DECISION ON ADMISSIBILITY

Case no. CH/98/1040

Milan ŽIVOJNOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 October 1999 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
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) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The facts of the case are essentially not in dispute. They may be summarised as follows:

2. The applicant's family owned the real estate located in Sarajevo, Branilaca Grada Street No. 21, registered in Land Registry's certificate No. XLVIII/7, cadastral lot no. 50, before it was nationalised and declared socially owned property by the Parliament of the People's Republic of Bosnia and Herzegovina on 29 April 1948, under the name of "Hotel Pošta". The right of usufruct over this property was registered consecutively in favour of different enterprises. Currently it is registered in favour of "Bosnia hoteli i restorani dd Sarajevo."

3. In October 1998 the privatisation of the business premises of Bosnia hoteli i restorani was publicly announced. At an unspecified date in August or September 1999, Bosnia hoteli i restorani announced the sale of the former "Hotel Pošta" under the so-called "small scale privatisation" procedure.

4. The applicant states that the law on restitution of nationalised property, which is still to be adopted, will entitle him to the restitution of the real estate. According to the respondent Party a draft of the statute was submitted by the Federation government to the Federation parliament for enactment, but the parliament sent it back to the government with instructions for amendments.

5. The applicant requested the Land Registry to register the interest of the restitution in his favour. Furthermore he informed the Agency for Privatisation of Sarajevo Canton of that request. The Chamber has not been informed of any decision taken by the Land Registry in this matter.

6. On 14 May 1999 the applicant requested from the First Instance Court of Sarajevo provisional measures against the Privatisation Agency for the Canton Sarajevo and against Bosnia hoteli i restorani. He sought a court order to the effect that the privatisation of the Hotel Pošta be suspended and the suspension of the privatisation process be entered into the Land Registry books. On 24 May 1999 the First Instance Court rejected the request for provisional measures on the ground that it could not issue provisional measures on the basis of a law that had not been enacted yet. On 2 June 1999 the applicant appealed against this decision to the Cantonal Court. The Chamber has not been informed of any decision taken on this appeal by the Cantonal Court.

II. COMPLAINTS

7. The applicant claims that his property-related human rights are violated in the privatisation process. The alleged violation is derived from the fact that the privatisation of the property he intends to claim is being carried out before the Law on Restitution has been adopted. According to the applicant, this sequence of events prevents him from effectively exercising his rights in the restitution process.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was submitted to the Chamber on 29 October 1998 and registered on the same day. The applicant is represented by Mr. Amir Salihagić, a lawyer from Sarajevo. The applicant sought a provisional measure ordering the suspension of the privatisation of the Hotel Pošta in Sarajevo.

9. The Chamber considered the application on 14 January 1999. It rejected the request for provisional measures and decided to transmit the case to the respondent Party.

10. The application was transmitted to the respondent Party on 2 February 1999. On 2 April 1999 the respondent Party's written observations were received. They were transmitted to the applicant on 22 April 1999. On 21 May 1999 the applicant's reply was received and transmitted for information to the respondent Party.

11. On 2 July 1999 the applicant renewed his request for provisional measures. The Chamber

considered the request on 8 July 1999 and rejected it again.

12. The Chamber considered the admissibility of the application on 9 October 1999 and adopted the present decision.

IV. SUBMISSIONS OF THE PARTIES

13. The respondent Party argues that the application is inadmissible because the nationalisation in 1948 does not fall within the Chamber's competence *ratione temporis*, and the applicant has not availed himself of domestic remedies. The respondent Party further submits that, should the Chamber find the application otherwise admissible, it should declare it manifestly ill-founded or dismiss it on the merits because the Law on Restitution will provide for compensation in those cases were the actual restitution (*in natura*) is no longer possible.

14. The applicant maintains his complaint. As to the admissibility of the request, he submits that, as the violation lies in the unreasonable timing of the privatisation and restitution process and not in a concrete administrative act, there is no remedy he could avail himself of (apart from his unsuccessful attempts to have his restitution interest registered and to halt the privatisation process).

V. OPINION OF THE CHAMBER

15. Before considering the merits of the case the Chamber must decide whether to accept the application, 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 notes that the applicant's complaint refers to the privatisation of the "Hotel Pošta" currently being carried out, and not to the nationalisation which took place in 1948.

17. In any event, following its decision in the case of *Grgić* (case no. CH/96/15, decision on admissibility of 5 February 1997, at section IV, Decisions on Admissibility and Merits 1996-1997), the Chamber finds that the respondent Party cannot be held responsible under the Agreement for events that occurred before it came into force. The Chamber further recalls that, according to the consistent case-law of the European Commission of Human Rights, deprivation of ownership or another right *in rem* is in principle an instantaneous act and does not produce a continuing interference with a property right of the applicant (see, e.g., application no. 7379/76, decision of 10 December 1976, Decisions and Reports 8, p. 211). As a consequence, the nationalisation of the property in 1948 does not fall within the scope of the Chamber's competence *ratione temporis*.

18. The Chamber will therefore limit itself to examining whether the applicant's prospect of becoming the owner of the real estate formerly owned by his family, once the legislation on the restitution of nationalised property will have been enacted and will have come into force, constitutes a possession within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights.

19. The first paragraph of Article 1 of Protocol No. 1 reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law."

20. The Chamber recalls that, according to the jurisprudence of the European Court of Human Rights, the "possession" protected can only be an "existing possession" (Eur. Court H.R., *Van der Mussele v. Belgium* judgment of 23 November 1983, Series A no. 70, paragraph 48) or, at least, an asset which the applicant has a "legitimate expectation" to obtain (see Eur. Court H.R., *Pine Valley*

Developments Ltd and Others v. Ireland judgment of 29 November 1991, Series A no. 222, paragraph 51, and *Pressos Compania Naviera SA and Others v. Belgium* judgment of 20 November 1995, Series A no. 332, paragraph 31).

21. The Chamber is of the opinion that in order to be a "legitimate expectation" constituting a protected possession, the applicant's prospect would have to be based on legislation in force or on a valid administrative act. The applicant's claim to the property at issue, however, is based on his expectation that the Federation will enact a law on restitution and that, under this future law, he will be entitled to restitution of the property once owned by his family. This expectation, as reasonable and factually well-founded as it may be, cannot constitute a "legitimate expectation" protected by Article 1 of Protocol No. 1. The application is therefore incompatible with the Agreement *ratione materiae*.

V. CONCLUSION

22. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel