



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/9189**

**Đuro BERONJA**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 May 2003 with the following members present:

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

Mr. Ulrich GARMS Registrar  
Ms. Olga KAPIĆ, Deputy Registrar  
Ms. Antonia DE MEO, 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 (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## **I. PROCEEDINGS BEFORE THE CHAMBER**

1. The application was introduced on 9 April 2002 and registered the same day. On 19 March 2003 the applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from an apartment which he occupies. On 21 March the applicant's request was rejected.

## **II. FACTS**

2. On 5 April 1994 the applicant concluded a contract on use over an apartment in Banja Luka with the Army Housing Fund over which M.Ž. had a pre-war occupancy right. On 7 December 2001 the Ministry for Refugees and Displaced Persons issued a procedural decision granting the pre-war occupancy right holder M.Ž. the right to repossess the apartment. The decision further terminated the applicant's right to use the apartment, ordering him to leave within 90 days. The decision also stated that the applicant was entitled to emergency accommodation. On 9 April 2002 the applicant appealed against this decision. The Chamber has no information as to whether this appeal was decided or whether the appeal is still pending.

3. On 16 January 2003 the applicant initiated proceedings before the First Instance Court in Banja Luka in order to establish that he was the legal occupant of the apartment and to annul the contract between the pre-war occupancy right holder M. Ž. and the Army Housing Fund. The applicant also requested the court, as a provisional measure, to forbid any reallocation of the apartment and to suspend any administrative enforcement of decisions regarding the allocation of the apartment until the final decision of the court. The Chamber has no information as to whether the request for provisional measure was granted.

4. On 11 March 2003 the Ministry for Displaced Persons and Refugees issued a conclusion on eviction of the applicant for 26 March 2003.

## **III. ALLEGED VIOLATIONS**

5. The applicant alleges a violation of Articles 8 and 13 of the Convention. The applicant refers to the Chamber's decision in the cases CH/97/60 *Miholić et al.*, ("the Article 3 a decision") and in particular to the findings regarding the applicants Božo Corapović and Milorad Ćirić who continued to be active in the military service outside of Bosnia and Herzegovina. He claims that the pre-war occupancy right holder M.Ž. also was transferred by military authorities to Serbia and Montenegro and continued to work for the military. The applicant concludes that therefore M. Ž. cannot be considered to be a refugee and does not have the right to repossess his apartment.

## **VI. OPINION OF THE CHAMBER**

6. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted .... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

7. With regard to the applicant's complaint regarding his rights over the apartment the Chamber notes that the applicant's complaint is premature as the proceedings are still pending before the First Instance Court in Banja Luka. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber decides to declare the application inadmissible.

**V. CONCLUSION**

8. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel