



DECISION ON ADMISSIBILITY

Case no. CH/99/2628

Meho ŠIŠIĆ and others

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 March 2000 with the following members present:

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

Mr. Anders MÅNSSON, 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 76 applicants, all citizens of Bosnia and Herzegovina, are displaced persons of Bosniak descent from the village Radanovići, in the municipality of Kiseljak in the Federation of Bosnia and Herzegovina. A list of the applicants' signatures is enclosed with the application form. They are represented by Mr. Salem Čeho, a lawyer practising in Sarajevo. They complain to the Chamber against a decision of 7 February 1998 issued by the Mayor of the municipality Kiseljak, Mr. Pero Mađar. The decision concerns the right of the firm ŠIP "Vranica" Fojnica to use socially owned building land, cadastral no. 931/1, cadastral municipality Homolj. The Mayor decided to deprive the firm of its right to use the land in question. There was no right to appeal provided in the decision. The applicants allege that before the war the land was used as a football court by the Football Club "Radanovići". Also, several local communities of the municipality used the football court for various cultural, religious and other manifestations. The applicants stress that, before the war, the land was designated for the building of a sport centre.

2. According to the applicants, the land in question was reallocated, by the Mayor's decision, to displaced persons of Croat descent who currently live in the village Radanovići. The purpose of the reallocation is to construct private dwellings for those displaced persons. The applicants state that building material was brought to the land on 17 June 1999.

3. However, the Municipal Council of the municipality of Kiseljak was constituted on 24 December 1997 as a new joint authority established according to the Dayton Peace Agreement. The applicants allege that the decision issued by the Mayor is illegal as only the Municipal Council has power to issue such decisions.

4. On 11 May 1998 the applicants addressed the Municipal Council, requesting protection of their rights in relation to unlawful activities of the present municipal authorities, regarding the process of privatisation of socially owned land. The applicants have never received any answer upon this request. The President of the Municipal Council, Mr. Bunjo Adnan, addressed the Federal Ombudsmen's Office in Travnik regarding the above mentioned issues. On 22 May 1998 the Federal Ombudsmen's Office answered the Municipal Council stating that it was not competent for such issues. It instructed the President of the Council to submit applications to the Federal Ombudsmen only in respect of an individual violation of human rights.

5. On 31 May 1999 the applicants submitted a criminal charge to the Municipal Prosecutor's Office in Kiseljak against the Mayor because of abuse of office or official authority.

6. The applicants also state that socially owned land is protected by the High Representative's decision issued on 26 May 1999. By that decision the High Representative suspended the power of authorities in both Entities to re-allocate and dispose of certain types of socially owned land. This decision addresses the wide-spread misuse, re-allocation and sale of socially owned land that was previously used by people who are now refugees and displaced persons and may wish to return.

7. Following the High Representative's decision, municipalities are no longer allowed to re-allocate or dispose in any way of socially owned property (other than apartments the use of which is regulated by separate laws), if on 6 April 1992 it was being used for residential, religious or cultural purposes, or for private agricultural and business activities. Any reallocation decisions of this nature that were made since 6 April 1992 and affect the rights of refugees and displaced people, are null and void unless significant and lawful construction work has commenced.

8. The High Representative' decision is a temporary suspension of the powers of municipal authorities to re-allocate socially owned land. It freezes the situation until the legal framework governing the re-allocation of socially owned land is reformed. The suspension would be in effect until 31 December 1999, but could be extended if the legal situation was not satisfactorily resolved by then. The High Representative urges the Governments of both Entities to amend the legal framework regulating the use of land in order to bring it in accordance with Annex 7 and international human rights legal standards as well as to prevent complications in the privatisation and restitution process.

II. COMPLAINTS

9. The applicants allege a violation of their rights under Article 6 (right to a fair hearing within a reasonable time by an independent and impartial tribunal), Article 13 (right to an effective remedy), Article 14 (protection against discrimination) of the European Convention on Human Rights and Article 1 of the Protocol No. 1 to the Convention (right to a peaceful enjoyment of possession). The applicants also allege that the unlawful activities of the Mayor of the municipality of Kiseljak have deprived them of their common life and public events.

10. Regarding Article 13 of the Convention, the applicants allegedly addressed the competent organs at all levels of authority in the Federation of Bosnia and Herzegovina (the municipality of Kiseljak, Srednjo-bosanski Canton) in order to prevent the unlawful usurpation. However, they have never obtained any relevant answer or final decision in this respect.

11. Regarding Article 14 of the Convention, the applicants allege that the socially owned land in the village of Radanovići has been arbitrarily usurped both by Croat municipal officials and citizens of Croat nationality. The population in the village was almost only of Bosniak descent before the war and the purpose of this conduct is to prevent the return of Bosniaks to the village and thereby forcibly change its ethnic structure.

III. PROCEEDINGS BEFORE THE CHAMBER

12. The application was introduced on 24 June 1999 and registered on 29 June 1999. By a letter of 30 June 1999 the applicants informed the Chamber that on 27, 28 and 29 June 1999 the construction of three objects had been commenced on the land in question, i.e. on the football field in front of goal posts. Subsequently, they requested the Chamber to order the respondent Party, as a provisional measure, to stop any further construction on the land and to suspend the decision of the Mayor of the municipality of Kiseljak of 7 February 1998.

13. On 7 July 1999 the Chamber refused the request for a provisional measure.

14. By a letter of 15 September 1999 the applicants amended the above complaints. The letter states that the applicants' rights protected by the Constitution of the Federation of Bosnia and Herzegovina such as the right to use public goods, the right to public assembly, the right to unity/community not only with respect to citizens of Bosniak, but also those of Croat and Serb descent, have been violated. Allegedly, those rights were affected by the procedural decision issued by the Mayor of the Municipality Kiseljak on 7 February 1998. They further state that the Mayor turned the location in question into private property having allocated it as sites to build private houses thereon. The applicants enclosed to this letter a letter of 9 August 1999 submitted by them to the High Representative's Office, requesting it to suspend the powers of municipal authorities of the Municipality Kiseljak with respect to allocation and disposal of socially owned land within the village Radanovići, and a letter of 18 August 1999 submitted to the Mayor of the Municipality Kiseljak requesting him and the municipality's authorities to apply property laws in a proper way.

IV. OPINION OF THE CHAMBER

15. Before considering the merits of the case the Chamber must decide whether to accept it, 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 incompatible with the Agreement.

16. The Chamber first notes that the deprivation of the right to use the land in question, which was socially owned land, was done by the decision of 7 February 1998 issued by the Mayor of the municipality Kiseljak, in order to construct private buildings. It appears that the applicants before the war used the land in question for different purposes of a common nature, such as cultural, religious and sport activities. Leaving aside the issue whether the deprivation of the right to use the land question was done properly and in accordance with the applicable laws, it is of no doubt that the applicants do not have any property rights regarding that land. In these circumstances, the Chamber

finds that the applicants can not be considered as victims of a possible violation in regard to the land and that, therefore, they do not have legal standing before the Chamber in this respect.

17. Accordingly, the Chamber decides not to accept the application, it being incompatible *ratione personae* with the Agreement within the meaning of Article VIII(2)(c) thereof.

V. CONCLUSION

18. For these reasons, the Chamber, by 5 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel