



DECISION TO STRIKE OUT

Case no. CH/00/6288

Senija MALKOČ

against

REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 September 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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 application was submitted to the Chamber and registered on 12 December 2000.
2. The case concerns the attempts of the applicant to repossess her apartment. The applicant, a citizen of Bosnia and Herzegovina, is the pre-war occupancy right holder of the apartment in question. She lodged a request for repossession before bodies of the respondent Party.
3. On 17 March 2000, the Ministry for Refugees and Displaced Persons, Gradiška Department, issued a procedural decision entitling the applicant to repossess her apartment and terminating the right of the temporary occupant to use it.
4. The applicant complains about the non-enforcement of the above-mentioned procedural decision.
5. On 2 August 2002, the applicant informed the Chamber that she had regained possession of her apartment, and noted that while she withdraws her complaints in this respect, she would like to maintain her claim for compensation.

II. COMPLAINTS

6. The applicant alleges a violation of her rights as protected by Articles 6, 8, 13 and 14 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention, as well as violations of Annexes 6 and 7 to the General Framework Agreement. She also alleges a violation of applicable legal regulations dated 28 October 1999.

III. OPINION OF THE CHAMBER

7. 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.”
8. The Chamber notes that the applicant lodged her application with a view to regaining possession of the apartment in question and while the case was still pending before the Chamber, she regained such possession.
9. 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.
10. 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.
11. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of her apartment on 30 July 2002. 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 her intention to pursue the application before the Chamber in regard to her 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 her 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.

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

IV. CONCLUSION

14. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel