



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/99/2291 and CH/99/2649

Radojka MALETIĆ and Branislav MATASIĆ

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 7 February 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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

A. CH/99/2291 Radojka MALETIĆ

1. The application was introduced on 4 June 1999 and registered on the same day.
2. The applicant complained of her inability to repossess her pre-war apartment, located at Ulica Rudolfa Rude Tomića 18/I, in Sarajevo.
3. On 14 January 2003, the applicant informed the Chamber that she had repossessed her apartment on 5 July 2002. However, she wished to maintain her claim concerning compensation since her apartment is damaged and she does not have the financial means to reconstruct it.

B. CH/99/2649 Branislav MATASIĆ

4. The application was introduced on 5 July 1999 and registered on the same day.
5. The applicant complained of his inability to repossess his pre-war apartment, located at Ulica Sarać Ismailova 4/III, in Sarajevo.
6. On 8 January 2003, the applicant informed the Chamber that he was reinstated into possession of his pre-war apartment on 27 November 2001. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

II. OPINION OF THE CHAMBER

A. With respect to Bosnia and Herzegovina

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. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton (Uprava za stambenje pitanja Kantona Sarajevo), which is responsible for the proceedings complained of by the applicants, is an organ of the Canton, the conduct of which engages the responsibility of the Federation of Bosnia and Herzegovina, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the applications are incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the applications inadmissible as against Bosnia and Herzegovina.

B. With respect to the Federation of Bosnia and Herzegovina

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 ... (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 applicants lodged their applications with a view to regaining possession of their apartments, and while their cases were still pending before the Chamber, they regained such possession. The Chamber further notes that although the applicants have been reinstated, they understandably ask the Chamber to find a violation of their rights protected by the Agreement due to the time that elapsed between their request for reinstatement into possession of their pre-war apartments and the actual repossession. They also ask the Chamber to order the

respondent Party to pay compensation to them in recognition of the damage, both pecuniary and non-pecuniary, suffered by them during the course of that time.

11. 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).

12. Taking into account that the applicants have been reinstated into possession of their apartments, the Chamber considers that the ongoing alleged human rights violations have been brought to an end and the main issue of the applications has been resolved. The Chamber recognises that valid reasons may underlie the applicants’ requests to nonetheless maintain their claims 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[s]” 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).

13. The Chamber, therefore, decides to strike out the applications as against the Federation of Bosnia and Herzegovina, pursuant to Article VIII(3)(c) of the Agreement.

III. CONCLUSION

14. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATIONS INADMISSIBLE IN PART and
STRIKES OUT THE REMAINDER OF THE APPLICATIONS.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel