



DECISION ON THE ADMISSIBILITY

DELIVERED IN WRITING ON 22 JULY 1998

in

CASE No. CH/97/61

Vukašin MAJSTORVIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 16 July 1998 in a panel composed of the following Members:

Michèle PICARD, President
Dietrich RAUSCHNING, Vice-President
Hasan BALIĆ
Rona AYBAY
Želimir JUKA
Miodrag PAJIĆ
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Vukašin Majstorović against The Federation of Bosnia and Herzegovina submitted on 14 July 1997 under Article VIII paragraph 1 of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered on 16 October 1997 under Case No. CH/97/61;

Adopted the following Decision on the admissibility of the Application in accordance with Article VIII paragraph 2 of the Agreement.

I. THE FACTS

1. The facts of the case are based on the application and appended documents as well as subsequent submissions by the applicant and can be summarised as follows:
2. The applicant had an occupancy right to a three-room apartment on Grbavička Street No. 32 in Sarajevo. At the beginning of the war the wife of the applicant went to Grbavica, which was then under Serb control, to visit her son. Since that time the applicant has lost all contact with her. In August 1992 he went to Belgrade where a son of his was living.
3. After the war the applicant returned to Sarajevo and tried to re-enter his apartment. A family was living in the apartment and he was prevented from doing so.
4. The applicant filed a complaint with the Court of First Instance II in Sarajevo. He was informed that the Court had pronounced a divorce between him and his wife (Judgment No. P-264/93 of 24 September 1993 of the Court of First Instance II Sarajevo) and that the apartment had been allocated to her (Decision R-46/93 of 4 November 1993 of the Court of First Instance II Sarajevo). The latter decision came into force on 4 November 1993.
5. On 3 March 1997 the applicant submitted a request for the re-instatement of the proceedings ("*Povraćaj u pređašnje stanje*") to the Court of First Instance II in Sarajevo which was rejected by the same Court on 19 May 1997 under Article 121 of the Law on Civil proceedings as ill-founded ("*nedozvoljen*").
6. On 28 May 1997 the applicant appealed to the Cantonal Court through the Court of First Instance II in Sarajevo against the decision of 4 November 1993 allocating the apartment to his former wife.
7. On 3 July 1997 the Court of First Instance II issued, a Procedural Decision rejecting the applicant's appeal as out of time (Article 380 paragraph 1 of the Law on Civil Proceedings).
8. On 8 July 1997 the applicant appealed against this decision to the Canton Court of Sarajevo through the Court of First Instance II. The applicant's lawyer alleges that there was no reaction to that appeal.
9. On 29 May 1997 the applicant requested the re-opening of the proceedings at the Court of First Instance II in Sarajevo. This remedy is regarded as an extraordinary remedy under the Law on Civil Proceedings.
10. On 23 March 1998 the applicant initiated criminal proceedings against the lawyer who represented him in his absence in 1993 in the above mentioned proceedings.
11. In a letter of 22 April 1998 the applicant's representative informed the Registry that a hearing concerning the occupancy right has been scheduled for 14 May 1998 before the Court of First Instance II in Sarajevo.

II. COMPLAINTS

12. The applicant complains, without further specification, that his rights under Article 6 of the European Convention on Human Rights (the "Convention") and under Article 1 of Protocol 1 to the Convention have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

13. The applicant lodged his application directly with the Chamber on 14 July 1997 where the original application was registered on 16 October 1997 under the above mentioned case number. The applicant is represented before the Chamber by Ms. Senija Poropat.

IV. OPINION OF THE CHAMBER

14. Before considering the case on its merits the Chamber has to decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. Under this provision the Chamber must take into account, *inter alia*, whether other effective remedies exist and whether the applicant has demonstrated that they have been exhausted, whether the Chamber was competent *ratione temporis*, whether the application falls within the Chamber's jurisdiction *ratione materiae* and whether the application was manifestly ill-founded.

15. The General Framework Agreement for Peace in Bosnia and Herzegovina was signed on 14 December 1995. Under Article XVI of the Agreement the Chamber is therefore only competent *ratione temporis* to consider events which happened after that date or, if they happened before then, constitute a violation continuing after that date. The proceedings in 1993 and the allocation of the apartment to the applicant's former wife are therefore outside the Chamber's competence *ratione temporis*.

16. The procedure before the Court of First Instance II and before the Cantonal Court in Sarajevo carried out after 14 December 1995 would fall in principle within the ambit of Article 6 of the Convention and under the competence of the Chamber *ratione temporis*.

17. The applicant's claims for the re-instatement of the proceedings and the re-opening of the proceedings cannot be related to any of the rights and freedoms guaranteed under Article II paragraph 2 of the Agreement because there is no right to re-open proceedings which have been terminated by a final decision under Article 6 nor would the criminal charge against his former lawyer fall within the ambit of Article 6 of the Convention. These claims are therefore not within the Chamber's jurisdiction *ratione materiae*.

18. The applicant's appeal against the Decision of 4 November 1993 allocating the apartment to his former wife of 28 May 1997 would fall in principle within the ambit of Article 6 of the Convention. However, the applicant did not allege any specific violation of the procedural guarantees under Article 6 of the Convention.

19. The Chamber finds, *proprio motu*, that the facts as submitted by the applicant do not give rise to a violation of Article 6 of the Convention. Having regard to the length of proceedings, the Chamber finds that the Court of First Instance II issued a procedural decision on 3 July 1997, only about one month after the applicant's appeal of 28 May 1997 and scheduled an oral hearing for 14 May 1998. Considering the complexity of the case, the applicant's conduct and the manner in which the matter was dealt with by the judicial authorities (see *inter alia*, European Court of Human Rights, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, paragraph 99) the Chamber finds that the judicial authorities did not exceed the reasonable time stipulated by Article 6 paragraph 1. The Chamber therefore finds that the applicant's claim under this head is manifestly ill-founded.

20. No other violations of Article 6 or any other provision of the Convention are apparent.

21. For these reasons, the Chamber, unanimously,

DECIDES TO DECLARE THE APPLICATION INADMISSIBLE

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Panel