



DECISION ON ADMISSIBILITY

Case no. CH/98/925

Siniša KOMLENOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 January 2000 with the following members present:

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

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)(a) and 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 an occupancy right holder over an apartment in Zenica, Sarajevska Street No. 62/A, pursuant to allocation decision of 24 May 1988. The apartment was owned by the Yugoslav National Army ("JNA"). The applicant was employed as an officer of the JNA.

2. The applicant, a citizen of Bosnia and Herzegovina of Serb origin, purchased the apartment from the JNA on 13 February 1992 and paid the price of 270,000 Dinars, but he did not sign a written purchase contract with the JNA, as he had left Zenica to get medical treatment. The applicant states that, at the time when the purchase contract should have been concluded, he was undergoing medical treatment in a hospital in Belgrade. On an unknown date the applicant requested the Housing Secretariat of the JNA in Belgrade to conclude the purchase contract for the apartment. By a letter of 16 December 1993 the Housing Secretariat informed the applicant that it had no competence to conclude the purchase contract since the apartment in question was situated on the territory of another state. It also informed the applicant that the issue of the contract would be solved after the war was finished.

3. The applicant continued serving as an officer of the JNA in Belgrade. The applicant's family (his wife and two children) continued to live in Zenica in the apartment in question. According to the applicant, he was in contact with his family in Zenica during the war but he was not able to visit them due to the hostilities. The applicant retired in 1994 on account of his health problems.

4. In May 1997 the applicant returned to Zenica. By a judgment of the Municipal Court in Zenica dated 9 September 1997 his wife divorced him. According to the applicant he did not appeal against the judgment because of negligence of his lawyer. The judgment became final and binding on 24 November 1997. On 4 December 1997 the applicant's ex-wife requested the Municipal Court to decide, under the Law on Housing Relations, who was entitled to the occupancy right over the apartment after the dissolution of the marriage. The Municipal Court held a hearing on 25 March 1998 and issued a decision declaring the applicant's ex-wife as the exclusive occupancy right holder over the apartment. The applicant was heard before the court.

5. On 19 June 1998 the applicant appealed against the decision to the Cantonal Court in Zenica. According to the applicant the Cantonal Court has not yet decided upon his appeal.

6. On 4 March 1999 the applicant submitted a complaint to the Municipal Court requesting it to recognize his ownership rights to the apartment in question since he had purchased the apartment in 1992 and paid the purchase price. This complaint was submitted against the Federation of Bosnia and Herzegovina and the Army Attorney of the Federal Ministry of Defense. The Chamber was not informed on whether the Municipal Court has issued a decision upon his complaint.

II. COMPLAINTS

7. The applicant alleges that his right to a fair trial by an independent and impartial tribunal has been violated. He further alleges that he has not been treated equally before the domestic courts (in the divorce proceedings and in the proceedings regarding the occupancy right). The only reason for the alleged unequal treatment, according to the applicant, was his Serb origin. Lastly, he states that he was deprived of his property rights over the apartment.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was introduced on 4 September 1998 and registered on the same day.

9. The Chamber considered the case on 8 September 1999 and 11 January 2000. On the latter date it adopted this decision.

IV. OPINION OF THE CHAMBER

10. 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) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies and whether the applicant has demonstrated that they have been exhausted. Moreover, according to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

11. The applicant complains that his right to a fair hearing by an independent and impartial tribunal has been violated on the ground that he was not given equal treatment in the divorce proceedings and in the proceedings on the establishment of the occupancy right. The Chamber notes, however, that there is no indication in the material before it that the proceedings in the applicant's case were unfair within the meaning of Article 6 of the European Convention on Human Rights. The Chamber further finds that the applicant has not substantiated his allegation that he was treated in an unfair manner because of his ethnic origin.

12. As to the alleged violation of Article 1 of Protocol No. 1 to the Convention, the Chamber notes that the applicant has not demonstrated that he has exhausted domestic remedies with respect to his request to be recognised as the owner of the apartment. Rather, the applicant has only filed a request for recognition of his ownership rights before the Municipal Court Zenica on 4 March 1999. No further information has been given on the status of those proceedings. Further, he has not demonstrated that domestic remedies would not be effective.

13. Accordingly, the Chamber decides not to accept the application, it being partly manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement and partly inadmissible as the applicant has not demonstrated that the domestic remedies have been exhausted pursuant to Article VIII(2)(a) thereof.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel