DECISION TO STRIKE OUT

Case no. CH/00/5738

THE FEDERATION OF BOSNIA AND HERZEGOVINA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 April 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
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. 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(3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the interference with the right of several thousand persons to regain possession of their pre-war homes arising out of the dispute between the Federation of Bosnia and Herzegovina ("the Federation") and the Republika Srpska about the location of the Inter Entity Boundary Line ("IEBL") in the area of Dobrinja I and IV in Sarajevo. The Federation requested the Chamber to establish that the Republika Srpska, by its failure to comply with Annex 1-A and Annex 2 of the General Framework Agreement for Peace in Bosnia and Herzegovina ("GFAP"), made it impossible for the Federation to respect its obligations under Article I of the Agreement. Further, the Federation requested the Chamber to order the Republika Srpska to perform its obligations under Annex 1-A within 45 days of the date of the delivery of the present decision in order for the Federation to establish *de facto* authority over the disputed area. Finally the Federation requested the Chamber to establish that the rights, as guaranteed by Article 8 of the European Convention ("the Convention") and Article 1 of Protocol No. 1 to the Convention, of the applicant in case CH/99/1961, Mrs Azra Zornić, had been violated by the Republika Srpska and not by the Federation.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 11 September 2000.

3. On 18 September 2000 the application was transmitted to the respondent Party for its observations on the admissibility and merits of the application. On 20 October 2000 the Chamber received the respondent Party's observations.

4. The applicant's additional observations were received on 23 November 2000.

5. The Chamber scheduled a public hearing in the case for 8 February 2001. On 5 February 2001 the Chamber informed the parties that the public hearing had been postponed, because the High Representative had issued a decision establishing an arbitration procedure to finally determine the location of the IEBL (see paragraph 11 below).

6. On 16 May 2001 the Chamber requested additional information from the applicant. On 31 August 2001 the Chamber received the requested information. On 19 October 2001 the Chamber asked the applicant to state whether it considered that it had now regained *de facto* control over the area assigned to it by the Arbitration Award (see paragraphs 12 and 13 below). No reply was received. On 19 March 2002 the Chamber renewed its request. Again, no reply was received.

7. On 8 November 2000, 8 January, 5 February, 7 May and 11 October 2001, and 8 April 2002 the Chamber deliberated on the application. On the latter date the Chamber adopted the present decision.

III. FACTS

8. During the negotiations in Dayton and on the occasion of the signing of the GFAP in Paris on 14 December 1995, the Parties agreed that the territorial division within Bosnia and Herzegovina, between the Federation of Bosnia and Herzegovina and the Republika Srpska, should be based on the wartime confrontation line. However, the map which was used during the negotiations in Dayton, the scale of which was 1:600,000, was transferred to an official map with a scale of 1:50,000. As a result, Dobrinja I and IV, two settlements on the outskirts of Sarajevo covering a territory which is 200 metres wide and 2 kilometres long, became disputed, since there were actually two different lines. One IEBL was *de iure* drawn on the official map and the other was the *de facto* IEBL which followed the confrontation line.

9. On 29 September 1999 the Chamber received an application from Mrs. Azra Zornić which was registered under case number CH/99/1961. The case concerned the attempts of the applicant to regain possession of an apartment located at Miroslava Krleže 12/I in Dobrinja I. She held the occupancy right over it and occupied it together with her family until 1992, when she was forced to

vacate it due to the hostilities. The applicant maintained that the area in which the apartment is located was, according to Annex 2 to the GFAP, part of the Federation. However, it was in fact under the control of the Republika Srpska. The applicant claimed that this situation had resulted in her being unable to regain possession of her apartment.

10. On 7 September 2000 the Chamber held a public hearing on the admissibility and merits of case no. CH/99/1961 *Azra Zornić v. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska*. At the public hearing the Agent of the Federation asked the Chamber to declare the application admissible with regard to all three respondent Parties, and to find the Republika Srpska responsible for the violation of the rights of the applicant as guaranteed by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, find that the Federation was not responsible for any violations of the rights of the applicant, and order the Republika Srpska to withdraw all of its forces from the area concerned. It also suggested that the Republika Srpska be ordered to pay to the applicant appropriate compensation.

11. On 9 January 2001 the Chamber adopted its decision in the case of *Azra Zornić* (case no. CH/99/1961, decision on admissibility and merits of 9 January 2001, Decisions January-July 2001). The Chamber declared the application admissible against all parties, i.e. Bosnia and Herzegovina, the Federation and the Republika Srpska. The Chamber found that Bosnia and Herzegovina was not responsible for any violation of the applicant's rights as guaranteed by the Agreement. The Chamber further found that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment involved a violation of the applicant's rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. Finally, the Chamber found that the continuing failure of the authorities of the Federation to act in accordance with its own laws in connection with the request of the applicant to regain possession of the apartment involved a violation of her rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

12. On 5 February 2001 the High Representative publicly announced a decision establishing an arbitration procedure to finally determine the location of the IEBL. The High Representative appointed Mr. Diarmuid P Sheridan as the sole arbitrator and decided that the Arbitration Award issued by the arbitrator should be final and binding on the State of Bosnia and Herzegovina, the Federation and the Republika Srpska.

13. On 17 April 2001 the Arbitration Award was signed by Mr. Diarmuid P Sheridan. The decision entered into force at midnight on 24 April 2001. The Arbitrator decided that about 800 apartments within the disputed area in Dobrinja I and IV belong to the Federation and about 250 to 300 apartments shall remain in the Republika Srpska. Pursuant to the High Representative's decision of 5 February 2001 the Award constitutes an agreement between the Parties in accordance with Article II of Annex 2 to the GFAP.

14. In a letter of 27 July 2001 from the Federation's Office for Cooperation With and Representation before the Human Rights Commission ("the Office") to the Federal Ministry of Justice regarding the implementation in the case of *Azra Zornić* (see paragraph 12) the Office writes:

> "…both competencies for the repossession of the apartment *de facto* and *de iure* have been transferred to the Federation of Bosnia and Herzegovina, i.e. the Sarajevo Cantonal Administration for Housing Affairs."

IV. RELEVANT LEGAL PROVISIONS

15. Annex 1-A to the General Framework Agreement for Peace in Bosnia and Herzegovina ("GFAP") deals with the military aspects of the peace settlement.

16. Annex 2 of the GFAP deals with the IEBL and related issues. Article I of Annex 2 states that the boundary line between the Federation and the Republika Srpska shall be as delineated on the map at the appendix to Annex 2. Article II of Annex 2 states that the Parties may adjust the IEBL only by mutual consent.

V. COMPLAINTS

17. In the application to the Chamber, the Federation asked the Chamber to issue a decision by which:

1) the application of the applicant in case no. CH/99/1961, Azra Zornić ("A.Z."), would be declared admissible in respect of the Republika Srpska and the Federation of Bosnia and Herzegovina;

2) the application of the Federation of Bosnia and Herzegovina would be declared admissible in respect of the Republika Srpska;

3) it would be established that the Republika Srpska breached the rights of A.Z., guaranteed by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

4) it would be established that the Federation of Bosnia and Herzegovina did not breach the rights of A.Z., guaranteed by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

5) it would be established that Republika Srpska by non-compliance with Annex 1-A and Annex 2 made it impossible for the Federation of Bosnia and Herzegovina to respect its obligations under Article I of Annex 6 in respect of A.Z. and other 5000 citizens of the Federation of Bosnia and Herzegovina;

6) it would order the Republika Srpska to perform its obligations from Annex 1-A within 45 days from the day of delivery of the decision, namely to withdraw all its forces, to completely vacate and clear the territory of Dobrinja I and IV, which the Peace Agreement allocated to the Federation of Bosnia and Herzegovina, in order that the Federation of Bosnia and Herzegovina can *de facto* establish its authority within that territory –decide on the request of A.Z. for return of the apartment of which she is the occupancy right holder, as well as on the requests of other citizens from that area – current and potential applicants before the Chamber;

7) it would order the Republika Srpska to pay compensation to A.Z. in the amount which the Chamber considers appropriate.

18. In a letter of 31 August 2001 the Federation informed the Chamber that they were of the opinion that the Arbitration Award had resolved all the issues raised in the application, except two. The first of the remaining issues was that it should be established that the Republika Srpska, by non-compliance with Annex 1-A and Annex 2, had prevented the Federation from complying with its obligations set out in Article I of the Agreement (no. 5 in paragraph 17 above). The second remaining issue was that the Federation persisted in its request that the Chamber order the Republika Srpska, within 45 days after the date of the delivery of the Chamber's decision, to enforce its obligations set out in Annex 1-A, i.e. to withdraw all its forces, to completely vacate and clear the territory of Dobrinja I and IV which the GFAP allocated to the Federation in order for the Federation to be able to *de facto* establish its authority within that territory and to be able to decide on requests for repossession of apartments in that area.

19. In the same letter the Federation stated that, although it had *de iure* authority in the area of Dobrinja I and IV, due to non-compliance of the Republika Srpska with its obligations set out in Annex 1-A and Annex 2, it had not been able to establish *de facto* power in the area, and therefore, had not been capable of passing decisions in any cases concerning repossession of apartments in the disputed area.

VI. OPINION OF THE CHAMBER

A. As to the complaints withdrawn by the applicant Party

20. 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 (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights."

21. The Chamber notes that the Federation, by letter of 31 August 2001, withdrew all its complaints, except those under nos. 5 and 6 (see paragraph 17 above). The Chamber therefore finds that the Federation does not intend to pursue complaints 1-4 and 7 of the application. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of these parts of the application to be continued. The Chamber therefore finds it appropriate to strike out these parts of the application in accordance with Article VIII(3)(a) of the Agreement.

B. As to the "victim requirement" under Article VIII(1) of the Agreement

22. With regard to the two remaining issues the Chamber notes that in accordance with Article VIII(1) of the Agreement the Chamber shall receive applications concerning alleged violations from "...any Party...claiming to be victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing...".

23. The Chamber interprets Article VIII(1) of the Agreement, which with regard to the inter-Party applications is somewhat unclear, in the light of Article 33 of the European Convention on Human Rights, which states that *"any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party"*. In the *Austria v. Italy* case, the European Commission on Human Rights has clarified that "a High Contracting Party, when it refers an alleged breach of the Convention to the Commission under Article 24, is not to be regarded as exercising a right of action for the purpose of its own rights, but rather as bringing before the Commission an alleged violation of the public order of Europe ..." (*Austria v. Italy*, application no. 788/60, 4 YB 140 (1961)).

24. The Chamber construes the complaints of the Federation under nos. 5 and 6 in paragraph 17 above not as claims that the Federation itself has been the victim of a human rights violations, but as alleging that the respondent Party has violated the rights of about 5,000 citizens of the Federation, and prevented the Federation from enforcing and protecting the rights of these persons. In this respect the Chamber also notes that, while the Federation states that it has filed the application on behalf of 5,000 of its citizens, there is no requirement for an inter-Party complaint that the alleged victims be citizens of the applicant Party.

25. In the light of the above considerations, the Chamber sees no obstacle with regard to Article VIII(1) to receiving the present application.

C. As to the complaints maintained by the applicant Party

26. With regard to the Federation's request that the Chamber establish that the Republika Srpska by non-compliance with Annex 1-A and Annex 2 made it impossible for the Federation to respect its obligations under Article I of the Agreement in respect to Mrs. Azra Zornić and 5000 other citizens of the Federation, the Chamber recalls its statement in the *Zornić* case (paragraph 107):

> "The Chamber considers that the obligation on the Federation to secure the applicant's right to respect for her home requires it to not only put in place a legislative regime enabling persons who lost possession of their homes to regain possession of them, but also to ensure that it acts in accordance with that regime in the individual cases, including that of the applicant. Even though the Federation has not *de facto* power in the area where the applicant's apartment is located and would most likely not be in a position to enforce any decision, it is nevertheless required to act in accordance with its own law in determining the applicant's claims. As noted in the previous paragraph, the Federation has not done so as the applicant's proceedings in this regard are still pending, despite the legal time-limits for the issuance of a decision having elapsed. The Chamber therefore considers that the Federation has failed to comply with the positive obligation imposed upon it by Article 8 and therefore it has violated the rights of the applicant under that provision".

27. The Federation has not submitted any evidence that they have issued any decisions in accordance with their own laws, establishing that persons in Dobrinja I and IV had the right to repossess their apartments over which they have the occupancy right. However, even if the Federation has issued any such decision, the Chamber notes that the Arbitration Award established the location of the IEBL and that the Federation now has *de iure* authority over parts of the disputed area. The Chamber has twice asked the applicant to state whether they have regained *de facto* control over the territory assigned to them by the Arbitration Award, and no reply has been received. There is no evidence before the Chamber that the Federation does not also have *de facto* control over the area. The Chamber therefore finds that, if the Federation has issued decisions allowing persons to regain possession of their apartments in Dobrinja I and IV, it now also has the necessary control to enforce those decisions. Accordingly, the Chamber finds that the matter has been resolved.

28. With regard to the Federation's request to the Chamber to oblige the Republika Srpska to perform its obligations under Annex 1-A within 45 days from the date of the delivery of this decision, i.e. to withdraw all its forces, to completely vacate and clear the territory of Dobrinja I and IV which the GFAP allocated to the Federation in order for the Federation to be able to *de facto* establish its authority within that territory and to be able to decide on requests for repossession of apartments in that area, the Chamber notes that an Arbitration Award has been signed.

29. The Arbitration Award, which entered into force on 24 February 2001 and constitutes an agreement between Bosnia and Herzegovina, the Federation and the Republika Srpska under Article II of Annex 2 of the GFAP, establishes the location of the IEBL. The Arbitration Award, which is final, establishes that 800 apartments within the disputed area are on territory belonging to the Federation and about 250 to 300 apartments should remain under the control of the Republika Srpska. The Chamber is therefore of the opinion that it is clear that the Federation has *de iure* authority of the area allocated to it by the Arbitration Award. The Federation has not submitted any evidence that it, after the Arbitration Award entered into force, does not also have *de facto* authority over the area allocated to them. Under these circumstances the Chamber considers that it is established that the Federation now has full authority over the parts of the area which were allocated to it. Accordingly, the Chamber finds that the matter has been resolved.

30. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of the application to be continued. The Chamber therefore finds it appropriate to strike out these parts of the application in accordance with Article VIII(3)(b) of the Agreement.

VII. CONCLUSION

31. For these reasons, the Chamber, by 11 votes to 1,

STRIKES THE APPLICATION OUT

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber