



DECISION TO STRIKE OUT

Case no. CH/99/2655

**THE ISLAMIC COMMUNITY
IN BOSNIA AND HERZEGOVINA**

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 January 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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

I. FACTS

1. This application concerns the sites of two Islamic graveyards in Ljubinje, Republika Srpska, on which, according to the applicant, construction activities were carried out by the Ljubinje municipal authorities during the spring of 1999. The application was lodged on 1 July 1999 by the Vakuf Head Office, the organ of the Islamic Community in Bosnia and Herzegovina (hereinafter “the Islamic Community”) entrusted with the administration of Vakuf property.

2. The applicant alleges that the Islamic Community owns two graveyards in Ljubinje, with a large number of tombstones. Before the war in Bosnia and Herzegovina, with the consent of the Islamic Community, in parts of the mentioned graveyards in Ljubinje a school and a hotel had been constructed. According to the applicant, the graveyards had been fixed and fenced after that. This situation prevailed until 1992, when the graveyards were devastated.

3. The applicant states that on 25 June 1999 it was informed by the Office for Displaced Persons of the Municipality Ljubinje seated in Mostar, that members of that Office had visited Ljubinje. These members claimed that graveyards were being destroyed, particularly the one next to the school, and that works were being carried out on the sites for unknown purposes. The applicant furthermore alleges that the municipal authorities of Ljubinje engaged engineering units of the multinational military Stabilisation Force (“SFOR”) for these works and that the Office wrote a letter to SFOR, asking them to stop these activities immediately.

4. The maps of Ljubinje submitted by the applicant suggest that in addition to the two Muslim graveyards mentioned in the application, also a mosque and a third graveyard next to it existed in the town centre of Ljubinje before the war in Bosnia and Herzegovina. The report by OSCE (see below paragraph 11) states that the sites referred to by the applicant, indicated as “devastated graveyards” on the maps, are not recognisable as former graveyards at all. According to the same report, at the third site only ruins of the mosque and tombstones are to be found. The photographic pictures of the sites submitted by OSCE confirm these statements. They show a few vehicles standing on what allegedly was the site of the graveyard next to the school, while the pictures of the alleged graveyard next to the hotel show concrete tubes lying in the grass among the trees.

II. COMPLAINTS

5. The applicant complains that the desecration of the Muslim graveyards in Ljubinje constitutes a violation of its members’ right to freedom of religion guaranteed by Article 9 of the European Convention on Human Rights. It also claims, in its own right, a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. Finally, the applicant complains of discrimination on religious grounds in the enjoyment of the mentioned rights.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was lodged on 1 July 1999. The applicant requested the Chamber to order the respondent Party to remove all objects built on the sites of the Muslim graveyards in Ljubinje and to refrain from any further illegal construction on Vakuf property in the Municipality Ljubinje, or other interference with the applicant’s possessions in that municipality. The applicant further requested that the respondent Party be ordered to allow the erection of fences at all the sites where Muslim religious objects were placed before the war, and to allow the unconditional reconstruction of destroyed religious objects.

7. The applicant finally requested the Chamber to issue a provisional measure prohibiting any further activities at the sites of the mentioned Muslim graveyards and any further interference with Vakuf real estate in the territory of the Municipality Ljubinje.

8. The Chamber considered the application on 7 and 9 July 1999 and decided to reject the request for provisional measures and to request further information from the applicant, from OSCE and SFOR.

9. By registered letter of 14 July 1999 the Chamber requested the applicant to specify and substantiate its complaints in several respects. As no reply was received within the time allotted, the Chamber renewed its request for further information by registered letter of 22 September 1999, and by a letter delivered by hand to the applicant's offices on 18 November 1999. No reply was received from the applicant, although the last two letters expressly indicated that the Chamber might interpret the applicant's silence as an intention not to pursue the application and accordingly strike the case out.

10. In September 1999 the Chamber also sought information from SFOR concerning its alleged involvement in works at one of the graveyards. The Chamber notes with concern that SFOR failed to clarify the issue. It only orally confirmed having received a letter from a Muslim individual or organisation in Mostar regarding a graveyard in Ljubinje (the letter referred to in paragraph 3 above).

11. Upon request of the Chamber, OSCE inspected the sites of the graveyards, as indicated on maps of Ljubinje submitted to the Chamber by the applicant. On 27 October 1999 the Chamber received from OSCE a report concerning the inspection and on 5 November 1999 pictures of the graveyards.

IV. OPINION OF THE CHAMBER

12. According to Article VIII(3) of the Agreement, the Chamber may at any point decide to strike out an application on the ground that the applicant does not intend to pursue its application or that for any other reason established by the Chamber, it is no longer justified to continue the examination. However, a decision to strike out an application must be consistent with the objective of respect for human rights.

13. The Chamber has requested the applicant three times, twice by registered mail and once by a letter delivered by hand, to submit certain information it considered necessary in order to further examine the case. All three letters were received at the applicant's address. Nonetheless, the applicant did not reply. The Chamber therefore cannot but conclude that the applicant does not intend to pursue its application.

14. Before striking out a case on the ground that the applicant does not intend to pursue the application, the Chamber must be convinced that this decision is also consistent with the objective of respect for human rights.

15. The applicant alleges that, in the spring of 1999, by carrying out or authorising construction works on their sites, the Ljubinje Municipal authorities further destroyed two Muslim graveyards which had been devastated in 1992. The report and the pictures submitted to the Chamber by OSCE suggest that if there were graveyards at the sites near the school and the hotel indicated by the applicant as "devastated graveyards", these have indeed been rendered unrecognisable as such. However, the applicant's allegations of renewed interference with the sites during the spring of 1999 have remained vague and unsubstantiated.

16. The Chamber recalls that according to generally accepted principles of international law and to its own case-law, it is outside its competence to decide whether events occurring before the coming into force of the Agreement on 14 December 1995 gave rise to violations of human rights (see e.g. case no. CH/96/1, *Matanović*, decision on the merits of 11 July 1997, paragraph 32). It is therefore precluded from considering the devastation of the graveyards which occurred before the entry into force of the Agreement.

17. As far as the alleged interference with the sites of the graveyards in the spring of 1999 is concerned, on the other hand, the Chamber cannot proceed in the absence of additional information from the applicant, which the applicant has failed to produce, notwithstanding the persistent attempts of the Chamber to obtain such information.

18. Under the above circumstances, the Chamber does not find it inconsistent with the objective of respect for human rights to strike out the application.

V. CONCLUSION

19. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel