



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/00/4002

Miodrag RADISAVLJEVIĆ

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 July 2003 with the following members present: 2

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER, Vice-President
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
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 to Article VIII(2)(c) and (3)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The case concerns the efforts of the applicant to regain possession of an apartment in Sarajevo, located at Ulica Vrazova 18/III, for which he has a revalidated occupancy right. On 17 July 1998, the Administration for Housing Affairs of the Sarajevo Canton (hereinafter: "the Administration") issued a decision ordering the temporary occupant to vacate the applicant's apartment within 90 days. On 10 November 2000, the Administration *ex officio* reviewed its decision of 17 July 1998 and changed the deadline for vacation of the apartment to 15 days.
2. On 8 June 1999, the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter: "the CRPC") confirmed the applicant's occupancy right over the apartment in question.
3. Although the applicant requested enforcement of the Administration's decision and of the CRPC's decision, up until the date he submitted his application to the Chamber (1 February 2000), he had received no response upon either request.
4. On 16 February 2001, the applicant was reinstated into possession of his apartment. He claims that his apartment was completely damaged and his moveable property had been taken away as well. According to the applicant, he is disabled and has no regular income.

II. COMPLAINTS

5. The applicant claims that he was discriminated against in the enjoyment of his right to a home and his right to property. He requests monetary compensation for the damage to his apartment and moveable property and for his mental suffering.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 1 February 2000.
7. On 13 March 2001, the Chamber requested further information from the applicant regarding his reinstatement into possession of his apartment. On 15 March 2001, the applicant informed the Chamber that he had been reinstated into his apartment on 16 February 2001. He withdrew his claims for regaining possession of the apartment before the Chamber. However, the applicant explicitly maintained his earlier request for compensation. On 29 March 2001, the applicant submitted a letter to the Chamber setting forth claims for compensation for pecuniary and non-pecuniary damages.
8. On 20 February 2002, the case was transmitted to the Federation of Bosnia and Herzegovina for its observations on the admissibility and merits under Article 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.
9. The written observations of the Federation of Bosnia and Herzegovina were received on 22 April 2002. Whereas the facts underlying the application are not in dispute, the respondent Party proposes to strike out the application. The applicant did not comment on these observations.

IV. OPINION OF THE CHAMBER

A. With respect to Bosnia and Herzegovina

10. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept. ... In doing so, 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."

11. The Chamber notes that the Administration for Housing Affairs of the Sarajevo Canton responsible for the proceedings complained of by the applicant 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. With respect to the Federation of Bosnia and Herzegovina

12. 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.”

13. The Chamber notes that the applicant lodged his application with a view to regaining possession of his apartment, and while the case was still pending before the Chamber, he regained such possession. The Chamber further notes that although the applicant has been reinstated, he understandably asks the Chamber to find a violation of his rights protected by the Agreement due to the time that elapsed between his request for reinstatement into possession of his pre-war apartment and the actual repossession. He also asks the Chamber to order the Federation of Bosnia and Herzegovina to pay compensation to him in recognition of the damage, both pecuniary and non-pecuniary, suffered by him during the course of that time

14. 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).

15. Taking into account that the applicant has been reinstated into possession of his apartment, 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 his claims 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).

16. The Chamber, therefore, decides to strike out the application as against the Federation of Bosnia and Herzegovina, pursuant to Article VIII(3)(c) of the Agreement.

V. CONCLUSION

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17. 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)
Mato TADIĆ
President of the Second Panel