



DECISION ON THE ADMISSIBILITY
DELIVERED IN WRITING ON 22 JULY 1998

in

CASE No. CH/98/635

Vukašin MAJSTORVIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 16 July 1998 in a panel composed of the following Members:

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

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Vukašin Majstorović against The Federation of Bosnia and Herzegovina submitted on 14 July 1997 under Article VIII paragraph 1 of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered on 19 May 1998 under Case No. CH/98/635;

Adopted the following Decision on the admissibility of the application in accordance with Article VIII paragraph 2 of the Agreement.

I. THE FACTS

1. The facts of the case are based on the application and appended documents as well as subsequent submissions by the applicant and can be summarised as follows:
2. The applicant lived together with his then wife in an apartment on Grbavička Street No. 32 in Sarajevo. At the beginning of the war the wife of the applicant went to Grbavica, which was then under Serb control, to visit her son. Since that time the applicant has lost all contact with her. In August 1992 he went to Belgrade where a son of his was living.
3. After the war the applicant returned to Sarajevo and tried to re-enter his apartment. As another family was living in the apartment he was prevented from doing so.
4. The applicant filed a complaint with the Court of First Instance II in Sarajevo. He was informed that the Court had pronounced a divorce between him and his wife (Judgment No. P-264/93 of 24 September 1993 of the Court of First Instance II Sarajevo) and that the apartment had been allocated to his wife.
5. The applicant submitted a request for the re-instatement of the proceedings ("*Povraćaj u pređašnje stanje*") to the Court of First Instance II in Sarajevo. On 5 June 1997 the Court rejected this request as ill-founded ("*nedozvoljen*"). On a date not specified by the applicant he appealed against this decision to the Cantonal Court in Sarajevo.
6. On 18 March 1997 the applicant's lawyer submitted to the Court of First Instance II in Sarajevo a request for the re-opening of the proceedings. This remedy is regarded as an extraordinary remedy under the Law on Civil Proceedings. On 2 September 1997 the Court rejected the applicant's request as incomplete and out of time. On 13 October 1997 the applicant appealed against this decision to the Cantonal Court in Sarajevo.
7. On 20 February 1998 the Cantonal Court held that both appeals, against the decisions of 5 June 1997 and against the decision of 2 September 1997, were ill-founded. Moreover, the Court confirmed the previous decisions of 24 September 1993, of 5 June 1997 and of 2 September 1997 issued by the Court of First Instance II in Sarajevo.

II. COMPLAINTS

8. The applicant complains, without further specification, that his rights under Article 6 of the European Convention on Human Rights (the "Convention") have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The applicant lodged his application directly with the Chamber on 14 July 1997 where the original application was registered on 16 October 1997. The applicant's complaints relating to the divorce proceedings were separated off and registered on 19 May 1998 under the case number CH/98/635. The applicant is represented before the Chamber by Ms. Senlja Poropat.

IV. OPINION OF THE CHAMBER

10. Before considering the case on its merits the Chamber has to decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. Under this provision the Chamber must take into account, *inter alia*, whether other effective remedies exist and whether the applicant has demonstrated that they have been exhausted, whether the Chamber

was competent *ratione temporis*, whether the application falls within the Chamber's jurisdiction *ratione materiae* and whether the application was manifestly ill-founded.

11. Article XVI of the Agreement states that the Agreement shall enter into force upon signature. As the agreement was signed on 14 December 1995 the Chamber is only competent *ratione temporis* to consider events which happened after that date or, if they happened before then, constitute a violation continuing after that date. The divorce proceedings in 1993 are therefore outside the Chamber's competence *ratione temporis*.

12. The procedure before the Court of First Instance II and before the Cantonal Court in Sarajevo carried out after 14 December 1995 would fall in principle within the ambit of Article 6 of the Convention and under the competence of the Chamber *ratione temporis*.

13. However, the applicant's claims for the re-instatement of the proceedings and the re-opening of the proceedings cannot be related to any of the rights and freedoms guaranteed under Article II paragraph 2 of the Agreement because there is no right to re-open proceedings which have been terminated by a final decision under Article 6 (see *inter alia*, European Court of Human Rights, *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, paragraph 25). These claims are therefore not falling in the Chamber's jurisdiction *ratione materie*.

14. The applicant did not further substantiate his claim under Article 6 of the Convention nor do the facts of the case disclose any violations of this provision. To the extent that the application is within its competence, the Chamber finds it manifestly ill-founded.

15. For these reasons, the Chamber, unanimously,

DECIDES TO DECLARE THE APPLICATION INADMISSIBLE

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Panel