DECISION ON THE ADMISSIBILITY

CASE No. CH/97/80

Aleksandar VELIČKOVSKI

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 June 1999 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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 ("General Framework Agreement");

Adopts the following decision pursuant to Article VIII(2)(a) and (c) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

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I. FACTS

1. These facts are based upon the application, appended documents and subsequent submissions by the applicant.

2. The applicant is originally from Macedonia. The applicant owns the house located at St. Jošanica II No, 21 in Vogošća, where he lived with his family for forty years, until the beginning of February 1996. Sometime before the reintegration of Vogošća into the Federation of Bosnia and Herzegovina, as envisaged in the General Framework Agreement, the applicant and his family left Vogošća because Bosnian Serbs had allegedly threatened that they would kill anybody who decided to stay.

3. On 8 July 1996 the applicant returned to Vogošća with his family having informed the municipal authorities in advance. However, the applicant could not enter his house because it was occupied by Mr. Esad Čolak, a refugee from Čajniče. According to a document issued by the Vogošća Municipality dated 5 January 1998, Mr. Čolak is an unlawful occupant of the house.

4. On 10 July 1996 the applicant requested the Vogošća Municipality to evict Mr. Čolak from the house. No decision appears to have been issued on this request.

5. On 12 June 1997 the competent organ of the Vogošća Municipality declared the house temporarily abandoned and put it under the management of the Municipality.

6. On 7 October 1997 the applicant initiated proceedings before the Municipality Court I in Sarajevo against Mr. Čolak and the Vogošća Municipality requesting the return of the house and movable property which had been left in the house. He also requested compensation for the use of the house and other goods by Mr. Ćolak in the amount of 700 DM per month, beginning from 10 July 1996 until the return of the house to the applicant.

7. On 24 March 1998 the Court issued a decision in favour of the applicant, ordering Mr. Čolak to return the house to the applicant within eight days. The decision states that the applicant no longer wished to pursue his earlier request for the return of the movable property. According to the applicant Mr. Čolak appealed against the above decision to the Cantonal Court in Sarajevo. It appears that no decision has been issued by the Cantonal Court.

8. The applicant discovered in the course of the court proceedings that his house had been declared temporarily abandoned. On 13 April 1998 he submitted a request to the Vogošća Municipality for the return of his house based on the Law on the Cessation of the Law on Temporarily Abandoned Property. A decision returning the house to the applicant was rendered on 27 April 1998, but apparently the applicant received it only on 11 September 1998.

9. On 25 May 1998, having received no decision on his request, the applicant appealed to the Cantonal Ministry for Property Law Affairs in Sarajevo. It appears that no decision has been issued on the applicant's appeal.

10. On 28 May 1998 the applicant submitted a second request to the Vogošća Municipality to evict Mr. Čolak from his house.

11. On 21 July 1998 the applicant submitted a request to the Municipality Court I in Sarajevo for the execution of the court decision of 24 March 1998. It appears that no decision has been issued by the court.

12. On 21 July 1998 the applicant submitted a letter informing the Chamber that the Municipal Court had not transmitted Mr. Čolak's appeal against its decision of 24 March 1998 to the Cantonal Court.

13. On 12 November 1998 the Commission for Real Property Claims of Displaced Persons and Refugees (established by Annex 7 to the General Framework Agreement) issued a decision in favor of the applicant.

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14. On 13 January 1999 the applicant informed the Chamber that he had repossessed his house on 21 December 1998 on the basis of a private agreement with the illegal occupant, Mr. Čolak.

II. COMPLAINTS

15. The applicant initially alleged violations of his right to property and freedom of movement and residence. He also alleged discrimination based on his national origin. He stated that for two years the Federation authorities did not issue any decision to evict the illegal occupant from his house.

16. In his observations of 13 January 1999 the applicant claimed compensation because of the failure of the Federation authorities to evict the illegal occupant. He requests the amount of 300 KM per month from 10 August 1996 until 22 December 1998.

III. PROCEEDINGS BEFORE THE CHAMBER

17. The application was introduced on 10 November 1997 and registered on the same day. The applicant is represented by Ms. Senija Poropat, a lawyer practicing in Vogošća.

18. On 16 October 1998 the Chamber decided to transmit the application to the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations on 22 December 1998. The applicant replied on 13 January 1999. On 2 February 1999 the respondent Party was invited to comment on these observations, but never did so.

19. On 19 March 1999 the Registry requested both parties to provide additional information by 5 April 1999. On 5 April 1999 the applicant submitted a letter and documents. On 19 April 1999, the Chamber received several documents from the respondent Party after it had applied for an extension on 2 April 1999.

IV. OBSERVATIONS OF THE PARTIES

A. Observations of the respondent Party

20. The respondent Party argued the case should be declared inadmissible under Article VIII(2)(d) of the Agreement noting that the same matter was currently pending before the Commission for Real Property Claims of Displaced Persons and Refugees.

21. The respondent Party also argued that the case should be declared inadmissible under Article VIII(2)(a) for failure to exhaust domestic remedies. The respondent Party noted that the applicant still had an appeal pending before the Cantonal Court and had initiated proceedings before the administrative organ in accordance with the Law on Cessation of the Application of the Law on Abandoned Property.

22. Should the case be declared admissible, the respondent Party argued that no violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention") had occurred. The respondent Party argued that there could be no violation of Article 6 or 13 of the Convention because the first instance procedure was finished in under six months and although the second instance procedure had not yet finished, it had not been excessively long to date.

23. In regard to possible violations of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the respondent Party argued that it was not responsible for the abandonment of the applicant's apartment. The applicant had abandoned his apartment during peacetime, three months after the General Framework Agreement had come into force. Nor was the respondent Party responsible for the illegal occupancy of Mr. Čolak.

B. Observations of the Applicant

24. The applicant maintained his request for compensation because the Federation authorities failed to evict the illegal occupant under the Law on Abandoned Real Estate and because municipal

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authorities declared the house abandoned after the applicant had requested reinstatement for himself and eviction of the illegal occupant.

V. OPINION OF THE CHAMBER

25. Before considering the merits of the application and the applicant's claim for compensation, the Chamber must decide whether to accept the case. To this end, the Chamber shall take into account the admissibility criteria set out in Article VIII(2) of the Agreement.

(i) The complaint relating to the Respondent party's failure to evict the illegal occupant

26. The applicant explicitly requests compensation for the failure of the Vogošća authorities to evict the illegal occupant of the applicant's house and to reinstate him in the possession of the same, amounting to a violation of his rights under Article 8 of the Convention and Article 1 of Protocol 1 to the Convention. The Chamber understands the applicant's statements as a complaint of an alleged violation of Articles 6 and 13 of the Convention as well.

27. The applicant filed a request with the competent administrative authorities for the eviction of Mr. Čolak on 10 July 1996. This request did not yield any result. He then made use of the proper remedy by initiating court proceedings and, within less than half a year, the court issued a decision in his favor. Therefore, it is clear that in the present case an effective remedy against the administrative authority's prolonged inactivity existed and that the applicant availed himself successfully of that remedy. The Chamber furthermore notes that the fact that the Cantonal Court has not issued any decision concerning Mr. Čolak's appeal against the Municipality Court's decision, does not result in any infringement of the applicant's rights, as he has in the meantime regained possession of his house.

28. Accordingly, the Chamber decides not to accept this part of the application pursuant to Article VIII 2(a), as remedies against the alleged violation exist and have proved effective in the applicant's case.

(ii) The complaint relating to the declaration of abandonment

29. In the original application, the applicant also complains that the Vogošća Municipality declared his house temporarily abandoned and never rendered a decision in the proceedings concerning his request for the return of the house. However, the documents submitted to the Chamber show that on 27 April 1998 the Vogošća Municipality issued a decision rendering the declaration of abandonment ineffective.

30. Accordingly, the Chamber decides not to accept this part of the application pursuant to Article VIII(2)(c) of the Agreement as it is manifestly ill-founded.

VI. CONCLUSION

31. For these reasons, the Chamber, by 4 votes to 3

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

Annex Dissenting Opinion of MESSRS. Manfred Nowak and Jakob Möller

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ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the separate dissenting opinion of Messrs. Manfred Nowak and Jakob Möller.

DISSENTING OPINION OF MESSRS. MANFRED NOWAK AND JAKOB MÖLLER

We cannot agree with the decision for the following reasons:

The applicant, a person of Macedonian origin who has been living in Bosnia for most of his life, was, in our opinion, a victim of double discrimination. Before Vogošča, according to the Dayton Peace Agreement, was transferred in early 1996 from the Republika Srpska to the Federation, he was forced by the Bosnian Serbs to abandon his house, where he had lived for forty years. When he returned five months later, his house had already been declared abandoned by the Federation authorities. Then he had to fight for two and a half years (from July 1996 to December 1998) in order to evict an unlawful occupant. It was only on the basis of a private agreement with this occupant that he finally managed to get into his house again. Although the Federation authorities took some action to assist him to repossess his house, these actions were unsuccessful. One cannot, therefore, say that these remedies were effective. Taking into account the overall situation of ethnic and religious discrimination, we are convinced that the applicant, because of his national origin, by the non-effective action taken to protect him, has been discriminated against in the enjoyment of his rights to protection of his house and possessions (Articles 8 and 1 of Protocol 1 to the Convention). As a remedy, the Chamber should have ordered the Federation to pay to the applicant the requested amount of 300 KM per month from 10 August 1996 until 22 December 1998.

In particular, we disagree with two statements in the Opinion of the Chamber. In paragraph 26, the Chamber interprets the applicant's compensation request "as a complaint of an alleged violation of Articles 6 and 13 of the Convention". Nothing in the applicant's submissions justifies this interpretation. He only alleges discrimination in respect to his rights of property, freedom of movement and residence. His compensation claim must, therefore, be based on Article XI of Annex 6. Secondly, in paragraph 27, the Chamber holds that the non-issuance of a court judgement "does not result in any infringement of the applicant's rights, as he has in the meantime regained possession of his house". In our opinion, a private initiative to put an end to an unlawful situation cannot absolve the State from its responsibility to protect human rights.

(signed) Mr. Manfred Nowak

(signed) Mr. Jakob Möller

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