



**DECISION ON ADMISSIBILITY
AND TO STRIKE OUT**

CASE No. CH/98/234

Nada LEBERL

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 3 July 2001, with the following members present:

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

Mr. Peter KEMPEES, 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) and Article VIII(3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 13 November 1997 and registered on 10 April 1998. The applicant requested that the Chamber order the respondent Party, as provisional measures, to give several public warnings to government officials, as follows: to the President of the Court of First Instance II in Sarajevo because he did not handle the applicant's case with urgency; to the Mayor of the Municipality of Novi Grad Sarajevo because he illegally deprived the applicant of her property; and to the Minister of Environmental Planning, Housing and Municipal Affairs of the Canton of Sarajevo because he failed to secure the eviction of the temporary occupant from the applicant's apartment. The applicant also requested that the Chamber assign a representative to attend the hearing scheduled for 27 November 1997 before the Court of First Instance II in Sarajevo. On 10 September 1998 the Chamber decided not to order the provisional measures requested.

2. The applicant complains of a violation of her right to enjoy property she owns in the Municipality of Novi Grad in Sarajevo, and she seeks the Chamber's assistance in regaining possession of her property and compensation for damages.

3. The case was transmitted to the respondent Party on 5 January 1999 with respect to Article 1 of Protocol No. 1 to the Convention and Articles 6 and 8 of the Convention. The respondent Party submitted its observations on the admissibility and merits of the application on 27 May 1999.

II. ESTABLISHMENT OF THE FACTS

4. The applicant is the owner of the apartment Trg ZAVNOBIH No. 32/IV number 17 in the Municipality of Novi Grad in Sarajevo. She does not use this apartment herself as she has lived and continues to live in Germany since 1972. Prior to the 1992-95 war in Bosnia and Herzegovina, the applicant did not rent out her apartment in Novi Grad Sarajevo, but she did occasionally permit relatives to stay in it.

5. The apartment was considerably damaged by a shell in 1992, and bad weather conditions and rodents caused further damage to it thereafter. On 4 November 1993 the apartment was allocated to a temporary occupant who made it habitable again with the help of workers of the local community "Alipašino Polje B-I".

6. On 16 December 1996 the applicant, through her representative, initiated civil proceedings against the temporary occupant, the Canton of Sarajevo and the Municipality of Novi Grad Sarajevo for repossession of her apartment and compensation for damages in an amount corresponding to rent payable for the apartment from 3 December 1993 until the eviction of the temporary occupant.

7. The temporary occupant voluntarily vacated the applicant's apartment on 17 October 1997. In December 1997 he offered the keys to the apartment to the applicant's representative. However, the representative refused to accept the keys while the applicant's civil claims regarding the temporary occupant's use of the apartment were still pending before the Municipal Court II in Sarajevo.

8. On 18 February 1998 the Municipal Court II in Sarajevo issued a partial judgement in favour of the applicant ordering the temporary occupant to return the apartment with all movable property to the applicant within 15 days upon threat of eviction.

9. The Municipal Court II in Sarajevo had doubts about the authorisation of the applicant's representative, which had been issued by the Consulate General of Bosnia and Herzegovina in Munich, Germany, because the applicant never appeared in person in the proceedings. Thus, on 5 April 1999 the Court ordered the applicant's representative, in accordance with Article 87 of the Code of Civil Proceedings, to present a new authorisation of representation. At the next hearing on 7 May 1999, the representative was unable to present the requested new authorisation. Pending the new authorisation, the Court postponed the hearing indefinitely.

10. On 24 May 1999 the applicant's representative took possession of the apartment Trg ZAVNOBIH No. 32/IV number 17. The applicant has been in possession of her apartment ever since.
11. In May 2000, the representative of the applicant submitted the applicant's final specification of her claim for compensation to the Municipal Court II in Sarajevo.
12. On 24 July 2000, the hearing was rescheduled to 18 September 2000 because the representatives of the second and third defendants and the representative of the public attorney's office were on annual leave. On 18 September 2000, the hearing was rescheduled again because a member of the Panel was unable to attend.
13. On 6 December 2000 the Municipal Court II in Sarajevo rejected the final version of the applicant's remaining claim, submitted in May 2000, for compensation for rent for the time in which the temporary occupant had used her apartment. The applicant appealed against this decision. As of 22 April 2001, the date of the last letter of the applicant to the Chamber, this appeal was still pending.

III. OPINION OF THE CHAMBER

A. With respect to the applicant's request for reinstatement into her apartment

14. In accordance with Article VIII(3) of the Agreement, "the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that ... (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights. "

15. The Chamber finds that the matter raised in the application regarding reinstatement of the applicant to her apartment has been resolved in view of the fact that the applicant's representative took possession of the apartment on 24 May 1999. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of this issue to be continued. It follows that this part of the application may be struck out of the list.

B. With respect to the applicant's complaints under Articles 6 and 8 of the Convention

16. In accordance with Article VIII(2)(c) of the Agreement, the Chamber shall "dismiss any application which it considers incompatible with this Agreement [or] manifestly ill-founded".

17. With regard to the applicant's claim that her right to home as protected under Article 8 of the Convention has been violated, the Chamber notes that the applicant has been living in Germany since 1972 with her family. Thus, the apartment Trg ZAVNOBIH No. 32/IV number 17 in the Municipality of Novi Grad cannot be considered to be her "home" for the purpose of Article 8 of the Convention. To this extent, the application is inadmissible as manifestly ill-founded.

18. With regard to the applicant's claim concerning the alleged undue length of the proceedings before the domestic civil courts, the Chamber recalls that a determination of the reasonableness of the length of proceedings must take into account the complexity of the case, the conduct of the applicant and the authorities, and the matter at stake for the applicant (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

19. The Chamber notes that the Municipal Court II in Sarajevo passed a partial decision in regard to the major issue of the case, the reinstatement of the applicant into possession of her apartment on 18 February 1998, one year, two months and 15 days after the applicant initiated the proceedings on 3 December 1996. In light of the situation of the courts in Bosnia and Herzegovina during the post-war period, the Chamber considers this length of time to be "reasonable". The Chamber further notes that the applicant's representative in this case has exacerbated the delays in resolving the applicant's claims through his inaction. The representative's refusal to accept the keys to the apartment from the temporary occupant delayed the applicant's reinstatement. Furthermore, the

representative did not provide the requested new authorisation of the applicant in a timely manner. Lastly, the representative modified the compensation claim several times and did not submit the final specification of the applicant's claim for compensation until May 2000. This compensation claim was refused by the judgement of the Municipal Court II in Sarajevo on 6 December 2000. The Chamber does not consider this length of time to be unreasonable under the circumstances. It follows that the remainder of the application may be declared inadmissible, in accordance with Article VIII(2)(c) of the Agreement.

IV. CONCLUSION

20. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION OUT, in so far as it concerns the applicant's claim to be reinstated into possession of her apartment, AND

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel