



DECISION TO STRIKE OUT

Case no. CH/99/1676

Midhat and Božana BALTA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 June 2000 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President

Mr. Jakob MÖLLER

Mr. Mehmed DEKOVIĆ

Mr. Manfred NOWAK

Mr. Vitomir POPOVIĆ

Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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. FACTS

1. The applicants are a married couple, both citizens of Bosnia and Herzegovina. On 25 February 1995 they entered into an apartment at Donje Rosulje 28, Visoko, on the basis of a contract with the pre-war occupancy right holder M.P. The agreement provided that the applicants could use the apartment and would take care of it until M.P.'s return at the end of the hostilities. On 20 July 1995 the Municipality Visoko allocated the apartment, which in the meantime had been declared abandoned, to the applicants for temporary use for a six-month period. The applicants were put under an obligation to return the apartment to the Municipality after the expiry of the six-month period. On 25 July 1995 Mr. Midhat Balta concluded a provisional contract on the use of the apartment with the allocation right holder, the Municipality Visoko. The applicants continued to use the apartment after the expiry of the six-month period.

2. On 28 August 1997 the owner of the apartment, the firm DD "Kovina" in Visoko, issued a procedural decision allocating the apartment to B.K. However, on 31 March 1998 the Municipal Court in Visoko, deciding on the applicants' complaint against the procedural decision, passed a judgment by which it annulled the procedural decision of DD "Kovina" allocating the apartment to B.K.

3. On 15 September 1997 DD "Kovina" initiated proceedings before the Municipal Court in Visoko against the applicants in order to repossess the apartment. On 23 February 1998 the Municipal Court passed a judgment in favour of DD "Kovina", ordering the applicants to return the apartment into the possession of the owner, within a 15 days time-limit, under the threat of forcible enforcement.

4. The applicants appealed this judgment, but on 30 September 1998 the Cantonal Court in Zenica confirmed the first instance judgment. The appeals judgment stressed that the fact that the applicants allegedly occupied the apartment in question on the basis of a verified contract to take care of it concluded with the pre-war occupancy right holder was not relevant for the proper solution of the dispute between the parties, i.e. the applicants and the owner of the apartment. Moreover, the applicants had failed to produce during the first instance proceedings and at appeal any evidence as to the existence of a valid contract for the use of the disputed apartment.

5. On 25 February 1999 the Municipal Court issued a decision on the applicants' eviction which was scheduled for 12 March 1999.

6. On 26 February 1999 the applicants received a summons by the Municipality Visoko to appear at a hearing on 26 March 1999, concerning the attempt of the pre-war occupancy right holder M.P. to be reinstated into his apartment.

7. On 23 March 1999, presumably as a consequence of M.P.'s attempt to regain possession of the apartment, the applicants moved out of the apartment and handed over the keys to the representative of the owner in the presence of the Court executive body. The Chamber has not been informed of the further developments in this case.

II. COMPLAINTS

8. The applicants claimed a violation of their right to use the apartment, which they had occupied for four years, and asked the Chamber to halt their eviction.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was submitted to the Chamber on 8 March 1999 and registered on the same day. The applicants are represented by Mr. Fuad Karamehić, a lawyer practicing in Visoko. The applicants sought an order for a provisional measure suspending their eviction scheduled for 12 March 1999.

10. The Chamber considered the application on 11 March 1999. It rejected the request for a provisional measure and decided to transmit the case to the respondent Party.

11. On 21 May 1999 the respondent Party submitted written observations on admissibility and merits of the application. It argued that by moving out of the apartment voluntarily the applicants had undoubtedly showed the intention to give up their application. The respondent Party therefore proposed to the Chamber to reject and strike out the application. The respondent Party also submitted that the apartment in question had been and still was the "home" of the occupancy right holder M.P. Therefore, even if the applicants had not voluntarily vacated the apartment, no violation of their "right to home" would have occurred, because M.P. had requested to be reinstated into possession of the apartment.

12. These observations were transmitted to the applicants on 24 May 1999. The applicants did not submit any reply. On 7 April 2000 the Chamber again sent a letter to the applicants, asking whether they intended to pursue their application and, if so, requesting information on the further developments in the case. This letter, which as the previous correspondence was addressed to the applicants' representative, pointed out that in case no reply was received within the set deadline of 15 days, the Chamber might consider that the applicants do not intend to pursue their application. No reply to this letter was received by the Chamber.

IV. OPINION OF THE CHAMBER

13. According to Article VIII(3) of the Agreement, 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 application. In all these situations, however, a decision to strike out an application must be consistent with the objective of respect for human rights.

14. In the present case, the Chamber notes that the applicants appear not to intend to pursue their application before the Chamber. Moreover, the eviction was not carried out and the applicants subsequently handed over the keys of the apartment to the owner.

15. In these circumstances it is no longer justified to continue the examination of the application. Moreover, such an outcome would not be inconsistent with the objective of respect for human rights.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel