



DECISION TO STRIKE OUT

Case no. CH/01/7964

Borislav PEJANOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting 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 Rule 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 ul. Džemala Bijedića no. 68 in Sarajevo, the Federation of Bosnia and Herzegovina.
2. On 18 June 1998, the applicant submitted a request to the Administration for Housing Affairs – The Novo Sarajevo Department (the “Administration”) for repossession of his apartment. On 28 January 1999, the applicant obtained a decision confirming his occupancy right over the apartment issued by the Commission for Real Property Claims of Displaced Persons and Refugees (the “CRPC”). On 5 January 2000, he requested enforcement of the CRPC decision. On 10 March 2000, as he received no decision upon that request, he submitted an appeal against the “silence of administration”.
3. On 26 September 2000, the Administration refused the request of 18 June 1998 as manifestly ill-founded. However, the procedural decision of 26 September 2000 was later annulled by the Ministry of Housing Affairs of the Sarajevo Canton (the “Ministry”) on the grounds that CRPC had already confirmed the applicant's occupancy right over the apartment, and the Administration was instructed to proceed with the applicant's case under Article 7 of the Law on Enforcement of Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/99 and 51/00). On 5 June 2002, the Administration issued a conclusion that the CRPC decision was effective.
4. On 30 August 2002, the applicant entered into possession of his pre-war apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 8 October 2001 and registered on a same date.
6. The applicant complains that his right to respect for home, right to property, right to a fair hearing in a reasonable time, and other procedural rights have been violated.
7. On 9 September 2002, the applicant submitted a letter and documentation informing the Chamber that he had entered into possession of his pre-war apartment on 30 August 2002. In addition, the applicant noted that although he has been reinstated into the apartment, he would like to maintain his 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 ... (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.”
9. 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.
10. 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.

11. 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 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.

12. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his apartment on 30 August 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 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.

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)
Viktor MASENKO-MAVI
Acting President of the Second Panel