



DECISION TO STRIKE OUT

Case no. CH/00/4455

Vaso ŠOLAJA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
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 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 applicant's attempts to regain possession of his pre-war apartment, located at Zmaja od Bosne No. 32/V, Sarajevo, Federation of Bosnia and Herzegovina.
2. On 19 January 1996 the applicant entered into a contract with the allocation right holder authorising the temporary use of his apartment while he was abroad. On 4 June 1997 the applicant requested in writing that the keys be returned to him, in accordance with items 4 and 5 of the contract. The allocation right holder informed the applicant that he would need to initiate court proceedings to enforce the contract. On 25 September 1998 the Sarajevo Cantonal Housing Department rejected the applicant's claim, as the apartment had not been declared abandoned. On 5 August 1999 the Ministry for Housing Affairs issued a decision quashing the decision of 25 September 1998 and sending the case back to the first instance body.
3. On 27 November 2000, the applicant entered into possession of his pre-war apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 27 March 2000 and registered on the same day.
5. The applicant confirmed in writing that he entered into possession of his apartment on 27 November 2000, and he attached the minutes on reinstatement taken at that time. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

III. OPINION OF THE CHAMBER

6. 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."
7. The Chamber notes that the applicant lodged his application with a view to regaining possession of his apartment, and while the case was still pending before the Chamber, he regained such possession.
8. 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.
9. 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.
10. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his apartment on 27 November 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 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.

11. 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