



DECISION TO STRIKE OUT

Case no. CH/99/2336

S. P.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 2 July 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

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

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of an apartment situated in Sarajevo after he had left it due to the war hostilities. The applicant, a citizen of Bosnia and Herzegovina of Serb descent, lodged, along with requests to institutions of the respondent Party, an application to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which issued a decision on 28 January 1999 recognising that he was the occupancy right holder of the apartment and that he had the right to regain possession of the apartment.
2. On 27 April 1999 the applicant requested enforcement of the above decision. On 9 May 2000 he complained to the CRPC Legal Executive Department of the failure of the Administration for Housing Affairs to order the enforcement.
3. On 26 March 2001 the Chamber was informed by the CRPC that its decision had been enforced on 13 December 2000 and that the applicant had taken possession of his apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was received and registered on 25 August 1999.
5. The applicant's further observations were received on 5 June 2000 and 25 July 2000.
6. On 15 September 2000 the Chamber decided to transmit the application and the applicant's further submissions to the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations on 15 November 2000.
7. The Chamber considered the case on 10 May, 7 June and 2 July 2001. It adopted the present decision on the latter date.

III. COMPLAINTS

8. The applicant alleges violations of Articles 6, 8, 13 and 14 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

IV. OPINION OF THE CHAMBER

9. Article VIII of Annex 6 to the General Framework Agreement for Peace in BiH provides the Chamber with the possibility to strike a case out. By considering this action, the Chamber must interpret the specific wording of the provision. The provision reads, in relevant part, as follows:

" ...

3. The Chamber may decide at any point in its proceedings 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; provided that such result is consistent with the objective of respect for human rights."

10. The Chamber notes that the applicant lodged his application with a view to regaining possession of the apartment over which he held an occupancy right. As noted above, the applicant regained possession of the apartment while the case was still pending before the Chamber.

11. It would be open to the Chamber to consider the admissibility and merits of the case, when, as in the present case, the question arises whether the time-limits and other procedural requirements laid down by domestic law have been complied with by the authorities. If it found a violation, the Chamber would have to address the question whether any remedies should be ordered.

12. However, the Chamber is not unmindful of the difficulties faced by the domestic authorities in implementing the property legislation in force in a timely manner. These include the large number of such cases which it is their responsibility to resolve and the need to relocate occupants of claimed housing in alternative accommodation. 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 the application out. The Chamber is of the opinion that such an approach, given the circumstances prevailing in the country, does not run counter to the objective of ensuring respect for human rights.

13. However, the Chamber's decision as to whether it should strike an application out, or in the alternative, proceed to a conclusion of the case, will depend on all the circumstances of the individual case.

14. As regards the proceedings before the Chamber itself, factors to be taken into consideration may include, but are not limited to, the length of time that has elapsed between the date on which the application was lodged and the date on which the applicant is reinstated, and the stage the proceedings have reached when the Chamber is informed of the applicant's reinstatement. In general, the sooner the applicant is reinstated, and the less advanced the stage of the proceedings reached, the greater the likelihood that the Chamber will consider it appropriate to strike the application out.

15. Nonetheless, the Chamber retains the option of proceeding to a decision on the merits of any particular case, including a decision ordering the respondent Party to take remedial action if a violation is found, if the other facts of the case so warrant. Circumstances to be taken into consideration in this regard may include, but are not limited to, the *bona* or *mala fides* of the applicant; the length of time the applicant has had to wait for reinstatement; other exceptional suffering incurred by the applicant, e.g. through maltreatment or violent eviction; the circumstances in which the applicant may have been living; and the proven effectiveness, in a particular locality, of the domestic remedies. As to the latter point, the Chamber would make it clear that the effectiveness of domestic remedies may be questioned if the applicant has been reinstated through the intervention of the High Representative, OSCE, IPTF, UNHCR or another international organisation. Additionally, the record of the competent local authorities with regard to return of displaced persons and refugees may also be a matter to be considered in this connection.

16. Turning to the facts of the present case, the Chamber notes that the applicant has been reinstated. That being so the Chamber considers that the main issue raised in the application has been resolved. The applicant has not drawn the Chamber's attention to any special circumstances regarding respect for human rights which would require the examination of the application to be continued, and the Chamber itself considers that none are present. It follows that the application may be struck out of the list, pursuant to Article VIII(3) of the Agreement.

V. CONCLUSION

17. For these reasons, the Chamber, unanimously,

STRIKES THE APPLICATION OUT.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber