



DECISION TO STRIKE OUT

Case no. CH/98/1368

Darinka REPIJA

against

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. 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 Article VIII(3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 17 December 1998.
2. The applicant complained of her inability to regain possession of her pre-war apartment located at Sulejmana Filipovića no. 16, in Sarajevo, over which she is the co-holder of the occupancy right.
3. On 8 December 2000 the applicant informed the Chamber that on 6 October 2000 she had succeeded to enter into possession of the above-mentioned apartment. At that time she also set out a compensation claim for pecuniary damages in the total amount of 8,250.00 KM, including rent in the amount of 250.00 KM per month from the date when she submitted her complaint to the Municipal Court until the date when she repossessed her apartment (*i.e.*, from 19 December 1997 until 6 October 2000), and legal costs in the amount of 1,831.50 KM.

II. STATEMENT OF THE FACTS

4. On 19 December 1997 the applicant filed an action with the Municipal Court II in Sarajevo against S.M., the temporary occupant of the apartment in question, and JP "GRAS", the owner of the apartment, for eviction of the temporary occupant and for delivery of possession of the apartment and the movable property in it to the applicant.
5. On 16 June 1998 the Administration for Housing Affairs of the Sarajevo Canton (the "Administration") issued a procedural decision confirming that the applicant was a co-holder of the occupancy right over the apartment in question. On 17 September 1998, 30 November 1998 and 2 August 1999, the applicant submitted requests for the issuance of a conclusion authorising the enforcement of the procedural decision of 16 June 1998.
6. On 25 May 1999 the Municipal Court issued a partial judgment ordering the temporary occupant to vacate the apartment in question and to deliver possession of it to the applicant within 15 days from the date when the judgment became effective.
7. On 21 March 2000 the Commission for Property Claims of Refugees and Displaced Persons (the "CRPC") confirmed that on 1 April 1992 M.R., the applicant's husband, was the occupancy right holder over the apartment in question. On 28 April 2000 the applicant submitted a request to the Administration for enforcement of the CRPC decision.
8. On 23 May 2000 the applicant submitted a proposal to the Municipal Court for the issuance of provisional measure ordering that an inventory list of the movable property in the apartment be made. On 25 May 2000 the Municipal Court rejected the request for provisional measure.
9. On 6 October 2000 the Municipal Court issued a conclusion establishing that the applicant had been reinstated into possession of the apartment in question, and thus, the enforcement ordered by the court's previous procedural decision of 29 August 2000 had been carried out.

III. OPINION OF THE CHAMBER

10. 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."

11. 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.

12. 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.

13. 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.

14. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of her apartment on 6 October 2000. 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 her intention to pursue the application before the Chamber in regard to her 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 her 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.

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

IV. CONCLUSION

16. 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