



DECISION ON ADMISSIBILITY

Case no. CH/02/8935

Group of Citizens of the Municipality of Žepče

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 2 July 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. Vitimir 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. Before the 1992-1995 armed conflict in Bosnia and Herzegovina, the Municipality Žepče was inhabited by Bosniaks, Croats and Serbs, the Bosniak population forming the majority. During the 1992-1995 armed conflict, the area of the Municipality Žepče was the theatre of clashes between Croats and Bosniaks.

2. During and after the armed conflict two parallel administrations emerged in the area of the former Municipality Žepče, one of the so-called “Croat Republic of Herceg-Bosna,” servicing Croats, and one connected to the Cantonal Administration of the Zenica-Doboj Canton.

3. The case concerns the decisions of the High Representative on “integrating the municipality of Žepče”. By these decisions the High Representative dismantled the two parallel administrations existing in the Municipality Žepče, and changed the borders of the Municipality so as to include several villages of neighbouring municipalities. As a result of the changed borders, the Municipality now has a majority Croat population.

4. As alleged by the applicants, the borders of the Municipality Žepče were changed with the aim of shifting the national majority within the municipality from Bosniak to Croat. The applicants complain that changing the municipal boundaries resulted in “national/ethnic superiority with characteristics of national/ethnic discrimination.” They refer to the establishment of the Croat majority in the municipality as “national/ethnic domination” and claim it leads to “differentiation, excluding and limiting of rights based on ethnic origin.” The applicants accuse the OHR of ignoring the “democratically expressed will of citizens belonging to Bosniak and Serb ethnic groups with regard to change of borders.” They claim that they have been denied a right “to take part directly and through elected representatives in the process of decision making at the municipal level.” They further state that the Bosniak and Serb people have been denied equal access “to public services at the municipal level as well as employment.”

5. The applicants requested the Chamber to order provisional measures by which the border of the Žepče municipality would be returned to the position of 1991 and equal rights for all citizens of the Municipality be established. This request for provisional measures was rejected by the First Panel on 8 April 2002. On 6 May 2002 the First Panel decided to relinquish jurisdiction over the case in favor of the plenary Chamber in accordance with Rule 29(2) of the Chamber’s Rules of Procedure. The plenary Chamber considered the application on 6 June and 2 July 2002. On the latter date it adopted the present decision.

II. OPINION OF THE CHAMBER

6. 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.”

7. Since the applicants do not allege violations of specific provisions of any human rights instruments, the Chamber examines the complaint under such instruments as may be relevant, namely, Article II(2)(b) of the Agreement in conjunction with Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

8. Article II(2)(b) of the Agreement provides, in relevant part:

“...the Human Rights Chamber shall consider ... (b) alleged or apparent discrimination on any ground such as ... national or social origin ... 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.”

9. Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by a secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature.”

10. Article 25 of the International Covenant of Civil and Political Rights (ICCPR) provides:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) To have access, on general terms of equality, to public service in his country.”

11. Article 2 of the ICCPR provides, in relevant part:

“1. Each State Party ... undertakes to respect ... rights recognized in the present Covenant, without distinction of any kind, such as ... national or social origin ... or other status.”

12. The UN Human Rights Committee’s General Comment on Article 25 addressed the issue of redrawing electoral boundaries (*The Right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96*. CCPR General Comment 25, adopted by the Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996). In paragraph 21 of its General Comment the Committee states:

“The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”

13. The municipal boundary changed by the OHR is not an “electoral boundary” within the meaning of the General Comment 25 to the ICCPR. Redrawing the electoral boundaries could be a violation of the Covenant if, for example, districts were changed to alter their representative votes in a national election and to derogate unreasonably from the one-person one-vote system. The applicants in the present case do not allege distortions of the representative vote of the municipality in general elections.

14. Instead, the change in boundaries only affects government and legislation within the municipality. The changed borders in no way derogate from the rights to have access to public office, to take part in the conduct of public affairs, to vote or to be elected. The residents of the Municipality can vote in the same way they voted before, with the only change being the make-up of the voting population. Thus, none of the rights protected by Article 3 of Protocol No. 1 to the Convention and Article 25 of the ICCPR are affected by changing the boundaries.

15. While the quoted human rights instruments protect electoral freedoms and access to public service, they do not recognise a group’s right to be a majority. This right to remain a majority is precisely what the applicants are asserting in the present case. Consequently, as the actions complained of here do not fall under any provisions of the applicable human rights instruments, the Chamber lacks competence *ratione materiae* to review this application.

III. CONCLUSION

16. For the foregoing reasons, the Chamber, by 13 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber