



DECISION TO STRIKE OUT

Case no. CH/99/1845

N.K.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Andrew GROTRIAN, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

Mr. Peter KEMPEES, 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 as well as Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant holds the occupancy right over an apartment located at Ulica Starine Novaka 1b in Banja Luka. In 1992 he entered into a contract for exchange of his holiday home on the Croatian Coast for a part-finished house in Banja Luka. However, the applicant remained in the apartment and did not enter into possession of the house, as it was not finished.
2. In July 1993 the holder of the allocation right over the apartment requested the relevant organ of the municipality of Banja Luka to evict the applicant from the apartment. The request was granted and on 17 June 1994 the applicant was evicted.
3. On 13 July 1994 the Supreme Court of the Republika Srpska decided to reopen the administrative proceedings. On 26 May 1995 the municipality confirmed that the applicant had the occupancy right over the apartment. The applicant requested the enforcement of the decision.
4. On 16 June 2000 the decision was enforced and the applicant was reinstated into the apartment. However, the applicant complains over the fact that the previous occupant left certain personal property in the apartment. He claims that for this reason he has not regained possession of the apartment in full.
5. Pursuant to minutes of the eviction, the applicant and the previous occupant have come to an agreement, under which the previous occupant is to leave specified items of personal property in the apartment until 26 June 2000. According to the latest information available to the Chamber (as of 31 July 2000), the belongings are still there.

II. COMPLAINTS

6. The applicant complained of the non-enforcement of the decision entitling him to regain possession of the apartment. He now complains that he has not regained full possession of it.

III. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION

7. The applicant previously applied to the Human Rights Ombudsperson for Bosnia and Herzegovina. The Ombudsperson adopted a report on the case on 2 December 1998, in which she found that the non-enforcement of the decision of 26 May 1995 constituted a violation of certain of the rights of the applicant as guaranteed by the Agreement. The case was never formally referred to the Chamber by the Ombudsperson.
8. The application was submitted on 1 December 1998 and registered on 17 February 1999. On 20 May 1999 the case was transmitted to the Republika Srpska for observations on admissibility and merits, which were received on 31 July 1999. The further observations of the applicant were received on 14 April 2000, after a reminder was sent (they were due by 3 September 1999).
9. On 14 July 2000 the RS informed the Chamber that the eviction had been carried out and suggested to the Chamber that the case be declared inadmissible. On 31 July 2000 the applicant informed the Chamber that he did not consider the matter to be resolved, as the previous occupant had left certain items in the apartment.

IV. OPINION OF THE CHAMBER

10. 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.

11. In the present case the Chamber notes that the case appears to have been resolved. The applicant has regained possession of the apartment. Concerning his complaint that the apartment has not been fully returned into his possession, it does not appear that the Republika Srpska can be held responsible for this, as it is a result of a private agreement of the parties (i.e. the applicant and the previous occupant). It is open to the applicant to initiate proceedings against the previous occupant to force her to remove her property or to take alternative steps to this end.

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

V. CONCLUSION

13. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel