



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/98/856

Munira and Muhamed FERIZ

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Jakob MÖLLER, Acting President
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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 Articles VIII(2)(a), VIII(2)(c) and VIII(3)(b) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced and registered on 7 August 1998.
2. The case concerns the applicants' attempts to repossess their pre-war apartment located at Ulica Avde Smajlovića 27/III in Sarajevo, the Federation of Bosnia and Herzegovina, over which they hold the occupancy right.
3. The Chamber sent letters to the applicants on 6 November 2002 and 29 January 2003, requesting them to inform the Chamber as to any developments in their case.
4. On 4 February 2003, the applicants responded that they had repossessed the apartment in question but that they do not consider the matter resolved as their request to purchase the apartment is still pending. The applicants did not provide any further information as to when they had repossessed their apartment, nor when they had filed the request to purchase their apartment.

II. OPINION OF THE CHAMBER

A. Claim as against Bosnia and Herzegovina

5. 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: ... (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."

6. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton responsible for the proceedings complained of by the applicants is an organ of the Canton, the conduct of which engages the responsibility of the Federation, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

B. Claim for repossession of the pre-war apartment

7. 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."

8. The Chamber notes that the applicants have informed it that they have succeeded in repossessing their pre-war apartment. That being so, the Chamber considers that the main issue raised in the application has been resolved. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require examination of this part of the application to be continued. The Chamber therefore decides to strike out this part of the application pursuant to Article VIII(3)(b) of the Agreement.

C. Claim regarding the purchase of the apartment

9. 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"

10. The Chamber notes that the applicants' complaint is premature as the proceedings to purchase the apartment are still pending. Accordingly, the domestic remedies have not been

exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

III. CONCLUSION

11. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE IN PART and
STRIKES OUT THE REMAINDER OF THE APPLICATION.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Jakob MÖLLER
Acting President of the Second Panel