



PARTIAL DECISION ON THE ADMISSIBILITY

CASE No. CH/98/707

Slavko MAKSIMOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 November 1998 with the following members present:

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

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 and 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 applicant was the occupancy right holder in respect of an apartment at Solina street no. 10A in Tuzla. It has been allocated to the applicant in 1978 by the Commission for Housing Affairs of republic officials of the Executive Council of the Socialist Republic BiH. He moved into the apartment on 1 October 1979 and concluded a contract to use it with the "Self-management Community of Interest" of the municipality of Tuzla on 15 October 1979.
2. The applicant, left Tuzla on 10 June 1994 in order to visit his family who was temporarily staying in Bjeljina. He stayed with his family in Bjeljina until the war ended.
3. On 25 October 1993, while the applicant was still living in the Tuzla apartment the District Court in Tuzla allocated the apartment to H. K., who moved into it on 10 June 1994. The applicant alleges that another apartment had been allocated to H. K., also by the District Court, shortly before the war started.
4. On 31 May 1996 the applicant submitted a request to the Municipal Secretariat for Housing and Communal Affairs to be re-instated into his apartment. He has never received any answer.
5. On 1 July 1997 the applicant filed a request with the Municipal Court in Tuzla to be re-instated into his apartment. No hearing has been held up to date.
6. Six months after the applicant filed the request the Cantonal Court (the successor of the former District Court) submitted a complaint under Article 47 of the Law on Housing Relations against the applicant to the Municipal Court, stating that he had not been using his apartment for more than six months and that, therefore, his occupancy right should be terminated. Since this complaint was submitted three hearings have been held before the Municipal Court.

II. COMPLAINTS

7. The applicant points out that whereas no hearing has been held in the proceedings he initiated, the proceedings initiated six months later by the Cantonal Court have resulted in swift action. He further stresses the fact that the Cantonal Court is neither the allocation right holder of the apartment in question nor the institution which is competent to allocate an apartment under Article 5 of the Law on Housing Relations. Moreover, it was impossible for the applicant to remain in his apartment after 10 June 1994 due to the fact that Ms. H. K. moved in on that day.
8. The applicant alleges a violation of provisions of various domestic laws. Moreover, he complains that his right to apply to the Annex 7 Commission has been obstructed, without specifying how, and of a violation of his rights under the Universal Declaration of Human Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced on 16 June 1998 and registered on 17 June 1998.

IV. OPINION OF THE CHAMBER

(i) The complaint relating to the applicant's property rights

10. 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 if so, 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.
11. Article XVI of the Agreement states that the Agreement shall enter into force upon signature. As the Agreement was signed on 14 December 1995, the Chamber is only competent *ratione*

temporis to consider events which happened after that date or, if they happened before then, constitute a situation continuing after that date.

12. In the present case the Chamber notes that the allocation of the applicant's apartment to H.K. took place before 14 December 1995. As far as it concerns a possible violation of the applicant's property rights, the case is thus outside the Chamber's competence *ratione temporis*.

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

(ii) The complaint relating to the applicant's procedural rights

14. The applicant's complaint about his procedural rights might involve a violation of his rights under Article 6 of the Convention. However, the Chamber is not yet in position to decide on the admissibility and merits of the case and defers further consideration pending receipt of the parties' observations.

V. CONCLUSION

15. For these reasons, the Chamber, unanimously,

RETAINS THE COMPLAINT RELATING TO THE APPLICANT'S PROCEDURAL RIGHTS FOR FURTHER CONSIDERATION; AND

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel