



**DECISION
IN PART TO STRIKE OUT
AND IN PART ON THE ADMISSIBILITY**

CASE No. CH/97/39

Aleksandar MALBAŠIĆ and Nataša PALIKUĆA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 15 December 1998 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Leif BERG, 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 (2)(a) and (c) and Article VIII (3)(b) of the Agreement as well as Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. After the death of their father the applicants inherited the family house in Sarajevo, at Alapi Street No. 3 (former Nahorevska 119 A). Before they left Sarajevo, at the beginning of the war, they authorised Mr. Jovan Palikuća to take any steps necessary for maintaining and renting out the house.

2. In March 1996 Mr. Palikuća reported to the local community "Pionirska dolina" that the house had not been abandoned. He was summoned to the Municipal Secretariat for Planning and Housing Affairs and given the oral promise that the house would not be declared abandoned. However, in November 1996 the Municipal Secretariat placed the house under its administration, declared it temporarily abandoned and allocated it to N.J. pursuant to the Decree (with force of law) on Temporarily Abandoned Property Owned by the Citizens During the State of War or in Case of Imminent Threat of War (Official Gazette of the Republic of Bosnia and Herzegovina, No. 11/93), the Law confirming this Decree as law and renaming it "The Law on Temporarily Abandoned Property Owned by Citizens (Official Gazette, No. 13/94), and pursuant to Article 1 of the Decree (with force of law) on the Application of the Law on Administrative Proceedings (Official Gazette, No. 6/92). On 27 February 1997 the applicants were informed that their appeal against the decision of the Municipal Secretariat had been forwarded to the Ministry for Urban Planning, Housing and Communal Affairs of the Sarajevo Canton.

3. On 15, 16 and 17 January 1998 the Ministry revoked the decisions of 13, 19 and 28 November 1996 and referred the matter back to the first instance organ for reconsideration. On 20 February 1998, the temporary occupant vacated the house which had been handed over to the applicants' representative. On 3 April 1998 the Municipal Secretariat, following the instructions given by the Ministry in the decisions of January 1998, decided, under Articles 25 and 26 of the aforementioned Law on Temporarily Abandoned Property Owned by Citizens to terminate the municipality's administration of the applicants' house.

II. COMPLAINTS

4. The applicants complain that their right to the peaceful enjoyment of their property was violated due to the fact that their house was declared abandoned and allocated to N.J. In their statement to the Chamber of 7 July 1998 the applicants further complained that the interior of their house was partly destroyed and certain items were missing. They also alleged that N.J. had not paid his electricity and water bills.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 8 April 1997 and registered on 23 May 1997. The applicants are represented by Mr. Palikuća.

6. On 5 December 1997 the Chamber decided to transmit the application to the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations on 6 February and 23 April 1998. The applicants replied on 7 July 1998.

IV. OPINION OF THE CHAMBER

(i) The complaint relating to the alleged violation of the applicants' property right resulting from the decision to declare their house abandoned

7. According to Article VIII(3), the Chamber may at any point decide to strike out an application on the ground that (a) the applicant does not intend to pursue his application; (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 case provided that a strike-out would be consistent with the objective of respect for human rights.

8. In the present case the Chamber notes that the applicants initially complained that their right to the peaceful enjoyment of their property had been violated due to the fact that their house was declared abandoned and allocated to N.J. The Chamber notes, however, that on 15, 16 and 17 January 1998 the second instance organ (the Ministry) revoked the decisions of 13, 19 and 28 November 1996 and referred the matter back to the first instance organ for reconsideration. Moreover, the applicants re-entered their house on 20 February 1998 after the temporary occupant had vacated the house. Finally, on 3 April 1998 the Municipal Secretariat for Urban Planning, Housing and Communal Affairs decided to terminate its administration of the applicants' house.

9. Accordingly, the Chamber concludes that the underlying matter which the present complaint concerns has been resolved within the meaning of Article VIII(3)(b) of the Agreement, for the fact that the applicants' property rights have been entirely re-validated, both practically and legally. In these circumstances it is no longer justified to continue the examination of this complaint and such an outcome would not be inconsistent with the objective of respect for human rights.

(ii) The applicants' further complaints of 7 July 1998

10. Before considering the remaining complaints the Chamber has to decide whether to accept these, taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. According to Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application which it considers manifestly ill-founded.

11. The Chamber notes that the applicants have not indicated that they initiated any proceedings in relation to their grievance of 7 July 1998 regarding their alleged pecuniary losses resulting from N.J.'s temporary occupation of their house. The applicants would have the opportunity to initiate proceedings for damages against the respondent Party or any private person who might have destroyed or stolen their possessions. Moreover, the Chamber has already held in similar circumstances that where it has not been shown that the alleged loss of or damage to moveable property was directly caused by the respondent Party or any person acting on its behalf, the respondent Party cannot be held responsible (*Blentić and Bejdić v. Republika Srpska*, CH/96/17 and CH/96/27, decisions of 22 July 1998, paragraphs 10 and 11, respectively).

12. Accordingly, the Chamber decides not to accept this part of the application pursuant to Article VIII(2)(a) and (c) of the Agreement, as the applicants have not demonstrated either that the matters complained of are within the responsibility of the respondent Party or that domestic remedies have been exhausted.

V. CONCLUSION

13. For these reasons, the Chamber, unanimously,

STRIKES OUT THE COMPLAINT RELATING TO THE DECISION TO DECLARE THE APPLICANTS' HOUSE ABANDONED; AND

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber