DECISION ON THE ADMISSIBILITY

CASE No. CH/98/722

Jadranka IBRIŠAGIĆ

against

THE REPUBLIKA SRPSKA

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

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Vlatko MARKOTIĆ
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK

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;

Adopts the following decision pursuant to Article VIII(2)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. On 17 April 1989, the applicant was granted the occupancy right over an apartment in Teslić, Republika Srpska, by the holder of the allocation right, "DP Fabrika Obuće Teslić" (Teslić Shoe Factory, a public company, "the company"). On 15 December 1989, she entered into a contract for the use of the apartment with the appropriate housing company. She occupied the apartment until September 1994, when she was evicted from it by a number of persons whose identity she does not know. The apartment had been allocated to another person for a period of 12 months, by a decision of the company.

2. On 11 February 1998, the applicant applied to the Administrative Board of the company, requesting that the apartment be returned into her possession. On 27 February 1998, the Administrative Board decided to establish a special commission to investigate the matter further and to report back to the Administrative Board, so that a fully informed decision could be taken. This decision provided for the applicant to initiate court proceedings against this decision within 15 days if she so wished. The applicant has not done so. She is currently residing with her mother in Teslić.

II. COMPLAINTS

3. The applicant claims that her right to life has been violated as a result of the deprivation of her accommodation. She requests that she be allowed to regain possession of the apartment she previously occupied.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 26 June 1998 and registered on the same day.

5. On 20 November 1998, the Chamber requested the applicant to provide further information regarding any steps she had taken to seek to regain possession of her apartment. The applicant's reply was received on 7 December 1998.

IV. OPINION OF THE CHAMBER

6. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In addition, according to Article VIII(2)(c), the Chamber shall dismiss any application which it considers, *inter alia*, incompatible with the Agreement.

(i) The applicant's eviction

7. The Chamber notes that the events surrounding the applicant's eviction from her apartment occurred in 1994, that is to say, before 14 December 1995, when the Agreement came into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (Human Rights Chamber, Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision of 13 September 1996, Decisions on Admissibility and Merits 1996–1997, page 7). Accordingly, the applicant's complaints relating to these events are outside the competence of the Chamber *ratione temporis* and are therefore incompatible with the Agreement.

(ii) The applicant's request for repossession

8. The Chamber notes that the applicant has not initiated any proceedings against the decision of the Administrative Board of the holder of the right to allocate the apartment of 27 February 1998 (see paragraph 2 above). Accordingly, she has not sought to avail herself of the domestic remedies available to her. She has not provided any evidence to the Chamber to show that at this stage that the possibility for her to seize a court of the matter would have been or would be an ineffective

remedy within the meaning of the Agreement. Therefore, she cannot be relieved of her obligation under Article VIII(2)(a) of the Agreement to exhaust such remedies.

9. Accordingly, the Chamber decides not to accept the application, partly as it is incompatible *ratione temporis* with the Agreement within the meaning of Article VIII(2)(c) thereof, and partly because the applicant has not shown that she has exhausted the effective domestic remedies as required by Article VIII(2)(a) of the Agreement.

V. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel