



DECISION ON THE ADMISSIBILITY

CASE No. CH/99/1832

Dragan MAJKIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 March 1999 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Vlatko MARKOTIĆ
Mr. Jakob MÉLLER
Mr. Mehmed DEKOVIĆ

Mr. Leif BERG, 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:

I. FACTS

1. The application concerns proceedings relating to the applicant's eviction from an apartment located in Veselina Masleše No. 3, Prijedor, Republika Srpska ("the apartment"). The occupancy right was held by his mother. The holder of the right to allocate the apartment is the Municipality of Prijedor ("the Municipality"). In 1991, the applicant was mobilised for military service and spent a number of weeks at the battle-front in Croatia. Afterwards, he moved to Kozarska Dubica. He established residence there, to avoid being mobilised again, or at least to avoid being mobilised into the same unit as before. The applicant claims that he never actually left Prijedor.

2. The applicant's mother died in 1993. After numerous attempts, he managed to have himself re-registered as resident in Prijedor in 1994. It appears that he maintained his registration of residence in Kozarska Dubica. He also applied to the Executive Board of the Municipality, seeking to inherit the occupancy right over the apartment. On 28 April 1994, this request was refused.

3. On 29 July 1994, the applicant applied to the Municipal Secretariat for Urbanism and Housing-Communal Affairs ("the Secretariat"), seeking to inherit the occupancy right over the apartment. This request was refused by a decision of 12 April 1995. This decision referred to a certificate of the Police in Kozarska Dubica, stating that the applicant had registered his residence there. In addition, the Municipal Directorate for Geodetic Affairs and Land Registry in Kozarska Dubica had informed the Secretariat that the applicant had been allocated an abandoned property in that Municipality for occupation. The Secretariat decided that, on the basis of this information, the applicant could not be considered to be a member of his mother's household and that therefore he was not legally entitled to inherit the occupancy right over the apartment.

4. The applicant appealed against this decision to the Ministry for Urbanism, Housing-Communal Affairs and Construction. On 18 July 1995, his appeal was rejected for the reasons stated in the decision of the Secretariat referred to at paragraph 3 above. The applicant appealed to the Supreme Court of the Republika Srpska against this decision on 8 August 1995. This appeal was rejected as ill-founded on 19 August 1997.

5. On 4 December 1998, the Secretariat issued a decision authorising the eviction of the applicant from the apartment. The applicant did not appeal against this decision, as he was entitled to do. On 3 February 1999, the Secretariat issued a conclusion ordering the applicant's eviction and scheduling it for 15 February 1999. The applicant has not informed the Chamber of whether or not the eviction has been carried out.

6. The applicant has also applied to the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") regarding the same matter. This application was registered on 26 February 1998 as application No. (B) 3308/98.

II. COMPLAINTS

7. The applicant complains generally that the eviction would violate his human rights and those of his wife and children. He requests that his eviction be postponed until the adoption of the new property law in the Republika Srpska. In addition, he requests that the Chamber issue a decision entitling him to inherit the occupancy right over the apartment and entitling him to purchase it.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was introduced on 10 February 1999 and registered on the same day. The applicant requested that the Chamber order a provisional measure to take all necessary action to prevent his eviction. On 11 February 1999, the Second Panel refused the request for a provisional measure.

IV. OPINION OF THE CHAMBER

9. Before considering the merits of the case the Chamber must decide whether to accept the

case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers, *inter alia*, incompatible with the Agreement or manifestly ill-founded.

(i) The events prior to 14 December 1995

10. The Chamber notes that the part of the events relating to the proceedings seeking the eviction of the applicant from the apartment occurred prior to 14 December 1995, when the Agreement came into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (Human Rights Chamber, Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision on Admissibility, Decisions on Admissibility and Merits 1996 – 1997, page 7). Accordingly, the applicant's complaints relating to these events are outside the competence of the Chamber *ratione temporis* and are therefore incompatible with the Agreement.

(ii) The events after 14 December 1995

11. Certain of the events relating to the proceedings seeking the eviction of the applicant from the apartment occurred after 14 December 1995, the date of entry into force of the Agreement. These are the refusal of the applicant's appeal to the Supreme Court on 19 August 1997 and the executory proceedings regarding the applicant's eviction by the municipal authorities in Prijedor.

12. The eviction of the applicant was ordered after proceedings that ended before the Supreme Court of the Republika Srpska. It appears that all of the relevant facts have been taken into account, the relevant national laws have been adhered to and the requirements of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms have been adhered to. As a result, the case does not appear to involve any violation of the rights as provided for in the Agreement.

13. Accordingly, the Chamber decides not to accept the application, it being partly incompatible *ratione temporis* with the Agreement, and partly manifestly ill-founded within the meaning of Article VIII(2)(c) thereof.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel