DECISION ON ADMISSIBILITY

CASE No. CH/98/726

D.Đ.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 April 2001 with the following members present:

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

Mr. Peter KEMPEES, 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. INTRODUCTION

1. The applicant, who is of Serb origin, contests his ranking for allocation of an apartment in 1990 and enforcement of the court decision of 8 April 1991.

II. FACTS

2. The Secretariat for Economy of the Socialist Republic of BiH (Republički sekretarijat za privredu SR Bosne i Hercegovine) ("the Secretariat") was founded on 1 July 1989 by the merger of three different committees, including the Committee for Energetic and Industry of the Socialist Republic of BiH (Republički komitet za energetiku i industriju SR Bosne i Hercegovine) ("the Committee"). The applicant was employed with the Secretariat since its inception.

3. On 27 February 1989 the JNA, which was the allocation right holder over the apartment in question, authorised the Committee to allocate an apartment at Ulica Alipašina (then Đure Đakovića) 10/5 in Sarajevo. This allocation right was to revert back to the JNA if the apartment became vacant in the future.

4. On 21 December 1989 the Secretariat announced a contest for the apartment at issue.

5. On 19 February 1990 the Workers' Council of the Secretariat (Savjet radne zajednice Sekretarijata) ("the Council") adopted the rank order of all participants in the contest for the apartment. The highest ranked was Mr. M.S. The applicant lodged a complaint to the Council stating that the Rules for solving the housing issues of employees of the Secretariat (Pravilnik o uslovima i načinu rješavanja stambenih potreba radnika Sekretarijata) ("the Rules") were not applied properly and that he should have been the highest ranked instead of Mr. M.S. However, the Council rejected the applicant's complaint.

6. On 28 June 1990 the employees of the Secretariat decided by signing a petition to annul the rank order of 19 February 1990 and to allocate the apartment to Ms. Dž.Č, although she was not ranked and even not employed with the Secretariat at that time. On 9 July 1990 the applicant lodged a complaint to the Secretary (sekretar) (the second instance organ). He did not receive any answer.

7. On 8 April 1991 the First Instance Court of Associated Labour in Sarajevo (Osnovni sud udruženog rada u Sarajevu) issued a decision ordering the Secretariat to annul the employees' decision of 28 June 1990, to admit a new rank order in accordance with the Rules and to allocate the apartment in accordance with that new rank order, all within 60 days. The First Instance Court of Associated Labour was of the opinion that the apartment could be allocated once again by the Secretariat since the first allocation was annulled. The applicant alleges that the apartment would surely have been allocated to him, if the Rules had been correctly applied.

8. On 11 December 1991 the Second Instance Court of Associated Labour in Sarajevo (Sud udruženog rada Bosne i Hercegovine) upheld the decision of 8 April 1991.

9. On 18 July 1994 the Court of First Instance I in Sarajevo (Osnovni sud I Sarajevo) ("the Court") issued a procedural decision (rješenje) ordering the Ministry of Economy of the RBiH (Ministarstvo privrede Republike Bosne i Hercegovine), which was the successor of the Secretariat, to enforce the decision of 8 April 1991 within 30 days.

10. The successor of the Ministry of Economy of the RBiH is the Ministry of Energy, Mining and Industry of the FBiH (Federalno ministarstvo energije, rudarstva i industrije) ("the Ministry").

11. On 22 November 1999 the Minister of Energy, Mining and Industry of the FBiH (federalni ministar energije, rudarstva i industrije) ("the Minister") annulled the decision of the employees of the Secretariat of 28 June 1990. The Minister was of the opinion that he was not capable of allocating the apartment at issue once again and was therefore unable to enforce the remainder of the decision of 8 April 1991, because the Secretariat was authorised for only one allocation. Since the apartment

was allocated to Ms. Dž.Č. by the decision of 28 June 1990, the apartment is in the competence of the Ministry of Defense of the FBiH (Federalno ministarstvo odbrane) as the successor of the JNA.

12. On 7 December 1999 the applicant appealed to the Minister. On 19 January 2000 the Minister refused the applicant's appeal.

13. On 30 November 1999 the applicant requested the Court to enforce the remainder of the decision of 8 April 1991. On 2 December 1999 the Ministry informed the Chamber that the decision of 8 April 1991 was enforced and suggested that the Court terminate (obustaviti) the enforcement proceedings.

14. On 5 February 2001 the Court held a public hearing. The Ministry repeated that it was not capable of allocating the apartment since the apartment was already allocated to Ms. Dž.Č. by the now annulled decision of 28 June 1990. Contrary, the applicant stated that since the decision of 28 June 1990 had been annulled, the Ministry was capable of allocating the apartment once again. Further, the applicant stated that he would be the only person to whom the apartment could be allocated in that case.

15. On the same date the Court issued a decision ordering the Ministry to initiate civil proceedings against the applicant within 30 days in order to settle the dispute (see paragraph 16). The applicant is not entitled to appeal against this decision.

16. The applicant stated that he would be satisfied even if the Ministry allocated him an apartment of the same size or larger.

III. RELEVANT DOMESTIC LAW

17. Article 54 of the Law on Enforcement Procedure (OG SFRY nos. 20/78, 6/82, 74/87, 57/89, 20/90, 35/91 and 63/91; OG RBiH nos. 16/92 and 13/94) reads as follows:

> ''If the procedural decision on objection depends upon some fact, which relates to the claim itself and which is at issue between the parties, the court shall instruct the debtor to initiate a dispute or other proceedings within a set time-limit in order to have it declared that the enforcement is unlawful.
>
> "The debtor may also initiate a dispute or other proceedings under the terms of paragraph 1 of this Article after the expiry of the time-limit set by the court until the enforcement procedure is concluded, but in that case he or she has to bear the expenses caused by the delay.
>
> "It is not permitted to file an appeal against the procedural decision issued under paragraph 1 of this Article.
>
> "If it is established by a legally valid court decision that the enforcement is unlawful, the court shall, upon a motion by the debtor, terminate the enforcement and revoke any effected actions."

IV. COMPLAINTS

18. The applicant alleges a violation of Article 6(1) of the European Convention and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. Further, the applicant alleges that he was discriminated against because of his Serb origin.

V. PROCEEDINGS BEFORE THE CHAMBER

19. The application was introduced on 29 June 1998.

20. On 13 May 2000 the Chamber considered the case and decided to transmit the case to the respondent Party for its observations under Articles 6 and 8 of the Convention, Article 1 of Protocol 1 to the Convention and Article 14 of the Convention in relation to Article 1 of Protocol 1.

21. On 20 July 2000 the Chamber received the respondent Party's observations. The respondent Party stated that the applicant was neither the owner nor the occupancy right holder over the apartment at issue. Further, his right to be allocated the apartment was not established. Accordingly, the respondent Party could not violate Article 8 of the Convention and Article 1 of Protocol 1 to the Convention. Regarding Article 6 of the Convention, the respondent Party pointed out that the dispute between the applicant and the Ministry was very complex and, accordingly, the time spent settling it was reasonable.

22. On 21 August 2000 the Chamber received the applicant's response containing a compensation claim in the amount of 350 KM per month since 28 June 1990 until the apartment is allocated to him. The Chamber did not receive the respondent Party's observations on the compensation claim.

VI. OPINION OF THE CHAMBER

23. 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)(a) and (c) of the Agreement which, so far as relevant, provides as follows:

> "The Chamber shall decide which applications to accept ... . In so doing, the Chamber shall take into account the following criteria:
>
> "(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ... .
>
> "(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, ..."

24. The applicant complains that the decision issued by the First Instance Court of Associated Labour in Sarajevo on 8 April 1991 was not fully enforced. As far as events before 14 December 1995 are concerned, the Chamber is not competent *ratione temporis.*

25. As far as events after 14 December 1995 are concerned, the applicant has not enforced domestic remedies. In 1999 the Ministry of Energy, Mining and Industry of the FBiH partly enforced the decision of 8 April 1991. On 30 November 1999 the applicant started new proceedings before the Court of First Instance I in Sarajevo requesting it to enforce the remainder of the decision of 8 April 1991. These proceedings are still pending. The application must, therefore, be rejected for non-exhaustion of domestic remedies in this respect, since the new proceedings cannot be regarded as having lasted for an excessive period.

26. The applicant further complains that he was discriminated against due to his Serb origin in the right to housing according to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. However, the applicant failed to provide any evidence to substantiate this claim, which in any case concerns facts which are outside the competence of the Chamber *ratione temporis.* The application must, therefore, be rejected as manifestly ill-founded and incompatible *ratione temporis* with the Agreement in this respect.

VII. CONCLUSION

27. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel