



DECISION TO STRIKE OUT

Case no. CH/98/654

Duro KECMAN

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 September 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 Article VIII(2)(c) and Article VIII(3) of the Agreement and Rules 49 and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns the applicant's attempts to regain possession of his pre-war apartment, located in Sarajevo, Skenderija 20/II. The applicant regained possession of his apartment on 30 April 2002. It appears, however, that in accordance with domestic law, the applicant was prevented from entering into possession of his apartment earlier because the temporary occupant of his apartment was within a category of persons who was entitled to emergency accommodation.

II. STATEMENT OF THE FACTS

2. The applicant initiated proceedings to regain possession of his apartment on 18 May 1998. Because no decision was forthcoming, the applicant appealed and later initiated an administrative dispute for the silence of the administration. On 26 January 2000, the Cantonal Court in Sarajevo issued a decision ordering the Ministry of Physical Planning, Housing and Utility Affairs of Sarajevo Canton to decide upon the applicant's appeal within 30 days.

3. On 30 October 2000, the Administration for Housing Affairs, as the first instance organ, issued a procedural decision establishing the temporary occupant's right to alternative accommodation and ordering him to leave the apartment within 90 days. The applicant appealed against this decision because it granted alternative accommodation to the temporary occupant and thereby deprived the applicant from immediate repossession. The second instance organ issued a decision ordering renewed proceedings. After renewed proceedings, on 10 August 2001, the first instance organ issued a decision with the same conclusion, that is, establishing the temporary occupant's right to alternative accommodation.

4. In addition, on 23 March 2001, when the 90-day period for the temporary occupant to depart from the apartment had expired, the applicant submitted a request for implementation of the decision of 30 October 2000. On 18 April 2001 the first instance organ issued a conclusion ordering that the eviction of the temporary occupant should be executed after alternative accommodation was located for the temporary occupant. On 21 May 2001 the applicant appealed against this conclusion, and it appears that these appellate proceeding are still pending.

5. Meanwhile, the applicant also initiated proceedings before the Commission for Real Property Claims of Displaced Persons ("CRPC"). The CRPC issued a decision on 2 May 2000 establishing the applicant's occupancy right and his right to regain possession of the apartment in question. On 14 June 2000, the applicant submitted a request for implementation of the CRPC decision.

6. Through implementation of the CRPC decision of 2 May 2000, the applicant was reinstated into possession of his apartment on 30 April 2002.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 19 May 1998 and registered on the same day.

8. On 23 March 2000, the Chamber transmitted the application to the respondent Parties for their 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.

9. On 22 May 2002, the Federation of Bosnia and Herzegovina provided information to the Chamber that the applicant had regained possession of his apartment. The applicant confirmed that he had entered into possession of his apartment on 30 April 2002. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

IV. OPINION OF THE CHAMBER

A. Admissibility *ratione personae*

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 (Uprava za stambenje pitanja Kantona Sarajevo), responsible for the proceedings complained of by the applicant, 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 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. Strike out as resolved

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 ... (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.”

13. 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.

14. 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.

15. 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.

16. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his apartment on 30 April 2002. 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 his intention to pursue the application before the Chamber in regard to his 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 his 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 application. Consequently, the claim for compensation cannot be considered.

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

V. CONCLUSION

18. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel