



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/00/6564

Senija SABIROVIĆ

against

**THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA**

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. Giovanni GRASSO
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 to Article VIII(2)(c) and VIII(3)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to prevent her eviction from an apartment in Sarajevo, which she temporarily occupied, and to regain possession of her pre-war apartment and other real estate in Zvornik, the Republika Srpska.
2. At the time of submission of the application, the applicant occupied an apartment located at Ul. Šefika Dorića no. 30 in Sarajevo, the Federation of Bosnia and Herzegovina. The Municipal Court II in Sarajevo issued a conclusion scheduling the applicant's eviction from the apartment in Sarajevo for 19 December 2000 because the pre-war occupant had obtained a decision entitling her to regain possession of the apartment.
3. On 13 June 2000, the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) issued a decision confirming the applicant's occupancy right over her pre-war apartment located at Ul. Filipa Kljajića 107 B (now Svetog Save 107 B) in Zvornik, the Republika Srpska, and over other real estate also located in Zvornik. On 21 August 2000, the applicant filed a request for execution of the CRPC decision.
4. On 7 September 2001, the applicant confirmed that she was reinstated into possession of her apartment and other real estate on unspecified dates.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 7 December and registered on 8 December 2000.
6. The applicant requested the Chamber to order the Federation of BiH, as a provisional measure, to take all necessary action to prevent her eviction from the apartment which she occupied. On 13 December 2000, President of the Second Panel decided not to order the provisional measure requested.
7. The applicant submitted a claim for compensation for the trauma her family suffered and for loss of her movable property, in connection with the family's expulsion from their home in the Republika Srpska in April 1992 due to their Bosniak origin. In addition, she claims compensation for her unsuccessful attempts to gain repossession of her pre-war apartment and other real estate in Zvornik.
8. On 7 September 2001, the applicant informed the Chamber that on an unspecified date she had entered into possession of her pre-war apartment in Zvornik. On 2 July 2002, the applicant submitted a letter informing the Chamber that on an unspecified date she had entered into possession of the remainder of her real estate. The applicant noted that, while she withdraws her complaints in this respect, she would like to maintain her claim for compensation.

III. OPINION OF THE CHAMBER

A. As against the Federation of Bosnia and Herzegovina

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: ... (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."
10. The applicant did not indicate the Federation of Bosnia and Herzegovina as a respondent Party, but rather only addressed her application against the Republika Srpska. However, the Chamber has decided to consider the application as directed also against the Federation of Bosnia and Herzegovina, because the request for provisional measures and proceedings complained of by

the applicant regarding the apartment in Sarajevo falls under the competence of the authorities of the Federation of Bosnia and Herzegovina.

11. The Chamber notes that the decision on the applicant's eviction from the apartment in Sarajevo was taken to allow the pre-war occupancy right holder to repossess the apartment. In these circumstances, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement in this respect. The Chamber therefore declares the application inadmissible as against the Federation of Bosnia and Herzegovina.

B. As against the Republika Srpska

a) As to the facts complained of relating to the period before 14 December 1995

12. The Chamber finds that the facts relating to the expulsion of the applicant and her family from Zvornik relate to a period prior to 14 December 1995, which is the date on which the Agreement entered into force. However, the Agreement is only applicable to human rights violations which are alleged to have occurred after its entry into force. It follows that this part of application, including the claim for loss of moveable property during this period, is incompatible *ratione temporis* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible also.

b) As to the reinstatement into possession of the pre-war property

13. 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 ... (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such a result is consistent with the objective of respect for human rights."

14. The Chamber notes that the applicant lodged her application with a view to regaining possession of her pre-war house and other real estate in Zvornik, and while the case was still pending before the Chamber, she regained such possession. The Chamber further notes that although the applicant has been reinstated, she understandably asks the Chamber to find a violation of her rights protected by the Agreement due to the time that elapsed between her request for reinstatement into possession of her pre-war property and apartment and the actual repossession. She also asks the Chamber to order the respondent Party to pay compensation to her in recognition of the damage, both pecuniary and non-pecuniary, suffered by her during the course of that time.

15. The Chamber recalls that under Article VIII(2)(e) of the Agreement, "the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds". As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

16. Taking into account that the applicant has been reinstated into possession of her pre-war apartment and other real estate in Zvornik, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main issue of the application has been resolved. The Chamber recognises that valid reasons may underlie the applicant's request to nonetheless maintain her claim for compensation. However, in the light of the considerations discussed above, the Chamber finds that "it is no longer justified to continue the examination of the application" within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is "consistent with the objective of respect for human rights", as this "objective" must be understood to embrace not only the individual applicant's human rights, but also the Chamber's more general

mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

17. The Chamber, therefore, decides to strike out the remainder of application, pursuant to Article VIII(3)(c) of the Agreement.

IV. CONCLUSION

18. 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)
Mr. Jakob MÖLLER
Acting President of the Second Panel