



DECISION ON ADMISSIBILITY

**Case nos. CH/00/3771, CH/00/6263, CH/00/6264, CH/00/6265, CH/00/6266,
CH/00/6267, CH/00/6268, CH/00/6269, CH/00/6270
and CH/00/6275**

**Dimitar HAJDER, Novak MRĐEN, Živko MRĐEN, Božo MRĐEN, Gnatija MRĐEN,
Milica MRĐEN, Stevan STANIVUK, David STANIVUK, Dušan STANIVUK
and Blagoje MARKOVIĆ**

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 November 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, 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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The cases concern the ten applicants' allegation of a violation of their right to peaceful enjoyment of their land located in an area in Canton 10 of the Federation of Bosnia and Herzegovina currently used by the NATO-led international Stabilisation Force (hereinafter "SFOR") as a military training range.

II. PROCEEDINGS BEFORE THE CHAMBER

2. All applications were introduced on 7 December 2000.

3. On 16 November 2001 the Chamber transmitted case no. CH/00/6263, Novak Mrđen to the respondent Party for its observations with respect to Articles 6, 8, 9 and 13 of the Convention, Article 14 in conjunction with Articles 6 and 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention.

4. On 14 December 2001 the respondent Party submitted its observations which were then transmitted to the applicant. On 21 February 2002 the observations of the applicant were received

5. On 19 March 2002 the Chamber transmitted the cases of the other nine applicants and additional eleven related cases to the respondent Party for its observations on admissibility and merits under Articles 6, 8, 9 and 13 of the Convention, Article 14 in conjunction with Articles 6 and 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention.

6. On 22 April 2002 these observations were received and then transmitted to the applicants for their comments. On 29 May 2002 the observations of the applicants were received.

III. FACTS

7. It is undisputed between the Parties that all applicants own plots of agricultural land and facilities in the cadastral Municipality of Odžak, Municipality of Glamoč. This land is located within an area currently used by the SFOR as a military training range. In 1995, due to the hostilities, all of the applicants left their land. As of 10 April 2002, several of the applicants have applied to the Municipality of Glamoč for voluntary return.

8. The applicant Dimitar Hajder, in addition to applying for voluntary return, also applied to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") and to the office of the Human Rights Ombudsman of Bosnia and Herzegovina.

9. The applicants allege that on 13 August 1998, as a result of SFOR's live firing exercise, a big fire broke out in the area. This fire destroyed all houses and orchards in the village of Prijani, including the property of the applicants.

10. On 7 October 1999 the applicants Gnatija Mrđen, Milica Mrđen, Stevan Stanivuk, David Stanivuk and Dušan Stanivuk allegedly applied to the SFOR base in Glamoč for compensation with respect to the fact that their property had been destroyed by the fire of 13 August 1998. It appears that this claim had no success. On 28 October 1999 the applicants Dimitar Hajder, Novak Mrđen, Živko Mrđen and Božo Mrđen allegedly submitted a request to the SFOR base in Ramči for compensation but did not receive any reply.

11. On 22 November 2000 the applicant David Stanivuk wanted to bury his deceased wife in the graveyard of the village Prijani. SFOR advised him not to do so because of the dangers due to the ongoing military training. SFOR allegedly clarified that he was free to bury his wife in Prijanij, but he would do so at his own risk. The applicant then buried his wife in a graveyard in Glamoč.

IV. OPINION OF THE CHAMBER

12. 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.”

13. The applicants allege a violation of their right to peaceful enjoyment of their plots of land located in an area in Canton 10 currently used by SFOR as a military training range. The Chamber notes that SFOR uses the land in question on the basis of Article VI of Annex 1-A of the Dayton Peace Agreement.

14. Article VI of Annex 1-A regulates the military aspects of the Dayton Peace Agreement and in particular the rights and duties of the predecessor of SFOR, the Implementation Force (“IFOR”). It is undisputed that SFOR succeeded in IFOR’s rights under Annex 1-A of the Dayton Peace Agreement. Article VI reads, in relevant parts, as follows:

“Article VI: Deployment of the Implementation Force

Recognizing the need to provide for the effective implementation of the provisions of this Annex, and to ensure compliance, the United Nations Security Council is invited to authorize Member States or regional organizations and arrangements to establish the IFOR acting under Chapter VII of the United Nations Charter. The Parties understand and agree that this Implementation Force may be composed of ground, air and maritime units from NATO and non-NATO nations, deployed to Bosnia and Herzegovina, to help ensure compliance with the provisions of this Annex. The Parties understand and agree that the IFOR shall have the right to deploy on either side of the Inter-Entity Boundary Line and throughout Bosnia and Herzegovina..... *The IFOR shall have complete and unimpeded freedom of movement by ground, air, and water throughout Bosnia and Herzegovina. It shall have the right to bivouac, maneuver, billet, and utilize any areas or facilities to carry out its responsibilities as required for its support, training, and operations, with such advance notice as may be practicable. The IFOR and its personnel shall not be liable for any damages to civilian or government property caused by combat or combat related activities. ...*” (emphasis added)

15. The respondent Party submits that SFOR uses the applicants’ land on the territory of the Federation of Bosnia and Herzegovina directly on the basis of Article VI of Annex 1-A. Replying to a specific question by the Chamber, the Federation has explained that it has not concluded any agreements regulating the use of the land by SFOR as a military training range. The Federation therefore argues that it cannot be held responsible for the alleged destruction of the applicants’ property and any obstacle to their return to their possessions. In conclusion, the Federation asks the Chamber to declare the applications inadmissible as incompatible *ratione personae* with the Agreement.

16. The applicants, however, argue that it is the “action and non-action” of the respondent Party, its failure to exercise control over its territory which gives rise to the alleged violation of their rights. The applicants argue that they are in a situation in which they cannot exercise their right to return to their former property and use it. They claim that when they address SFOR about their problem, SFOR advises them to address the respondent Party’s authorities. The applicants conclude that whether any agreement between the respondent Party and SFOR regulating the use of their land exists is irrelevant, as the Federation should in any event be held responsible for the applicants’ inability to use their land situated in the territory of the Federation.

17. The Chamber recalls Article II(2) of the Agreement and Article VIII(1) of the Agreement setting out the Chamber’s jurisdiction. Article II(2) of the Agreement states as follows:

“The Office of the Ombudsman and the Human Rights Chamber shall consider, as subsequently described:

(a) alleged and apparent violations of human rights as provided in the (Convention) and the Protocols thereto, or

(b) alleged or apparent discrimination on any ground ... arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex,

where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.”

18. Article VIII(1) of the Agreement states as follows:

“The Chamber shall receive by referral of the Ombudsman on behalf of the applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.”

19. Article II(2) of the Agreement gives the Chamber competence to consider, *inter alia*, alleged or apparent violations of human rights for which it is alleged or apparent that the Parties are responsible. It does not give the Chamber jurisdiction to consider applications directed against SFOR. The Chamber notes that the actions complained of by the applicants, the use of their property as a military training range, were carried out exclusively by SFOR. There is no intervention or participation by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, SFOR, when using the applicants’ property as its training range, cannot be said to be acting as, or on behalf of, the State or the Entities. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party.

20. The Chamber notes that this reasoning underlies a line of previous decisions by the Chamber. In cases no. CH/98/230 *Suljanović* and CH/98/231 *Čišić and Lelić v. Bosnia and Herzegovina and the Republika Srpska* (decision on admissibility of 14 May 1998, Decisions and Reports 1998) the applicants complained that they were improperly excluded from the elections as a result of a number of mistakes in the organisation of the out-of-country voting procedure administered by OSCE under Annex 3 of the Dayton Peace Agreement. The applicants and the Ombudsperson, who had referred the cases to the Chamber, considered that Bosnia and Herzegovina and the Republika Srpska were responsible for the management of the elections by the bodies entrusted with this task in Annex 3. The Chamber, however, held that:

“42. The actions complained of were carried out exclusively by the OSCE, PEC and EASC within the scope of them carrying out their responsibilities under Annex 3 to the General Framework Agreement. The General Framework Agreement does not provide for the intervention of either respondent Party in the conduct of the elections. Accordingly, these actions are not such as are within the responsibility of either respondent Party.

43. In conclusion, while it is possible that a breach of the rights of the applicants as guaranteed by Article 3 of Protocol No. 1 to the European Convention on Human Rights may have occurred, the impugned acts do not come within the responsibility of the respondent Parties and are therefore outside the competence of the Chamber under Article II and VIII(I) of Annex 6 to the General Framework Agreement. Accordingly the application is inadmissible under Article VIII(2)(c) of Annex 6 to that Agreement.”

21. Similarly, in case no. CH/98/1266 *Čavić v. Bosnia and Herzegovina* (decision on admissibility of 18 December 1998, para. 19, Decisions and Reports 1998) the Chamber examined the compatibility with Annex 6 of complaints concerning actions carried out by the High Representative in the performance of his functions under Annex 10 of the Dayton Peace Agreement. The applicant complained that the High Representative, by removing him from office as a member of the Republika Srpska National Assembly, to which he had been elected, had exceeded his powers and thereby violated several rights of the applicant protected by the Convention. The applicant submitted that

Bosnia and Herzegovina was responsible for the actions of the High Representative for the purposes of the Annex 6 Agreement. The Chamber held that “the impugned acts do not come within the responsibility of the respondent Party and are therefore outside the competence of the Chamber under Articles II and VIII(1) of the Agreement” (para. 19) and decided not to accept the application, it being incompatible *ratione personae* with the Agreement (para. 20).

22. In conclusion, the Chamber finds that the respondent Party is not responsible for the conduct of SFOR on the applicants’ land. Therefore the impugned acts do not come within the responsibility of the respondent Party and are outside the competence of the Chamber under Articles II and VIII(1) of Annex 6 to the General Framework Agreement. It follows that the applications are incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the applications inadmissible.

V. CONCLUSION

23. For these reasons, the Chamber, unanimously,

JOINS THE APPLICATIONS AND

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber