers it appropriate to allow the applicant to submit, before 11 June 1998, any claims she wishes to put forward against the respondent Party for monetary relief or other remedies within the scope of Article XI paragraph 1 (b) of the Agreement.

VII. CONCLUSIONS

29. For the reasons given above the Chamber;

- 1. **Decides** by thirteen votes against one that the threatened eviction of the applicant from the apartment involves a violation by the respondent Party of her right to respect for her home under Article 8 of the Convention and that the respondent Party is thereby in breach of its obligations under Article 1 of the Agreement;

- 2. **Decides** unanimously that it is unnecessary to examine the case under any of the other Articles of the Convention referred to;

- 3. **Decides** by thirteen votes against one to **order** the respondent Party to revoke the Decision of 19 September 1996 for the eviction of the applicant and **further to order** it not to evict the applicant from the apartment;

- 4. **Decides** unanimously to **order** the respondent Party to report to it before 11 May 1998, on the steps taken by it to give effect to this decision;

- 5. **Decides** unanimously to reserve for further consideration the question whether any other remedies should be ordered against the respondent Party and to allow the applicant to submit before 11 June 1998 any claim she wishes to put forward in that respect.

(signed) Peter KEMPEES
Registrar of the Chamber

signed) Michèle PICARD
President of the Chamber