



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/99/2595

Danilo RALEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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)(a), VIII(2)(c), VIII(3)(b) and VIII(3)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant complained of his inability to regain possession of his pre-war apartment in Mostar, the Federation of Bosnia and Herzegovina, of his inability to obtain an identity document from the authorities, and of the failure of the public company "KOMOS" in Mostar to return to him his family tombstones located in the cemetery Sutina, which he purchased before the armed conflict.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was received on 23 June 1999 and registered on 24 June 1999. The application was referred to the Chamber by the Ombudsperson for Bosnia and Herzegovina, who had received the application on 1 June 1999.

3. On 20 January 2000, the Chamber transmitted the application to the Federation of Bosnia and Herzegovina under Article 8 of the European Convention on Human Rights ("the Convention"), Article 1 of Protocol No. 1 to the Convention, Article 2 of Protocol No. 4 to the Convention, Article 26 of the International Covenant on Civil and Political Rights, and Articles 2(a) and 5(d)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination. The respondent Party submitted its observations on the admissibility and merits on 20 March 2000. The Chamber received additional observations on 23 August 2002.

4. The applicant submitted observations to the Chamber on 28 July 1999, 24 August 1999, 3 May 2000, 28 October 2002 and 27 December 2002.

III. FACTS

5. The applicant is the pre-war occupancy right holder over an apartment located at Ulica Splitska no. 5a, apartment no. 11, in Mostar. The applicant moved into the apartment in 1986 or 1987. The allocation right holder over the apartment was the former Yugoslav National Army (JNA). In a document submitted to the Ombudsperson for Bosnia and Herzegovina on 27 April 1999, the applicant alleged that he had purchased the apartment from the former JNA based on his contributions to the JNA Housing Fund. The applicant did not submit to the Chamber any purchase contract or evidence of having paid the purchase price for the apartment in question.

6. On 23 August 2002, the respondent Party informed the Chamber that the applicant had repossessed his pre-war apartment on 5 March 2002. On 28 October 2002, the applicant confirmed that he had repossessed his pre-war apartment but noted that he had suffered material losses, as moveable property from his apartment was removed. He also stated that he does not consider himself to have lost the status of "victim", as the respondent Party argued in its written observations. He seeks the Chamber to issue a decision in his favour, keeping in mind that he has suffered material losses for which he has not received any compensation.

7. On 22 November 2002, the Chamber requested the applicant to update the Chamber on whether he had succeeded in obtaining his identity documents and on the status of the dispute over his family tombstones.

8. On 27 December 2002, the Chamber received a letter from the applicant informing it that he had succeeded in obtaining the necessary identity documents from the Mostar Police Department on 19 February 2002.

9. As to the dispute over the family tombstones, the applicant attached a copy of receipts dated 11 and 14 March 1992 paid to the public company "KOMOS" for the tombstones in question, as well as his lawsuit before the Municipal Court II in Mostar. On 2 July 2002, the applicant requested the Municipal Court II to order the accused, the public company "KOMOS", to fulfil its contractual obligations and hand over the tombstones to the applicant. In response to the lawsuit, the Director of the public company "KOMOS" sent a letter to the Municipal Court II dated 6 August 2002, stating that the company will build and give to the applicant a tombstone worth 920.00 KM, as per the

contract. The Director also noted that the tombstones that the applicant paid for prior to the conflict were never built, due to the outbreak of the armed conflict.

IV. OPINION OF THE CHAMBER

A. Claim for family tombstones

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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

11. The Chamber notes that the applicant’s complaint concerning his family tombstones is premature as the proceedings are still pending before the Municipal Court II in Mostar. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

B. Claim for loss of moveable property

12. 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.”

13. Regarding the applicant’s claim for damage to or loss of moveable property from his pre-war apartment, the Chamber notes that the applicant has not shown that this alleged damage was directly caused by the respondent Party or any person acting on its behalf. 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 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.

C. Claim for identity documents

14. 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; ... provided that such a result is consistent with the objective of respect for human rights.”

15. Considering that the applicant has informed the Chamber that he succeeded in obtaining the necessary identity documents on 19 February 2002, the Chamber finds that this matter raised in the application has been resolved. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of this part of the application to be continued. The Chamber therefore decides to strike out this part of the application, in accordance with Articles VIII(3)(b) of the Agreement.

D. Claim for repossession of pre-war apartment

16. 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.”

17. The Chamber first observes that, while the apartment is a former JNA apartment, the applicant is the occupancy right holder over the apartment in question and apparently not the owner, as the applicant did not attach any proof of having purchased the apartment in 1991 or 1992. The

Chamber notes that the applicant lodged his application with a view to regaining possession of his apartment, 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 apartment 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.

18. 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).

19. Taking into account that the applicant has been reinstated into possession of his apartment, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and that one of the main issues of the application has been resolved. In the light of the considerations discussed above, the Chamber finds that “it is no longer justified to continue the examination of [this part 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).

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

V. CONCLUSION

21. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE insofar as it relates to the claim for the family tombstones and the loss of moveable property, and

STRIKES OUT THE REMAINDER OF THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel