



DECISION TO STRIKE OUT

Case no. CH/98/1172

Muharem KURBEGOVIĆ

against

REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 September 2002 with the following members present:

Mr. Giovanni GRASSO, 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 case concerns the attempts of the applicant to regain possession of his property. The applicant, a citizen of Bosnia and Herzegovina, is pre-war owner of property situated in Gradiška. He lodged a request for repossession before bodies of the respondent Party.
2. The respondent Party has informed the Chamber that its responsible bodies took necessary steps which enabled the applicant to regain possession over his property in Gradiška and to enjoy the free use of it.
3. On 10 June 2001, the applicant entered into possession of his pre-war property.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted to the Chamber and registered on 21 September 1998.
5. On 18 February 1999, the Chamber transmitted the application to the respondent Party for its 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, in connection with Article II(2)(b) of the Agreement.
6. In its observations of 19 March 1999, the respondent Party was of the opinion that the application should be declared inadmissible because the applicant has not exhausted domestic remedies.
7. On 21 June 2001, the respondent Party provided information to the Chamber that the applicant had regained possession of his property on 10 June 2001. The applicant has confirmed this information. The applicant noted that while he withdraws his complaints in this respect he would like to maintain his claim for compensation.

III. COMPLAINTS

8. The applicant alleges a violation of his rights as protected by Articles 8, 13 and 14 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention, as well as violations of Annexes 6 and 7 to the General Framework Agreement.

IV. OPINION OF THE CHAMBER

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 ... (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.”
10. 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.
11. 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.

12. 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.

13. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his property on 10 June 2001. 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.

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

V. CONCLUSION

15. 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