DECISION ON ADMISSIBILITY

Case no. CH/99/2399

Marko ATELJ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 January 2000 with the following members present:

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

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

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina. On 11 November 1992 the applicant was granted the occupancy right over an apartment in Sanski Most, which at the time belonged to the Republika Srpska. The previous holder of the occupancy right over it had died. The applicant subsequently left Sanski Most, which is now part of the Federation of Bosnia and Herzegovina. He now lives in Prijedor, Republika Srpska.

2. On 4 February 1999 the applicant applied to the Municipality of Sanski Most, seeking to regain possession of the apartment. On 5 February 1999 his application was rejected, on the ground that an occupancy right existed in respect of the apartment as of 30 April 1991. On 18 February 1999 the applicant appealed against this decision to the relevant cantonal organ. The basis of his appeal was that the previous holder of the occupancy right had died and therefore the apartment was not abandoned when allocated to him. There has been no decision on this appeal to date. On 21 September 1999 the applicant requested that his appeal be dealt with urgently. He has not initiated any court proceedings against the failure of the cantonal organ to decide upon his appeal, stating that such a remedy would be ineffective.

II. COMPLAINTS

3. The applicant alleges that his right to a fair hearing within a reasonable time, as guaranteed by Article 6 paragraph 1 of the European Convention on Human Rights, has been violated by the failure of the cantonal organ to decide upon his appeal. He also claims a violation of his right to respect for his home, as guaranteed by Article 8 of the Convention, due to the failure of the organs of the Federation to allow him to return to the apartment. For the same reason, he alleges that his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, has been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 27 October 1999 and registered on the same day.

5. The applicant requested a provisional measure from the Chamber ordering the respondent Party to enable him to regain possession of the apartment in Sanski Most. On 9 December 1999 the Chamber refused the request and considered the admissibility of the application.

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 shall consider whether effective domestic remedies exist and whether the applicant has demonstrated that they have been exhausted.

7. The Chamber notes that the applicant has not initiated court proceedings before the Cantonal Court against the silence of the administration, as provided for by the law of the Federation. The applicant claims that the reason for this is that such proceedings would have no prospect of success. The applicant refers to the decision of the Chamber in *Miljković* (case no. CH/98/636, decision on admissibility and merits of 13 May 1999, Decisions January – July 1999) in support of this contention. However that decision concerns a factual situation where the law of the Republika Srpska in question had invalidated all contracts of the type entered into by the applicant in that case. For this reason, the Chamber found that an appeal to the Supreme Court of the Republika Srpska in the circumstances of that case would have had no prospect of success and therefore was not a domestic remedy which the applicant in that case was required to exhaust (see paragraph 45 of the decision).

8. In the present case, however, there is no law of the Federation purporting to invalidate the rights the applicant claims to have. There is therefore, at this stage, no indication that the initiation by the applicant of proceedings before the Court would not be an effective remedy in his case.

9. Accordingly, the Chamber decides not to accept the application, as the applicant has neither demonstrated that he has exhausted the domestic remedies available to him nor that they are ineffective, as required by Article VIII(2)(a) of the Agreement.

V. CONCLUSION

10. For these reasons, the Chamber, by 5 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel