



**DECISION TO STRIKE OUT
and
DECISION ON ADMISSIBILITY**

Case no. CH/00/4538

Behdžeta HASANAGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 February 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
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 Articles VIII(2)(c) and VIII(3)(b) of the Agreement and Rule 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant was the occupancy right holder over an apartment located at ul. 25 Novembra no.4/II in Čapljina, the Federation of Bosnia and Herzegovina (the “apartment”). She was forced to leave her apartment during 1993 due to the armed conflict in Bosnia and Herzegovina. On 27 April 1998 the applicant submitted a request to the Municipality of Čapljina, and on 31 March 1999 a complaint to the Municipal Court in Čapljina, both regarding her reinstatement into the apartment.

2. The applicant complains that her rights protected under Articles 6, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention are violated. Additionally, she alleges that she has been discriminated against based on her Bosniac origin. She also alleges that her right to equality before the law protected under Article 26 of the International Covenant on Civil and Political Rights has been violated.

3. On 2 May 2000 the Annex 7 Commission for Real Property Claims of Refugees and Displaced Persons (“the CRPC”) confirmed the applicant’s occupancy right over the apartment. On 17 August 2000 the Municipality Čapljina approved a conclusion on the enforcement of the CRPC decision. On 11 October 2000 the applicant was formally reinstated into possession of her apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 5 April 2000. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary actions to protect her movable property within the apartment. On 8 May 2000 the Chamber issued an order for provisional measures, ordering the respondent Party to have an inventory list of the apartment prepared in the applicant’s presence.

5. On 9 May 2000 the application was transmitted to the respondent Party for observations on the admissibility and merits. On 9 June 2000 the Chamber received observations from the respondent Party. On 25 July 2000 the applicant submitted her observations in reply and a compensation claim. She requested 5.000 KM compensation for non-pecuniary damage. On 1 September 2000 the respondent Party submitted additional information in reply to the compensation claim, which was transmitted to the applicant for her observations.

6. On 13 June 2001 the Chamber requested information on further developments in the case from the applicant. On 9 July 2001 the applicant submitted a letter and documentation informing the Chamber of the 17 August 2000 conclusion on enforcement of the CRPC decision. The applicant stated that, although she had been formally reinstated into the apartment on 11 October 2000, she wanted to pursue the application before the Chamber with regard to her compensation claim. On 7 August 2001 the respondent Party submitted her observations in reply to the applicant’s letter, which were transmitted to the applicant on 5 October 2001.

III. OPINION OF THE CHAMBER

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. Considering that the applicant was reinstated into the apartment on 11 October 2000, the Chamber finds that the matter raised in the application has been resolved. The Chamber finds no special circumstances regarding respect for human rights which require the examination of the application to be continued. The Chamber notes that the applicant has expressed her intention to pursue the application before the Chamber in regard to the compensation claim. The Chamber observes, however, that it can only award compensation if it makes a finding of a violation of the

Agreement. The Chamber therefore decides to strike out the part of the application relating to the failure of the authorities to reinstate the applicant into possession of her home.

9. In accordance with Article VIII(2)(c) 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. As to the applicant’s claims that, in the proceedings before domestic authorities, she has been discriminated against on the basis of her Bosniac origin, the Chamber considers that she has failed to substantiate her allegation of discrimination. Therefore, the Chamber finds that these allegations do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. Accordingly, the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement, insofar as it relates to the complaint of discrimination. The Chamber therefore decides to declare this part of the application inadmissible.

IV. CONCLUSION

11. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION, in so far as it concerns the applicant’s complaint relating to the failure of the authorities to reinstate her into possession of her apartment, AND

DECLARES THE APPLICATION INADMISSIBLE, in so far as it concerns the applicant’s complaint that she has been discriminated against.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel