



DECISION ON THE ADMISSIBILITY

in

CASE No. CH/97/56

Hamid ZAJKOVIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on **11 June 1998** in a panel composed of the following Members:

Manfred NOWAK, President
Giovanni GRASSO, Vice-President
Vlatko MARKOTIĆ
Jakob MÖLLER
Mehmed DEKOVIĆ
Vitomir POPOVIĆ
Viktor MASENKO-MAVI

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Hamid ZAJKOVIĆ against the Federation of Bosnia and Herzegovina, registered under Case No. CH/97/56;

Adopted the following Decision on the admissibility of the application in accordance with Article VIII (2) of the Human Rights Agreement (hereinafter "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

I. THE FACTS

1. The facts 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 is the holder of an occupancy right to an apartment located at Trg ZAVNOBIH-a 39 in Sarajevo. Before the war the applicant left Sarajevo for Germany to work while his wife and their two children remained in the apartment.
3. During the war the applicant's family joined the applicant in Germany. Sometime during the war Mr. Jasminko Ljuca from Sarajevo moved into the apartment. On 5 March 1997 the applicant returned to Sarajevo with his family.
4. On 11 April 1997 the applicant initiated proceedings before the Court of First Instance II in Sarajevo to evict Mr. Ljuca from the apartment. On 17 June 1997 the court held a hearing but the defendant did not appear. On the same date the Court issued a decision postponing the proceedings until "more information was available to pursue the proceedings".
5. On 28 October 1997 the Court of First Instance issued a decision in favour of the applicant. Mr. Ljuca was ordered to deliver possession of the apartment to the applicant and to pay court costs within eight days. Mr. Ljuca appealed against this decision to the Cantonal Court of Sarajevo, where the case has been pending since 7 February 1998.
6. The applicant continues to lack possession of his apartment.

II. COMPLAINT

7. The applicant alleges the violation of his rights guaranteed under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "Convention"). In this regard he points out that Article 10 of the Law on Housing Relations (Službeni list SRBiH no. 14/84, 12/87 and 36/89) applicable in the Federation of Bosnia and Herzegovina by the Law on Taking Over the Law on Housing Relations (Službeni list BiH no. 11/98 published on 3 April 1998) requires that lawsuits regarding housing are to be dealt with urgently. On the basis of the alleged violation of Article 6 of the Convention, the applicant also alleges the violation of his rights under Article 1 of Protocol No. I to the Convention.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was submitted to the Chamber on 23 July 1997 and registered on 19 August 1997. The applicant subsequently made two additional submissions dated 17 September 1997 and 15 April 1998 respectively. The applicant is represented in the proceedings before the Chamber by his authorised representative Ms. Senija Poropat, a lawyer practising in Sarajevo.
9. On 15 May 1998 a Panel of the Chamber considered the application and deliberated on the admissibility of the case.

IV. OPINION OF THE CHAMBER

10. Before examining 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.

11. Under Article VIII (2) (a) of the Agreement, the Chamber must consider whether effective remedies exist not only in theory but in practice, and whether the applicant has demonstrated that they have been exhausted (see e.g., Case No. CH/96/21, Čegar v. Federation of Bosnia and Herzegovina, Decision on Admissibility of 11 April 1997, para. 11). **In addition, the Chamber shall also consider that it shall dismiss applications which it considers incompatible with the Agreement, manifestly ill-founded or an abuse of the right of petition as provided for in Article VIII (2) (c) of the Agreement.**

12. In the present case the Court of First Instance II of Sarajevo issued its decision on the merits (in favour of the applicant) on 28 October 1997, only six months after the applicant initiated proceedings before that court on 11 April 1997. Furthermore, Mr. Ljuca's appeal against this decision has been pending before the Cantonal Court of Sarajevo only since 7 February 1998.

13. The applicant's sole basis for his complaint against the respondent Party is the allegedly excessive length of the legal proceedings. However, the period of time from the initiation of the proceedings until the decision of first instance was issued (just over six months), the period from the issuance of that decision until the transmission of the appeal to the Cantonal Court (just over three months) and the period which has passed since the appeal has been pending before the second instance court (just over four months) cannot be considered excessive. The Chamber therefore finds that the application with regard to Article 6 of the Convention is manifestly ill-founded and that the application is inadmissible under Article VIII (2) (c) of the Agreement.

14. As far as the alleged violation of Article 1 of Protocol No. 1 to the Convention is concerned, the Chamber notes that the procedure before the Cantonal Court of Sarajevo is still pending. Moreover, the proceedings before the domestic courts, and in particular the decision of the Court of First Instance II in Sarajevo to evict Mr. Ljuca from the apartment, proves that these remedies are in fact available to the applicant and effective. For these reasons the Chamber finds that the applicant failed to exhaust domestic remedies in respect to his claims under Article 1 of Protocol No. 1 and that the application is inadmissible under Article VIII (2) (a) of the Agreement.

15. The Chamber finds therefore that the application is inadmissible under Article VIII (2) (a) and Article VIII (2) (c) of the Agreement.

16. For the above reasons, the Chamber **unanimously**

DECLARES THE APPLICATION INADMISSIBLE.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Manfred NOWAK
President of the Panel