



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/98/836

Ešef MILAK

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 November 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of his pre-war property in Graborezi, Livno Municipality, the Federation of Bosnia and Herzegovina.
2. On 24 April 1997 the applicant submitted a claim against the occupants of his house to the Livno Municipal Court. On 19 June 1997 the applicant submitted a claim to gain repossession of his house to the Livno Municipal Department for Geodetic and Legal-Property Affairs.
3. On 8 November 1999, the applicant withdrew the proceedings before the Livno Municipal Court.
4. On 9 May 2000, the applicant entered into possession of his pre-war property.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 4 August 1998 and registered on the same day.
6. On 20 July 1999 the case was transmitted to the respondent Party for its observations on the admissibility and merits under Articles 6, 8, 13 in relation to Article 6, and Article 14 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention. On 20 September 1999 the respondent Party submitted its observations. The respondent Party asserted that the applicant had not used all available legal remedies, as his case was still pending before the Municipal Court in Livno at that time.
7. On 5 November 1999 the Chamber received a claim for compensation from the applicant for his rental payments and damage to his house, garden, fence, and tractor.
8. On 28 February 2000 the applicant responded to the respondent Party's observations.
9. On 20 November 2001 the respondent Party informed the Chamber that the applicant had withdrawn the claim in the Livno Municipal Court on 8 November 1999 against the occupants of his house.
10. On 24 December 2001 the Chamber received the applicant's response to the respondent Party's observations of 20 November 2001. The applicant noted that due to his financial situation he did not have money to pay for a lawyer. He alleges that the Livno Municipal Court took advantage of his lack of representation and suggested to him that he withdraw his case, without informing him of the legal implications of such an action.

III. OPINION OF THE CHAMBER

A. Admissibility

11. 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."
12. The Chamber notes that the applicant has raised claims under Articles 6 and 13 of the Convention in relation to his proceedings before the Livno Municipal Court. However, the applicant has failed to substantiate his allegations, and moreover, the challenged proceedings were withdrawn on 8 November 1999. Therefore, the Chamber finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the 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. Strike Out

13. 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 ... (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.”

14. The Chamber notes that the applicant lodged his application with a view to regaining possession of his property, and while the case was still pending before the Chamber, he regained such possession. The Chamber further notes that although the applicant has been reinstated, he understandably asks the Chamber to find a violation of his rights protected by the Agreement due to the time that elapsed between his request for reinstatement into possession of his pre-war property and the actual repossession. He also asks the Chamber to order the respondent Party to pay compensation to him in recognition of the damage, both pecuniary and non-pecuniary, suffered by him during the course of that time.

15. The Chamber recalls that under Article VIII(2)(e) of the Agreement, “the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds”. As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

16. Taking into account that the applicant has been reinstated into possession of his property, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main issue of the application has been resolved. The Chamber recognises that valid reasons may underlie the applicant’s request to nonetheless maintain his claim for compensation. However, in the light of the considerations discussed above, the Chamber finds that “it is no longer justified to continue the examination of the application” within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is “consistent with the objective of respect for human rights”, as this “objective” must be understood to embrace not only the individual applicant’s human rights, but also the Chamber’s more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

17. The Chamber, therefore, decides to strike out this part of the application, pursuant to Article VIII(3)(c) of the Agreement.

IV. CONCLUSION

18. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE IN PART AND STRIKES OUT THE REMAINDER OF THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSI
President of the Second Panel