



DECISION TO STRIKE OUT

Case no. CH/01/8366

Stojan MIMOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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)(b) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. In his application to the Chamber, the applicant complained of his inability to enter into possession of his pre-war apartment in accordance with a decision of the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") in his favour.
2. The applicant has been an occupancy right holder over the apartment in question, located at Grbavička 9/II in Sarajevo, since 1985.
3. On 12 January 1990, Mr. D.J., the former husband of Mrs. V.J. (both citizens of Bosnia and Herzegovina of Croat origin), concluded a contract on use of the apartment in question with the competent housing authority. However, according to a statement made by D.J. at a hearing on 20 February 2001 before the Administration for Housing Affairs of the Canton Sarajevo (the "Administration"), the couple never moved into the apartment. The applicant (a citizen of Bosnia and Herzegovina of Serb origin), who also held an occupancy right over the apartment, apparently continued to live there. Mr. D.J. and Mrs. V.J. were divorced on 8 May 1991.
4. In 1996 Mrs. V.J. entered into possession of the apartment in question, which at that time was abandoned and severely damaged, relying upon the contract on use of the apartment of 12 January 1990.
5. On 6 September 1996, acting upon Mrs. V.J.'s request, the Municipal Court II Sarajevo issued a decision recognising Mrs. V.J. as the occupancy right holder over the apartment. On 10 September 1996, she concluded a contract on use of the apartment with the Housing Fund of the City of Sarajevo. Mrs. V.J. purchased the apartment on 18 January 1999 and registered her ownership with the land registry at the Municipal Court I of Sarajevo on 23 March 1999.
6. On 22 June 1998, the applicant filed a claim concerning the apartment with the CRPC. On 13 June 2000, the CRPC issued a decision establishing that the applicant had been the occupancy right holder over the apartment at issue on 1 April 1992.
7. On 23 October 2000, the applicant requested the Administration to enforce the CRPC decision.
8. On 15 December 2000, Mrs. V.J. submitted a request to the CRPC for reconsideration of its decision of 13 June 2000. On 21 February 2001, the CRPC informed the Administration of the request for reconsideration and suggested that it suspend enforcement of the CRPC decision pending resolution of the request for reconsideration.
9. On 13 March 2001, the Administration allowed the requested enforcement of the CRPC decision. It ordered Mrs. V.J. to vacate the apartment within 15 days from the date of delivery of the conclusion on eviction. According to the conclusion, Mrs. V.J. is not entitled to alternative accommodation, because she was a subtenant on 30 April 1991.
10. On 30 March 2001, Mrs. V.J. filed an appeal against the conclusion on her eviction, arguing that she is the owner of the apartment.
11. On 12 June 2001, the CRPC rejected Mrs. V.J.'s request for reconsideration of its decision as ill-founded. The CRPC held that Mrs. V.J. did not enter into possession of the apartment and did not obtain the occupancy right as provided in Article 11 of the Law on Housing Relations.
12. On the same day, Mrs. V.J. submitted another request for reconsideration of the CRPC decision.
13. On 11 September 2001, the Administration issued a conclusion scheduling the eviction of Mrs. V.J. from the apartment for 1 October 2001.

14. On 27 September 2001, the Organisation for Security and Co-operation in Europe (“OSCE”) intervened with the Novo Sarajevo Housing Department, arguing that the eviction should not be enforced as Mrs. V.J. was registered as the owner of the apartment. On 28 September 2001, the Novo Sarajevo Housing Department consulted with the Administration and it was agreed that the eviction would not be carried out. The Administration thereafter suspended the eviction of Mrs. V.J.

15. On 16 October 2001, the CRPC rejected Mrs. V.J.’s second request for reconsideration as inadmissible.

16. On the same day, Mrs. V.J. filed criminal charges of “abuse of office or official capacity” and “infringement of the equality of citizens” against V.P., a staff lawyer of CRPC, with the Municipal Prosecutor, alleging that he had unlawfully exercised pressure on officials of the Administration. According to Mrs. V.J. this resulted in the unlawful issuing of the eviction order. On 19 December 2001, the Municipal Prosecutor’s Office informed Mrs. V.J. that they would not prosecute the charges filed, as an investigation had resulted in the conclusion that there was no reasonable suspicion that the offence had been committed.

17. On 18 October 2001, the Cantonal Ministry for Housing Affairs issued its decision upon the appeal of Mrs. V.J. against the conclusion on eviction. The Ministry ordered the suspension of Mrs. V.J.’s eviction until completion of the CRPC reconsideration of its decision (Mrs. V.J.’s second request for reconsideration had in fact already been rejected on 16 October 2001).

18. On a date unknown to the Chamber, the Administration scheduled the eviction of Mrs. V.J. for 14 January 2002. The eviction was subsequently postponed, and rescheduled for 28 February 2002.

19. According to the undisputed statements of Mrs. V.J., on 26 February 2002, she learned that her eviction from the apartment had been scheduled for 28 February 2002. Mrs. V.J. states that she learned about this through the respondent Party’s submission in a case concerning the same apartment which she had filed with the Chamber, (CH/01/7728, *V.J.*, decision on admissibility and merits of 31 March 2003), and which submission was forwarded to her by the Chamber, as the authorities had in no way notified her of the fact and date of her eviction. On 28 February 2002, an Inspector of the Administration escorted by two policemen came to her apartment. Mrs. V.J. and the Inspector agreed that she would hand over the keys to the apartment on 4 March 2002. On that date, when the Inspector returned to the apartment, Mrs. V.J. informed him of the decision of the Ministry suspending her eviction. The Inspector alleged that there was no such decision in his case-file. The Inspector then took over the keys to the apartment.

20. On 6 March 2002, the Administration reinstated the applicant into possession of the apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

21. On 2 November 2001, the applicant introduced his application to the Chamber, which was transmitted for observations to the respondent Party on 26 November 2001.

22. On 18 December 2001, the Chamber invited the CRPC to act as *amicus curiae* in the applicant’s case and in the case of Mrs. V.J., case no. CH/01/7728. The CRPC submitted its *amicus curiae* brief on 28 February 2002. The Chamber transmitted the *amicus curiae* brief to the parties. On 30 April 2002, the CRPC submitted an “addendum” to its *amicus curiae* brief, which was transmitted to the parties as well.

23. On 3 April 2002, the Chamber also invited the OSCE to submit an *amicus curiae* brief concerning the applications in both cases. The Chamber received the brief by OSCE on 10 April 2002 and transmitted it to the parties.

24. The respondent Party submitted observations on 27 December 2001, as well as on 20 February, 8 and 29 March, and 1 April 2002.

25. The applicant made submissions to the Chamber on 22 January 2002.

26. On 18 March 2003, the applicant requested the Chamber to allow him to participate in the case of Mrs. V.J. either as *amicus curiae* or as a person with a legal interest. In its letter of 1 April 2003, the Chamber informed the applicant that it decided that it would not be appropriate to allow him to take part in the case of Mrs. V.J., as *amicus curiae* or in any other capacity. The applicant did not make further submissions.

III. OPINION OF THE CHAMBER

27. 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; ... provided that such a result is consistent with the objective of respect for human rights.”

28. The Chamber notes that the applicant lodged his application with a view to regaining possession of his pre-war apartment, and while the case was still pending before the Chamber, he regained such possession. Accordingly, the Chamber finds that the matter raised in the application has been resolved. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of the application to be continued. The Chamber therefore decides to strike out the application pursuant to Article VIII(3)(b) of the Agreement.

IV. CONCLUSION

29. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber