



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/99/1415

Nada KURILIĆ

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 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 Article VIII(2)(c) and Article VIII(3)(c) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of her pre-war apartment located at ul. Rudolfa Rude Tomića no. 16 (previously Ernesta Telmana), in Sarajevo, the Federation of Bosnia and Herzegovina.
2. The applicant submitted a request for repossession of the apartment on 7 July 1998. On 3 August 1998 the Administration of Housing Affairs of Canton Sarajevo (the "Administration") rejected this request. On 23 September 1998, the applicant submitted an appeal against the procedural decision to the Cantonal Ministry for Physical Planning, Housing and Communal Affairs.
3. On 18 January 1999 the applicant submitted a claim to the Municipal Court II in Sarajevo against the temporary occupant seeking reinstatement into possession of her apartment. On 18 August 1999, the Court issued a judgment in favour of the applicant and ordered the temporary occupant to vacate the apartment in 15 days.
4. On 9 September 1999, the Commission for Real Property Claims of Displaced Persons and Refugees (the "CRPC") issued a decision recognising the applicant as the occupancy right holder of the apartment in question. On 16 December 1999, the applicant submitted a request to the Administration seeking enforcement of the CRPC decision. In April 2000, the applicant submitted an appeal against the "silence of the administration" to the Ministry of Justice of the Federation of Bosnia and Herzegovina - Administrative Inspectorate.
5. On 26 October 2000 the applicant entered into possession of her apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 5 January 1999 and registered on the same date.
7. On 12 May 2000 the Chamber transmitted the application to the Federation of Bosnia and Herzegovina for its observations on the admissibility and merits under Articles 6 and 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.
8. On 8 October 2002 the Federation of Bosnia and Herzegovina provided information that the applicant had regained possession of her pre-war apartment on 26 October 2000.
9. On 18 November 2002 the applicant confirmed that she entered into possession of her apartment. However, she stated that her reinstatement did not cure her moral and material consequences and that she would like to maintain her application before the Chamber in this regard.

III. OPINION OF THE CHAMBER

A. As against Bosnia and Herzegovina

10. 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."
11. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton, the Ministry of Housing Affairs of Sarajevo Canton and the Municipal Court II in Sarajevo, the organs responsible for conducting the proceedings complained of by the applicant, engage the responsibility of the Federation, not of Bosnia and Herzegovina for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the

meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

B. As against the Federation of Bosnia and Herzegovina

12. 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.”

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

14. 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).

15. Taking into account that the applicant has been reinstated into possession of her apartment, 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 the proceedings and her 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).

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

IV. CONCLUSION

17. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE AS AGAINST BOSNIA AND HERZEGOVINA AND STRIKES OUT THE REMAINDER OF THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel