



## **DECISION ON THE ADMISSIBILITY**

**CASE No. CH/98/870**

**Sejfudin TOPČAGIĆ**

**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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## **I. FACTS**

1. The applicant was the holder of the occupancy right over a three-roomed apartment in Teslić, Republika Srpska, since 1978. On 22 September 1993, the competent authority of the Municipality of Teslić informed the applicant that it wished to exchange the applicant's occupancy right over the apartment he occupied for a right over another, smaller, apartment. This was stated to be in accordance with a decision of the Municipality dated 5 June 1993, regarding rationalisation of the available housing space. The applicant made oral objections to the competent authorities, but was informed that the exchange would take place regardless.

2. The applicant states that he then requested that he be allocated a one-room apartment on the same floor of the same building. On 13 December 1993, the competent authority allocated the applicant and his wife a two-room apartment on the same floor of the same building. They entered into a contract regarding the use of the new apartment on 18 December 1993. They entered the new apartment in December 1993 (exact date unknown).

3. The applicant states that he did not exercise his right to appeal against the decision allocating him the second, smaller, apartment for three reasons: (a) because he knew that the persons who had been allocated his previous, larger, apartment, had a larger family than him; (b) because only non-Serbs were forced to exchange apartments and (c) because he was, around that time (exact dates not supplied), detained without criminal charge and periodically forced to perform forced labour at the combat front lines.

## **II. COMPLAINTS**

4. The applicant complains that the actions of the Municipality of Teslić have violated his right to home. In addition, in the event that legislation is passed allowing holders of occupancy rights over apartments to purchase those apartments, he will be at a disadvantage, as the previous holder of the occupancy right over the apartment he currently occupies will be able to purchase the apartment.

## **III. PROCEEDINGS BEFORE THE CHAMBER**

5. The application was introduced on 14 August 1998 and registered on the same day.

## **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)(c), the Chamber shall dismiss any application which it considers, *inter alia*, incompatible with the Agreement or manifestly ill-founded.

(i)     The exchange of the applicant's apartment

7. The Chamber notes that the events surrounding the exchange of the applicant's apartment occurred in 1993. These events thus happened 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 on Admissibility, 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 potential disadvantage of the applicant relating to the possible purchase of the apartment

8. The applicant also complains that, in the event that legislation providing for the purchase of apartments over which there exists an occupancy right enters into force in the Republika Srpska, he will suffer a disadvantage. He claims that this is because the previous holder of the occupancy right over the apartment he currently occupies would be entitled to purchase it under any such legislation.

The Chamber finds, however, that it is impossible to know what the precise terms of any such legislation would be, and what consequences, if any, their application would have for the applicant. The applicant cannot therefore claim to be a “victim” of any violation of any of his rights as protected by the Agreement. The applicant’s complaints in this regard must therefore be rejected, if not as incompatible *ratione personae* with the Agreement, then at any rate as being manifestly ill-founded.

9. Accordingly, the Chamber decides not to accept the application, it being partly incompatible *ratione temporis* with the Agreement, and partly manifestly ill-founded within the meaning of Article VIII(2)(c) thereof.

**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