



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/97/44

Sabina HUSEDŽINOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 October 2001 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting 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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced to the Chamber on 9 June 1997. In her application the applicant complained that the authorities of the respondent Party offered her insufficient compensation for expropriation of her house in Banja Luka. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to prevent demolition of her house that was the subject of the expropriation proceedings, and on 10 July 1997, the Chamber refused that request for provisional measures.

2. The applicant alleged violations of her right to peaceful enjoyment of possessions protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention") and her right to a fair hearing in civil proceedings protected by Article 6 of the Convention.

II. STATEMENT OF FACTS

3. On 15 July 1992, the Municipal authorities of Banja Luka issued a procedural decision on expropriation of the applicant's house. In 1997, unsatisfied with the determination of fair compensation for her expropriated house, the applicant initiated proceedings before the First Instance Court in Banja Luka seeking a higher amount of compensation. On 1 December 1998, and again on 26 March 2001, the applicant sought to have the decision on expropriation annulled, arguing that the beneficiary of the expropriation failed to commence construction of the facility for which the expropriation was performed within the three-year time limit provided by law. The competent domestic court and administrative body have not yet decided on the applicant's requests.

4. In the meantime, on 5 March 1998, the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) issued a decision confirming the applicant's right to repossess her house. The applicant alleges that she requested implementation of this decision on 13 April 1999 and 28 July 2000. On 27 April 2001, the applicant further wrote to the Chamber requesting that it order the execution of the CRPC decision in her favour. On 16 May 2001, 26 July 2001 and 17 August 2001, the Chamber wrote to the applicant informing her that her application as originally submitted did not concern the implementation of the CRPC's decision, but that the possibility existed for her to submit a separate application to the Chamber in that respect. Meanwhile, however, the CRPC decision has been enforced and the applicant has been reinstated into possession of her house.

5. On 3 September 2001, the applicant wrote to the Chamber and requested that the Chamber order a reversal of the expropriation of her house and further order that a change be made in the Land Registry so that she is registered as the owner of her house.

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." In addition, 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."

7. To the extent the applicant's initial complaint was directed against the procedural decision on expropriation of 15 July 1992, the Chamber notes that it is incompetent *ratione temporis* to consider any alleged or apparent violation of human rights occurring before the entry into force of the Agreement on 14 December 1995.

8. In addition, with respect to the applicant's complaint that the compensation she was offered for her expropriated house was insufficient, the Chamber notes that the essence of this complaint is that the domestic authorities have incorrectly assessed the facts pertaining to the applicant's case, namely, the value of the applicant's house. The Chamber recalls that it has stated on several occasions that it is not within its competence to substitute its own assessment of the facts for that of the national courts (*see, e.g.*, case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999; case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this portion of the application inadmissible.

9. Lastly, to the extent the applicant's complaints concern implementation of the CRPC decision in her favour and reinstatement into possession of her house, the Chamber finds that the matter has been resolved, within the meaning of Article VIII(3)(b) of the Agreement. It follows that the Chamber, therefore, decides to strike out this portion of the application.

III. CONCLUSION

10. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE IN PART AND
STRIKES OUT THE REMAINING PART OF THE APPLICATION.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel