



DECISION TO STRIKE OUT

Case no. CH/01/7725

Đula HASANAGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 November 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. 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 to Article VIII(3)(c) of the Agreement and Rules 52 and 65(3) of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of her pre-war apartment, located at Ante Starčevića bb lamela 7 in Čapljina, the Federation of Bosnia and Herzegovina.
2. On 3 September 1998 the applicant submitted a request for reinstatement into possession of her pre-war apartment to the Municipality Čapljina. On 9 September 1999 the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant's occupancy right over the apartment. On 5 April 2000 the applicant requested execution of the CRPC decision.
3. On 6 March 2002, the applicant entered into possession of her pre-war apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 23 July 2001 and registered on the same day. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent her eviction from the apartment she occupied in Sarajevo. On 1 August 2001 the President decided not to order the provisional measure requested.
5. On 6 September 2001, the First Panel adopted a decision declaring the application inadmissible. The First Panel held that the decision to evict the applicant was taken to allow the pre-war occupancy right holder to repossess the apartment and that the applicant had no legally protected right to occupy the apartment. The applicant submitted a request for review of the First Panel's decision on 14 November 2001, stating that her main complaint concerned protection of her rights in her Čapljina apartment, not her eviction from her Sarajevo apartment. On 6 June 2002, the plenary Chamber decided to accept the request for review and to transmit the case.
6. On 19 June 2002, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits under Articles 6, 8, 13 and 14 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.
7. On 22 July 2002, the respondent Party provided information to the Chamber that the applicant had regained possession of her pre-war apartment. The applicant confirmed that she entered into possession of her pre-war apartment on 6 March 2002. The applicant noted that while she withdraws her complaints in this respect, she would like to maintain her claim for compensation.

III. OPINION OF THE CHAMBER

8. 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 ... (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."
9. 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. The Chamber further notes that although the applicant has been reinstated, she understandably asks the Chamber to find a violation of her rights protected by the Agreement due to the time that elapsed between her request for reinstatement into possession of her pre-war apartment and the actual repossession. She also asks the Chamber to order the respondent Party to pay compensation to her in recognition of the pecuniary damages she incurred during the course of that time.
10. 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”. As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July– December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

11. Taking into account that the applicant has been reinstated into possession of her apartment, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main issue of the application has been resolved. The Chamber recognises that valid reasons may underlie the applicant’s request to nonetheless maintain her claim for compensation. However, in the light of the considerations discussed 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).

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

IV. CONCLUSION

13. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber