



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/98/401

Slavka BANDOV

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice- President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

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) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 5 March 1998 and registered on 10 April 1998.
2. The application concerns two complaints of the applicant. The first complaint concerns the applicant's request to prevent her eviction from a house located at Gorička bb in Livno, and, in the alternative, the second complaint concerns the applicant's attempts to regain possession of her pre-war apartment located at Lenjinova no. 69/IV in Sarajevo – Grbavica.

II. FACTS

3. During the armed conflict in Sarajevo – Grbavica, the applicant was forced to leave Grbavica. On 22 February 1995 she moved to Livno.
4. On 16 October 1995 the Department of Real Estate Cadastre, Geodetic and Property-Legal Affairs of the Municipality Livno allocated an abandoned private house located at Gorička bb in Livno to the applicant. Meanwhile, the owner of the abandoned house in question sold this house to Mr. A.B., who initiated proceedings before the relevant bodies seeking the applicant's eviction from the house.
5. On 19 February 1998 the Municipal Court in Livno ordered the applicant's eviction.
6. On 2 August 2002 the applicant informed the Chamber that she had succeeded to repossess her apartment in Sarajevo - Grbavica. However, she points out that this apartment is in "an unenviable condition" and that she needs significant financial investments to repair it. Therefore, she set out a compensation claim for pecuniary damages.

III. OPINION OF THE CHAMBER

A. Complaint concerning eviction

7. 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."
8. The Chamber notes that the applicant was ordered to vacate the house in Livno on the ground that she no longer had a right under domestic law to occupy it. In these circumstances, the Chamber finds that the facts complained of do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

B. Complaint concerning repossession

9. 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; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such a result is consistent with the objective of respect for human rights."
10. The Chamber notes that the applicant lodged her application with a view to regaining possession of her pre-war apartment in Sarajevo, and while the case was still pending before the Chamber, she regained such possession.

11. It would be open to the Chamber to consider the admissibility and merits of a case, when, as in the present case, the question arises whether the time-limits and other procedural requirements prescribed by domestic law have been complied with by the authorities. If it found a violation, then the Chamber would address the question of whether any remedies should be ordered, including compensation.

12. However, as the Chamber explained in the case of *S.P.* (case no. CH/99/2336, decision to strike out of 2 July 2001, Decisions July—December 2001), the Chamber is not unmindful of the difficulties faced by the domestic authorities in implementing the property legislation in force in a timely manner. Consequently, where it is established that the domestic authorities, albeit belatedly, have taken effective action and where the applicant has in fact been reinstated, although not within the time-limit established by law, the Chamber may be persuaded to strike out an application, unless there are particular reasons, apart from the delays in the reinstatement, that require continued consideration.

13. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of her pre-war apartment. That being so, the Chamber considers that the main issue raised in the application has been resolved. The Chamber further notes, however, that the applicant has expressed her intention to pursue the application before the Chamber in regard to her claim for compensation. The Chamber observes that it can only award compensation if it makes a finding of a violation of the Agreement. Apart from the delays that occurred in securing her reinstatement, the applicant has not drawn the Chamber's attention to any special circumstances regarding the respect for human rights which would require the examination of the application to be continued after the main issue raised in the application has been resolved, and the Chamber considers that no such special circumstances are present in this application. In the circumstances, the Chamber finds that it would not be inconsistent with the objective of respect for human rights to strike out the remainder of the application. Consequently, the claim for compensation cannot be considered.

IV. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE COMPLAINT CONCERNING THE APPLICANT'S EVICTION INADMISSIBLE AND STRIKES OUT THE REMAINDER OF THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel