



DECISION TO STRIKE OUT

Case no. CH/00/5440

Žarko ĐUROVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 September 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
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 applicant complained of his inability to repossess his pre-war apartment, located at Ulica Radnička no. 70, in Sarajevo.
2. On 5 August 1999 the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant's occupancy right.
3. On 24 March 2000 the applicant submitted a request for execution of the CRPC decision to the Administration for Housing Affairs of Sarajevo Canton ("the Administration").
4. On 4 May 2000 the applicant submitted a complaint the Ministry for Housing Affairs of Sarajevo Canton due to the silence of the administration.
5. On 3 September 2001 the applicant entered into possession of his pre-war apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 24 July 2000.
7. On 8 May 2001 the application was transmitted to the Federation of Bosnia and Herzegovina ("the Federation") 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. On 21 June 2001 the Federation submitted its observations.
8. On 20 September 2001, the Federation informed the Chamber that the applicant had been reinstated into his apartment on 3 September 2001.
9. On 2 October 2001 the applicant confirmed that he entered into possession of his property. 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

10. 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."
11. 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.
12. 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.
13. 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.

14. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his apartment on 3 September 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.

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

IV. CONCLUSION

16. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar

(signed)
Giovanni GRASSO
President of the Second Panel