



DECISION TO STRIKE OUT

Case no. CH/99/3081

Mahmud MEHMEDBAŠIĆ

against

THE REPUBLIKA SRPSKA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 2002 with the following members present:

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

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 Article VIII(3)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 1 November 1999 and registered on the same day.
2. The case concerns the applicant's attempts to regain possession of his pre-war apartment, located at Trg Sabora Bosanskog 6, in Sarajevo – Novi Grad.
3. On 4 March 1999 the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant's occupancy right over his pre-war apartment.
4. On 1 April 1999 the applicant filed a claim for repossession of his apartment to the competent body of the Ilidža Municipality - the Republika Srpska.
5. On 17 July 2000 the Ministry for Refugees and Displaced Persons of the Republika Srpska (Ministarstvo za izbjeglice i raseljena lica, Republike Srpske) issued a decision establishing that the applicant is the occupancy right holder over the apartment and allowing him to repossess it.
6. On 17 October 2000 the applicant filed a request for enforcement of the decision of the Ministry for Refugees and Displaced Persons.
7. On 8 February 2002 the Administration for Housing Affairs of the Sarajevo Canton (Uprava za stambena pitanja Kantona Sarajevo) issued a decision confirming the applicant's occupancy right over the apartment in question and allowing him to repossess it.
8. On 2 April 2002 the applicant entered into possession of his pre-war apartment.
9. On 31 October 2002, the applicant informed the Chamber that he had repossessed his apartment. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

II. OPINION OF THE CHAMBER

10. 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 ... (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."

11. 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. The Chamber further notes that although the applicant has been reinstated, he understandably asks the Chamber to find a violation of his rights protected by the Agreement due to the time that elapsed between his request for reinstatement into possession of his pre-war apartment and the actual repossession. He also asks the Chamber to order the respondent Party to pay compensation to him in recognition of the damage, both pecuniary and non-pecuniary, suffered by him during the course of that time.

12. The Chamber recalls that under Article VIII(2)(e) of the Agreement, "the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds". As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

13. Taking into account that the applicant has been reinstated into possession of his apartment, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main issue of the application has been resolved. The Chamber recognises that valid reasons may underlie the applicant's request to nonetheless maintain his claim for compensation. However, in the light of the considerations discussed above, the Chamber finds that "it is no longer justified to continue the examination of the application" within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is "consistent with the objective of respect for human rights", as this "objective" must be understood to embrace not only the individual applicant's human rights, but also the Chamber's more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

14. The Chamber, therefore, decides to strike out the application, pursuant to Article VIII(3)(c) of the Agreement.

III. CONCLUSION

15. For these reasons, the Chamber, unanimously

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel