



DECISION TO STRIKE OUT

Case no. CH/99/2198

Neđo VUJIĆIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 10 October 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
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(3)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of his pre-war property, located at Ulica Nahorevska 125 (former Ulica Nahorevska 109) in Sarajevo Centar, the Federation of Bosnia and Herzegovina.

2. The applicant left his property on 24 December 1995. The applicant submitted a request for reinstatement to the Municipal Service for Administration of Property Related Affairs, Geodetic Affairs and Cadastre of Real Estates in Sarajevo Centar ("the Service") on 22 June 1998, two and a half years later. On 4 January 1999, the Service issued a decision recognising the applicant's title to the property at issue. On 10 May 1999, the applicant requested the Service to enforce its decision of 4 January 1999. On 23 September 1999, the Service issued a conclusion allowing for enforcement of the decision of 4 January 1999.

3. The applicant submitted a request for repossession to the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC") on 18 September 1997. The applicant repeated his request on 28 October 1998. On 17 December 1998, the CRPC issued a decision confirming the applicant's title to the property at issue. On 2 March 1999, the applicant requested the Service to enforce the CRPC's decision of 17 December 1998. On 2 August 1999, the Service issued a conclusion allowing for enforcement of the CRPC's decision of 17 December 1998.

4. On 29 September 1999, 12 June 2000 and again on 24 August 2000, the applicant urged the Service to enforce its decision of 4 January 1999 and the CRPC's decision of 17 December 1998. On the last date (24 August 2000), the applicant also requested the Service to forward to him the record of the delivery of the applicant's possession to temporary occupants. On 15 September 2000, the Service informed the applicant that the record had never been made.

5. The applicant addressed the Institution of the Ombudsmen of the Federation of Bosnia and Herzegovina on 10 May 1999. On 20 March 2000, the Institution of the Ombudsmen of the Federation of Bosnia and Herzegovina issued a decision finding a violation of the applicant's constitutional rights to equality before the law and to property. The applicant addressed also the UNCHR Mission to Bosnia and Herzegovina (on 11 May 1999), the Office of the High Representative in Bosnia and Herzegovina (on 20 March 2000) and the OSCE Mission to Bosnia and Herzegovina (on 25 August 2000).

6. On 13 August 2001, the applicant entered into possession of his pre-war property.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 19 May 1999 and registered on 24 May 1999.

8. On 22 June 2001, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits under Article 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.

9. On 10 September 2001, the respondent Party provided information to the Chamber that the applicant had regained possession of his property. The applicant confirmed that he entered into possession of his property on 3 October 2001. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

10. The Second Panel considered the application on 5 July and 10 October 2002. On the latter date it decided to relinquish jurisdiction over the case in favour of the plenary Chamber in accordance with Rule 29(2) of the Chamber's Rules of Procedure.

III. OPINION OF THE CHAMBER

11. 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.”

12. 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.

13. 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.

14. The Chamber recalls that in the case of *S.P.* (case no. CH/99/2336, decision to strike out of 2 July 2001, Decisions July–December 2001), it has explained that it is not unmindful of the difficulties faced by the domestic authorities in implementing the property legislation in force in a timely manner. Consequently, the Chamber may be persuaded to strike out an application where the applicant has lodged his application with a view to regaining possession of his property, and while the case was still pending before the Chamber, regains such possession. In the *S.P.* decision, the Chamber explained that such a decision to strike out will depend upon the circumstances of the particular case, i.e. both the stage the proceedings have reached when the Chamber is informed of the applicant’s reinstatement (para. 14) and the circumstances of the applicant’s reinstatement, such as “the length of time the applicant has had to wait for reinstatement; other exceptional suffering incurred by the applicant, e.g. through maltreatment or violent eviction; the circumstances in which the applicant may have been living; and the proven effectiveness, in a particular locality, of the domestic remedies” (para. 15).

15. The Chamber now finds it useful to highlight additional considerations that guide it in its decision whether to strike out a given application where the applicant has been reinstated, or to continue consideration of it with regard to its admissibility and merits. 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”. The Chamber further observes that there are presently over ten thousand undecided applications pending before it, and that this number is growing month by month. Since the Chamber’s decision in the *S.P.* case, the number of applications lodged with the Chamber every month has increased: during the six months preceding the *S.P.* decision (January-June 2001) the Chamber received 770 applications, during the same period of the year 2002 it received 1824 applications.

16. The Chamber also notes the significant progress in the return and property law implementation process in Bosnia and Herzegovina since it adopted the *S.P.* decision. According to the statistics of the Property Law Implementation Plan (PLIP), on 31 July 2001 the rate of implementation of property legislation was 36% with regard to socially owned property and 27% with regard to privately owned property. A year later, as of 31 July 2002, the rate of implementation of property legislation was 61% with regard to socially owned property and 53% with regard to privately owned property.

17. The Chamber notes that, the applicant having been reinstated, the ongoing alleged human rights violation has been brought to an end and the main issue of the application solved. However, the applicant understandably asks the Chamber to find a violation of his rights protected by the Agreement due to the more than three years that elapsed between his request to be reinstated into his pre-war home and the actual repossession. He also asks the Chamber to order the Federation to pay compensation to him in recognition of the damage, both pecuniary and moral, suffered by him in the course of those three years.

18. The Chamber recognises that valid reasons may underlie the applicant's request. However, in the light of the considerations in paragraphs 15 and 16 above, the Chamber finds that "it is no longer justified to continue the examination 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). In the light of these considerations the Chamber shall, as a rule, strike out applications where the applicant has been reinstated into his pre-war home. Nonetheless, the Chamber retains the option of proceeding to a decision on the merits of any particular case, provided the specific facts of the case so warrant.

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

IV. CONCLUSION

20. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber