



DECISION TO STRIKE OUT

Cases nos.

CH/98/1154 Sead GERZIĆ
CH/98/1173 Enver KASUMOVIĆ
CH/98/1178 Nafa HASANBEGOVIĆ
CH/98/1190 Atif RIZVANOVIĆ

against

REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 July 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
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)(b) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The cases concern the applicants' attempts to regain possession of their property. The applicants, citizens of Bosnia and Herzegovina, are pre-war owners of property situated in Gradiška. They all lodged requests for repossession before bodies of the respondent Party
2. The respondent Party has informed the Chamber that its responsible bodies took necessary steps which enabled the pre-war owners of the property situated in Gradiška to regain possession over their property and to enjoy the free use of it.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were submitted and registered in a time period between 14 and 25 September 1998.
4. On 9 February 1999 the Chamber decided to transmit the applications and further submissions in the above cases to the respondent Party for its observations on admissibility and merits under Articles 6 and 8 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention, in connection with Article II(2)(b) of the Agreement.
5. In its observations of 19 March 1999, the respondent Party was of the opinion that the applications should be declared inadmissible because the applicants have not exhausted domestic remedies.
6. On 21 June 2001 the respondent Party provided information that the applicants have regained possession of their property and have been provided with free use of it in period between June 2000 and March 2001. The applicants have confirmed this information. They have also highlighted that they withdraw their complaints in this respect, but they maintain their compensation claims.

III. COMPLAINTS

7. The applicants allege violations of their rights as protected by Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention as well as violations of Annexes 6 and 7 to the General Framework Agreement.

IV. 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 applicants lodged their applications with a view to regaining possession of the property and while the cases were still pending before the Chamber, they regained possession.
10. It would be open to the Chamber to consider the admissibility and merits of a case, when, as in the present cases, 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.
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 appears that the domestic authorities have taken appropriate and effective action in good faith and where the applicants have in fact been reinstated, although not within the time-limit established by law, the Chamber may be persuaded to strike out an application. Such a decision to strike out, however, will depend upon the circumstances of the particular case, including the stage the proceedings have reached when the Chamber is informed of the applicant's reinstatement. Nonetheless, the Chamber retains the option of proceeding to a decision on the merits of any particular case, provided the other facts of the case so warrant.

12. Turning to the facts of the present cases, the Chamber notes that the applicants have been lodged requests related to repossession of their property in a period between April and September 1998. Further, the applicants had already been reinstated into possession of their property in 2000 and latest in 2001. That being so, the Chamber considers that the main issue raised in the applications has been resolved. The Chamber further notes, however, that the applicants have expressed their intention to pursue their applications before the Chamber in regard to their compensation claims. The Chamber observes that it can only award compensation if it makes a finding of a violation of the Agreement. The applicants have not drawn the Chamber's attention to any special circumstances regarding the respect for human rights which would require the examination of the applications to be continued after the main issue raised in the applications has been resolved, and the Chamber considers that no such special circumstances are present in these applications. The Chamber, therefore, decides to strike out the applications, pursuant to Article VIII(3)(b) and (c) of the Agreement.

V. CONCLUSION

13. 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