



DECISION TO STRIKE OUT

Case no. CH/01/7219

Milisav BOŠKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 September 2002 with the following members present:

Ms. Michèle PICARD, President
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(3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was submitted to the Chamber and registered on 29 June 2001.
2. The case concerns the attempts of the applicant to regain possession of his property. The applicant, a citizen of Bosnia and Herzegovina, is the pre-war owner of property situated in Ilijaš.
3. The applicant complains of the non-enforcement of a procedural decision issued by the Property-Legal, Geodetic and Cataster Service in Ilijaš on 30 June 2000, confirming his right to regain possession of his property. He also complains of the non-enforcement of a conclusion on permission of enforcement of the above-mentioned procedural decision dated 12 October 2000.
4. The applicant also asks the Chamber to provide him with compensation for rental costs and for mental suffering of him and his family.
5. On 16 July 2002, the applicant provided information to the Chamber that he had regained possession of his property on 23 April 2002.

II. COMPLAINTS

6. The applicant alleges a violation of his right to family life and home as protected by Article 8 of the European Convention on Human Rights ("Convention") and a violation of his right to peaceful enjoyment of his property as protected by Article 1 of Protocol No. 1 to the Convention. He also alleges a violation of his right to a fair hearing in civil proceedings as protected by Article 6 of the Convention and Article 1 of the Human Rights Agreement.

III. OPINION OF THE CHAMBER

7. 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."
8. 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.
9. 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.
10. 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 appears that the domestic authorities have taken appropriate and effective action in good faith 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. Such a decision to strike out, however, will depend upon the circumstances of the particular case, including the stage the proceedings have reached when the Chamber is informed of the applicant's reinstatement. Nonetheless, the Chamber retains the option of proceeding to a decision on the merits of any particular case, provided the other facts of the case so warrant.

11. Turning to the facts of the present case, the Chamber notes that the applicant has been reinstated into possession of his property. 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 compensation claim. The Chamber observes that it can only award compensation if it makes a finding of a violation of the Agreement. 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. The Chamber, therefore, decides to strike out the application, pursuant to Article VIII(3) of the Agreement.

IV. CONCLUSION

12. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel