



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/989

Jakov JUKIĆ

against

**BOSNIA AND HERZEGOVINA
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 February 1999 with the following members present:

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

Mr. Leif BERG, 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)(c) of the Agreement and Rule 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The facts of the case, as they appear from the application and documents submitted by the applicant, are as follows:
2. The applicant is a citizen of Bosnia and Herzegovina of Croat nationality. He is a teacher and he is employed as the Principal of an elementary school in Stup, a suburb of Sarajevo.
3. Since 1982 the applicant has been a holder of an occupancy right over a four room apartment at Valtera Perića 5 in Sarajevo. He lived in this apartment with his wife, his father and two children.
4. In 1986 the applicant divorced his wife but they continued to share the same apartment.
5. In April 1992 the applicant resided in Kiseljak and joined the formation of the HVO (Croatian Defence Council) in Kiseljak where he was engaged up to 31 March 1996. Having been demobilised, he returned into the apartment at Valtera Perića 5, Sarajevo.
6. The applicant's ex-wife submitted a proposal to the Municipal Court I instituting proceedings so as to have determined who of the divorced would remain the occupancy right holder over the apartment at Valtera Perića 5.
7. On 6 April 1998 the Municipal Court I of Sarajevo issued a procedural decision establishing that the applicant's wife was to remain the occupancy right holder over the apartment in question, terminating the applicant's occupancy right and obliging him to leave the apartment at the request of his ex-wife. The court found in the course of the proceedings that the conditions had been met under Article 19 para. 2 of the Law on Housing Relations; thus it found that the applicant and his ex-wife had used the apartment in question jointly as spouses and that they had both acquired the occupancy right. As no agreement had been reached between the spouses as to who would remain the occupancy right holder, the court decided in accordance with Article 20 of the Law on Housing Relations that the ex-wife should remain the occupancy right holder. The court noted, in particular, that the applicant had accommodation in a weekend house in Kiseljak in respect of which he shared the property right with his ex-wife; that the ex-wife was on a "waiting list" in her firm; and that their daughter and their grandson were living with her.
8. The applicant filed an appeal against the first instance decision to the Cantonal Court of Sarajevo. On 13 August 1998 it issued a procedural decision refusing the appeal and confirming the first instance decision.

II. COMPLAINTS

9. The applicant complains that his property right was violated because he was deprived of his occupancy right by virtue of court decisions. He points out in particular that the apartment in question was acquired through the exchange of his father's apartment, which the family had obtained after the expropriation of their house. He also alleges that he is not satisfied with the decision of the Municipal Court, which was allegedly issued because of his absence of four years from the apartment, while he was the member of the HVO (Croatian Defence Council).

III. PROCEEDINGS BEFORE THE CHAMBER

10. The application was introduced on 25 September 1998 and registered on 29 September 1998. The applicant is represented by Mr. Ešref Gracić, a lawyer practising in Sarajevo.

IV. OPINION OF THE CHAMBER

11. 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. In accordance with the Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application which it considers manifestly ill-founded.

12. The Chamber first notes that the applicant has exhausted normal legal remedies and has received a final court decision. By applying the valid law the two courts have decided to allocate the apartment to the applicant's ex-wife with whom their daughter and grandson live. The courts further noted that the applicant had accommodation elsewhere. The Chamber considers that in these particular circumstances there is no indication of any violation of the rights of the applicant provided in the European Convention of Human Rights (Article 1 of Protocol No. 1) or of any other treaty applicable under the Agreement.

13. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel