



DECISION TO STRIKE OUT

CASE No. CH/98/1330

Dyke HASANAJ and others

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 16 April 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. Leif BERG, 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 as well as Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. This case involves the conditions in which the applicants, refugees from Kosovo (eleven adults, both couples and single mothers, with their 27 children) were accommodated in former factory premises serving as the Hadžići refugee camp near Sarajevo. The applicants are listed in the Annex.

II. COMPLAINTS

2. The applicants complained that, notably in view of the winter climate, the conditions in which they had been accommodated were such as to constitute a violation of their rights under Article 2, 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The applicants referred, in particular, to the lack of adequate heating and sanitary facilities which are said to be potentially life-threatening, in particular for very young applicants.

III. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 4 December 1998 and registered on 5 December 1998. The applicants are represented by Ms. Sevima Sali Terzić, a lawyer at the International Human Rights Law Group. The applicants requested an order for provisional measures be issued against both respondent Parties to the effect that they should "immediately take all appropriate measures to prevent the current violations of Article 2 and 3". The United Nations High Commissioner for Human Rights proposed to act as *amicus curiae* in the case.

4. On 4 December 1998 the President ordered both respondent Parties to take all necessary steps to protect the applicants' health by improving the heating and sanitary conditions in the Hadžići refugee camp and by considering urgently the applicants' transfer to more suitable premises. The respondent Parties were requested to inform the Chamber by 11 December 1998 on the measures taken to implement this order. On 11 December 1998 Bosnia and Herzegovina submitted its observations.

5. The Chamber considered the case on 14 December 1998, and decided to transmit the case to both respondent Parties pursuant to Rule 49(3)(b) for observations on the admissibility and merits, with specific reference to Article 3 and 8 of the European Convention. The Chamber also decided to accept the United Nations High Commissioner for Human Rights as *amicus curiae* pursuant to Rule 32 *ter*.

6. On 18 January 1999 Bosnia and Herzegovina submitted its observations on the admissibility and merits. On 21 January 1999 the Federation of Bosnia and Herzegovina submitted its observations.

7. By a letter of 26 January 1999 the observations of the respondent Parties were sent to the applicants' representative for their observations within one month. No reply was received. By a letter of 17 March 1999 the applicants' representative was warned that the case could be struck out for the applicants' apparent lack of interest in pursuing it. The applicants' representative was invited to submit any observations within one week. No reply has been received.

8. By a letter of 17 March 1999 the Chamber invited the *amicus curiae*, to comment on the enclosed observations submitted by the respondent Parties. On 6 April 1999 the *amicus* stated that "an effective resolution of the matter" had been found.

IV. SUBMISSIONS ON THE ADMISSIBILITY

9. Bosnia and Herzegovina submitted that since the application was introduced, it had taken various steps to improve the accommodation of refugees from Kosovo, including their transfer from the Hadžići refugee camp to newly built Centres in Rakovica and Bosanski Petrovac. All refugees would be placed in the new Centre in Bosanski Petrovac before the end of January 1999.

10. The Federation of Bosnia and Herzegovina submitted that the applicants, non-nationals of Bosnia and Herzegovina, could not have standing before the Chamber, since the Convention is only applicable to “citizens of a State”. Accordingly, the case should be declared inadmissible pursuant to Article VIII(2)(c) as being incompatible with the Agreement. Moreover, as refugees the applicants should have addressed the United Nations High Commissioner for Refugees, who is supervising compliance with the 1951 Convention relating to the Status of Refugees. As the applicants had allegedly failed to address UNHCR, they had not exhausted all available domestic remedies within the meaning of Article VIII(2)(a) of the Agreement.

V. OPINION OF THE CHAMBER

11. According to Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application which it considers incompatible with the Agreement. According to Article VIII(2)(a), the Chamber must further consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

12. The Chamber recalls the undertaking of the Parties to the Agreement to “secure” the rights and freedoms mentioned in the Agreement and its Appendix “to all persons within their jurisdiction”(Article I). It follows that the Chamber is competent to adjudicate applications lodged by non-nationals or stateless persons such as the applicants. Accordingly, the present case is not incompatible with the Agreement.

13. The Chamber further finds that the applicants are not barred under Article VIII(2)(a) of the Agreement from bringing their grievances before the Chamber, whether or not they have addressed UNHCR in this matter.

14. The Chamber recalls, however, that according to Article VIII(3) of the Agreement, it may at any point decide to strike out an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the case. In all these situations, however, a decision to strike out an application must be consistent with objective of respect for human rights.

15. The Chamber notes that its letters of 26 January 1999 and 17 March 1999 to the applicants’ representative have remained unanswered, even after the applicants were warned that the case might be struck out. The Chamber concludes that the applicants do not intend to pursue their application. Furthermore, in the opinion of *amicus curiae* the matter has been resolved.

16. In these circumstances it is no longer justified to continue the examination of the case and such an outcome would not be inconsistent with the objective of respect for human rights. It follows that the order for provisional measures issued on 4 December 1998 is no longer valid.

VI. CONCLUSION

17. For these reasons, the Chamber unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

ANNEX

The applicants are the following:

1. Dyke HASANAJ
2. Henkelinda HASANAJ
3. Lezonjare HASANAJ
4. Ngadhnjim HASANAJ
5. Eperhitura HASANAJ
6. Donika HASANAJ
7. Gufin HASANAJ

8. Elhamija HOXHA
9. Malich HOXHA
10. Liridona HOXHA
11. Denis HOXHA
12. Shadija HOXHA

13. Mihane MURTEZI
14. Labinote MURTEZI
15. Sejrane MURTEZI
16. Leonora MURTEZI
17. Jehona MURTEZI
18. Ardijan MURTEZI

19. Jasminka SECIC
20. Tahir GEGAS
21. Fatmir SECIC-GEGAS
22. Vilca SECIC-GEGAS
23. Fitore SECIC-GEGAS
24. Ljiljidona SECIC-GEGAS

25. Hazire Laci GUSTEMI
26. Selim GUSTEMI
27. Barjram GUSTEMI
28. Fator GUSTEMI

29. Murveta ISA
30. Fatmir ISA
31. Arbeshja ISA
32. Albulena ISA
33. Dorotina ISA
34. Dielza ISA
35. Arber ISA

36. Merita UKA
37. Nehat TMAVA
38. Nimon UKA-TMAVA