



DECISION ON ADMISSIBILITY

Case no. CH/00/4439

Blagoja ŠARENAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The subject matter of the application is the applicant's request that his pre-war real estate, consisting of land and residential, business and ancillary facilities at Lokve, Hadžići, the Federation of Bosnia and Herzegovina, which was destroyed during the armed conflict, be reconstructed and returned into his possession, or that he be compensated for it. Also, the applicant complains about the death of his father, who was imprisoned at Tarčin Camp, and he sets forth a compensation claim in this respect, as well.

II. FACTS

2. The applicant alleges that at the beginning of the armed conflict in 1992, his father, Vaso Šarenac, remained at their real estate at Lokve, Hadžići to protect it from plunder. However, he was arrested and imprisoned at Tarčin Camp, where he died in December 1992; this is confirmed by a certificate from the International Committee of the Red Cross. The applicant points out that after that, the local population in the Hadžići Municipality plundered his property, took all the construction materials, and used it for their own construction. He points out that in that way, 477m² of residential premises, 215m² of business premises and 153m² of ancillary facilities were destroyed and plundered. He considers that his facilities were not destroyed due to war hostilities but rather the population of Hadžići Municipality plundered and stole all of his property.

3. On 28 January 1999, upon the applicant's requests for repossession of his real estate, the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter: "CRPC") issued six decisions: by decision no. 301-118-1/1 it is confirmed that on 1 April 1992 the applicant was the owner of cadastral lots no. 25, 187, 196, 476/3, 801, 802, 1231, 1254, 1291, 1386, 1459, 1489/3, 1554 and 1560/1, registered in the land registry entry no. 292, cadastral municipality Lokve-Hadžići; by decision no. 301-118-2/1 it is confirmed that the applicant was the co-owner of 1/2 of cadastral lots no. 186, 194, 195 and 198, registered in the land registry entry no. 286, cadastral municipality Lokve-Hadžići; by decision no. 301-118-3/1 it is confirmed that the applicant was the co-owner of 1/4 of the real estate no. 197, registered in the land registry entry no. 287, cadastral municipality Lokve-Hadžići; by decision no. 301-118-5/1 it is confirmed that the applicant was the co-owner of 1/4 cadastral lot no. 1232/2, registered in the land registry entry no. 293, cadastral municipality Lokve-Hadžići; by decision no. 301-118-6/1 it is confirmed that the applicant's father was the co-owner of 1/2 of the cadastral lots no. 186, 194, 195 and 198, registered in the land registry entry no. 286, cadastral municipality Lokve-Hadžići; and by decision no. 301-118-7/1 it is confirmed that the applicant's father was the owner of the cadastral lots no. 832 and 1320, registered in the land registry entry no. 285, cadastral municipality Lokve-Hadžići.

4. On 13 September 1999, the applicant submitted a proposal to the Municipal Court II Sarajevo against the Hadžići Municipality for enforcement of the CRPC decisions no. 301-118-1/1 and 301-118-2/1.

5. On 20 October 1999, the Municipal Court II issued a procedural decision declaring itself absolutely non-competent for acting and decision-making in this administrative matter; therefore, the applicant's proposal was rejected in its entirety.

6. On 10 November 1999, the applicant filed an appeal against the procedural decision of 20 October 1999.

7. On 3 May 2000, the applicant filed a request for enforcement of the above-mentioned CRPC decisions to the Municipal Administration competent for repossession of private property in the Hadžići Municipality. In his request for enforcement of the CRPC decisions, he requested reconstruction of his pre-war residential and business facilities that were destroyed and plundered during the armed conflict.

8. On 5 July 2001, the Administration issued a conclusion on enforcement. On 16 July 2001, the applicant filed an appeal against the mentioned conclusion, as it did not contain all the real estate to be returned to his possession. He attached the six CRPC decisions to his appeal. On 1

August 2001, the Administration issued a supplementary conclusion on enforcement of all six CRPC decisions. The date for the applicant's delivery into the possession of the real estate was set for 6 September 2001.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was submitted in 27 March 2000 and registered the following day.
10. On 22 June 2001, the Chamber transmitted the application to the respondent Party for its observations on 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.
11. On 23 July 2001, the respondent Party submitted its written observations on admissibility and merits. On 27 February 2002, the respondent Party submitted additional observations.
12. On 28 September 2001, the applicant submitted his written observations in reply, and on 21 March 2002, he filed additional observations.
13. On 19 September 2002, 13 January 2003, 17 February 2003, 6 May 2003 and 12 June 2003, the applicant submitted requests for urgency to the Chamber.

IV. SUBMISSIONS BY THE PARTIES

A. The respondent Party

14. In its written observations the respondent Party alleges that Hadžići Municipality was not able to meet the applicant's request of 3 May 2000 for reconstruction of the destroyed facilities, about which it informed the applicant by a letter of 16 May 2001. The respondent Party points out that based on the conclusion of 5 July 2001, enforcement can be done immediately upon the applicant's receipt and attendance at the enforcement, as there is no temporary occupant of the real estate.

15. In its additional written observations, the respondent Party alleges that on 6 September 2001, the date of the applicant's reinstatement into the possession of the real estates, the officials of the Department for Physical Planning and Housing and Public Utility Affairs attended the scene, but the applicant did not appear. The same day a notice was again sent to the applicant for his reinstatement into possession, scheduled for 19 September 2001. The respondent Party alleges that on 19 September 2001, the applicant came to the Department and stated that he did not want to be reinstated into the possession until the Municipality carries out an on-site establishment of the exact borders of the land, as the borders were allegedly changed and some of his land usurped. The respondent Party points out that as of the date of submission of its additional observations and in spite of efforts made by domestic authorities, it was not found that anybody was using the applicant's land; thus, he could be reinstated into possession without the presence of the competent authorities.

16. The respondent Party points out that it complied with the complete legal procedure in the applicant's case and it is willing to reinstate him, but he has refused. It also alleges that if third persons are usurping the land in question, then the applicant may address the competent court by filing an action for disturbance of his possessions. The respondent Party proposes to the Chamber to issue a decision to strike out the application under Article VIII(3)(b) of the Agreement.

B. The applicant

17. On 28 September 2001, the applicant submitted to the Chamber his written observations. He considers that the respondent Party can enforce the CRPC decisions by disbursing monetary compensation for damage for 477m² of residential premises, 215m² of business premises and 153m² of ancillary facilities, in accordance with the market value of the real estate.

V. ALLEGED HUMAN RIGHTS VIOLATIONS

18. The applicant complains of two forms of violence committed against him: violence to his father, Vaso Šarenac, who was imprisoned and died in Tarčin Camp, and the destruction and plunder of his residential and business facilities.

VI. OPINION OF THE CHAMBER

19. 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.”

A. Complaints in relation to the applicant’s father

20. The Chamber observes that the applicant’s father died in December 1992. Thus, the facts complained of by the applicant 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 alleged to have occurred subsequent to its entry into force. Claims on behalf of alleged victims directly related to acts exclusively occurring prior to 14 December 1995 are inadmissible as outside the Chamber’s competence *ratione temporis*. This includes the arrest, detention, and killing of alleged victims prior to 14 December 1995 (case no. CH/96/15, *Grgić*, decision on admissibility of 5 February 1997, at section IV, and decision on the merits of 5 August 1997, paragraph 19, Decisions on Admissibility and Merits March 1996-December 1997). It follows that this part of the application 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.

B. Complaints in relation to the destruction and plunder of the applicant’s property

21. Regarding the applicant’s complaints about the destruction and plunder of his pre-war real estate, consisting of land and residential, business and ancillary facilities at Lokve, Hadžići, the Chamber notes that the applicant specifically alleges that the damage to his real estate was caused by the population of Hadžići Municipality. The applicant has not shown that the damage was directly caused by the respondent Party or any person acting on its behalf. Therefore, the Chamber finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

C. Request for compensation

22. The Chamber notes that the applicant has set forth claims for compensation for his destroyed and plundered property, as well as for his father’s death. The Chamber observes, however, that it can only award compensation if it makes a finding of a violation of the Agreement, which it has not done in the present case.

VII. CONCLUSION

23. For these reasons, the Chamber, unanimously,
DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel