



DECISION ON ADMISSIBILITY

Case no. CH/02/9853

Citizens of Divič

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 September 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. Vitomir 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. The application was introduced on 4 April 2002. The applicants, who are all of Bosniak origin, are citizens of Divič, a settlement on the outskirts of Zvornik, Republika Srpska. They challenge the Chamber's Decision on Review in the case number CH/98/1062 *Islamic Community v. Republika Srpska* adopted on 4 September 2001. They claim that the Chamber should have ordered the destruction of the Serb Orthodox church illegally built on the site of the Divič mosque, which was destroyed during the war, and complain that the change of the name of Divič to Sveti Stefan during the war was illegal.

2. In its Decision on Admissibility and Merits of 9 November 2000 (in the case number CH/98/1062 *Islamic Community v. Republika Srpska*) the Second Panel found that the Republika Srpska violated the right to freedom of religion of the Islamic Community and of its members in Zvornik, as guaranteed by Article 9 of the Convention, and the Islamic Community's right to the peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. The Second Panel also found that the respondent Party discriminated against the Islamic Community and its members in the enjoyment of these protected rights by preventing the Islamic Community from reconstructing the destroyed mosques or using their sites. In the part that relates to the site of the Divič mosque, the Second Panel ordered Republika Srpska to allocate a suitable building site in the vicinity of the former Divič mosque to permit, upon request of the Islamic Community, the construction of a mosque to replace the former Divič mosque. The Second Panel also ordered the respondent party to pay the applicant 10.000 KM as monetary compensation for the moral damage suffered after 14 December 1995 in relation to all sites involved in that case.

3. Both parties requested review of the 9 November 2000 decision. In its request the Islamic Community argued that by leaving intact the structures illegally built on the sites of the destroyed mosques the Chamber "legalised" the violations committed by the respondent Party. The applicants requested an increase in the amount of damages and an order to remove the structures built on the sites of the destroyed mosques, in particular the Serb Orthodox church built on the site of the Divič mosque. Republika Srpska challenged the compensation awards. By its Plenary decision of 4 September 2001 the Chamber declined to order the destruction of the Serb Orthodox church built on the site of the Divič mosque, but increased the compensation award by 50.000 KM.

4. The applicants in the present case claim that the Chamber's decision adopted on 4 September 2001 perpetuates the injustice of allowing an Orthodox church, a product of genocide against the Muslims of the area and built illegally, to stand on the site of the destroyed mosque. The applicants further claim that by changing the name of Divič to Sveti Stefan the respondent Party intends to prevent the applicants' return to their pre-war homes, in violation of Annex 7 of the General Framework Agreement.

II. OPINION OF THE CHAMBER

5. 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."

6. The Chamber first considers the applicants' complaint about the Chamber's Decision on Review in case no. CH/98/1062 *Islamic Community v. Republika Srpska* in which it declined to order the destruction of the Orthodox church built on the site of the destroyed Divič mosque. The Chamber notes that the applicants' complaint is directed not against the conduct of the respondent Party, the Republika Srpska, but against the Chamber itself. It follows that in this respect the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c), as the Chamber is not one among the respondent Parties under the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

7. The Chamber next considers the applicants' claim that changing the pre-war name of Divič to Sveti Stefan was done with the intent of preventing their return to their pre-war homes, in violation of Annex 7 of the General Framework Agreement. The Chamber observes that the applicants complain that there has been an interference with their right to the name of their settlement. However, in the "Foča/Srbinje"-case (see case no. CH/00/4424 et al., *Šljivo & Others*, decision on admissibility of 12 October 2000, paragraph 12, Decisions July-December 2000) the Chamber held that a right to have the pre-war name restored is not included among the rights and freedoms guaranteed under the Agreement. It follows that the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c), and must be rejected. Accordingly, the Chamber decides to declare this part of the application also inadmissible.

III. CONCLUSION

8. For these 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

Annex Dissenting Opinion of Mr. Hasan Balić

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Dr. Hasan Balić.

DISSENTING OPINION OF MR. HASAN BALIĆ

I cannot agree with my colleagues who voted in favor of declaring the application inadmissible for the following reasons:

The applicants are a group of citizens, Bosniaks from Divič. Part of the Bosniak population of Divič was killed and part expelled from Divič:
But before that, what is Divič?

This is one docile settlement in the Drina River basin which has been inhabited for more than 500 years exclusively by Bosniaks. The Chamber's file number CH/98/1062 (Islamic Community v. Republika Srpska) provides that according to 1991 census the population was mostly of Bosniak origin. Not only that the Serbs expelled the Bosniaks but they also burned and destroyed the mosque and built a church on its basis. The Chamber resolved that issue in the case number CH/98/1062 in which I had dissenting opinion.

In this case, the Chamber made a wrong conclusion in paragraph 6 that the application is incompatible *ratione personae* because it was directed against the Chamber. On the contrary, the group of citizens requests the Chamber "to protect them from the respondent Republika Srpska, as it has violated their human right destroying also the tomb stones of applicants' ancestors while building the church. They are not able to visit the graves now. Therefore, they request the Chamber to award them monetary compensation for mental sufferings because they, as believers, cannot access graves of their ancestors and the mosque which exists no more. According to my opinion, in these circumstances this part of the application is admissible, within the meaning of Article VIII(2)(c) of the Agreement as the issue concerns apparent violation of human rights by the Republika Srpska.

In addition, with regard to paragraph 7, where the subject matter of dispute or the impugned act is the violent change of the name Divič into Sveti Stefan. Imagine that some people come and conquer Rome, or "The Leaning Tower" of Pisa and name it The Tower of "Drunk People" as of today; or "The Statue of Liberty" naming it The Statue of a Girl; or l'Arc d'Triomphe calling it The Arch of Bandits and Outlaws. Who is obliged to remedy that? In the BiH, where no efficient remedy for this dispute exists, the right thing would be for the Chamber to resolve the matter. This is Chamber's obligation under Article VIII(2)(c) of the Agreement, Article 1 of Protocol No. 1 to the Convention, and Articles 6, 8 and 9 of the Convention and Annex 7 to the Peace Agreement which provides for peaceful return. And, all of this is substantiated with discrimination because people were mass killed, expelled, their property was robbed, their religious and other cultural objects were destroyed only because they are of Bosniak origin. The change of the name of the place from which they were expelled and in which they had lived for more than 500 years is the top of the iceberg. This is an apparent violation of human rights and a violation of Annex 7 to the General Framework Agreement for Peace in BiH. Therefore, I am of the opinion that the Chamber is competent *ratione materiae* to consider the merits of this dispute.

(signed)
Hasan Balić