



DECISION TO STRIKE OUT

Case no. CH/99/2727

Predrag MILANOVIĆ and Slobodan MILANOVIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2002 with the following members present:

Ms. Michèle PICARD, 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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicants' attempts to regain possession of their pre-war apartment, located at Isevića sokak 2/11, Sarajevo, Federation of Bosnia and Herzegovina. Predrag Milanović is the occupancy right holder of the apartment in question. Slobodan Milanović is considered a member of the household of someone with an occupancy right to the apartment.
2. The applicants submitted a request to regain possession of the apartment on 28 May 1998.
3. Upon this request the Administration for Housing Affairs of Canton Sarajevo issued a decision on 30 September 1998 ordering that the applicants should regain possession of the apartment and that the temporary occupants, only one of whom had a right to alternative accommodation, should leave the premises.
4. On 13 January 1999 Slobodan Milanović submitted a request to carry out the forcible eviction of one of the temporary occupants.
5. On 26 July 1999 the Administration for Housing Affairs of Canton Sarajevo issued a Conclusion ordering enforcement of the decision of 30 September 1998.
6. On 14 September 1999, after an appeal by one of the temporary occupants, the decision of 30 September 1998 was annulled and the case was returned to the first instance body.
7. On 19 November 1999 the first instance body again confirmed the occupancy right of the applicant Predrag Milanović and stated that the applicants should be allowed to repossess the apartment.
8. On 7 December 1999 Slobodan Milanović entered into possession of the pre-war apartment. On 17 February 2000 Predrag Milanović also entered into possession of the apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced on 22 July 1999 and registered on 26 July 1999.
10. On 28 February 2000 the applicants provided information to the Chamber that they had regained possession of their apartment. The applicants noted that while they withdraw their complaints in this respect, they would like to submit and maintain a claim for compensation.
11. On 7 June 2000, the First Panel decided to relinquish jurisdiction of the case to the Plenary Chamber.
12. On 19 July 2000 the Chamber transmitted the application to the respondent Parties for their observations on the admissibility.
13. The Chamber received the submissions of Bosnia and Herzegovina on 7 August 2000 and the submissions of the Federation of Bosnia and Herzegovina on 18 and 28 August 2000.
14. On 18 October 2000 the Chamber received the reply observations of the applicants with regard to the submissions of the respondent Parties.
15. On 5 September 2002, the Plenary Chamber decided to return the case to the First Panel.

III. OPINION OF THE CHAMBER

16. 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.”

17. The Chamber notes that the applicants lodged their application with a view to regaining possession of their apartment, and while the case was still pending before the Chamber, they regained such possession.

18. It would be open to the Chamber to consider the admissibility and merits of a case, when, as in the present case, 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, including compensation.

19. 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 is established that the domestic authorities, albeit belatedly, have taken effective action and where the applicant has in fact been reinstated, although not within the time-limit established by law, the Chamber may be persuaded to strike out an application, unless there are particular reasons, apart from the delays in the reinstatement, that require continued consideration.

20. Turning to the facts of the present case, the Chamber notes that the applicants were reinstated into possession of their apartment on 7 December 1999 and on 17 February 2000, respectively. That being so, the Chamber considers that the main issue raised in the application has been resolved. The Chamber further notes, however, that the applicants have expressed their intention to pursue the application before the Chamber in regard their claim for compensation. The Chamber observes that it can only award compensation if it makes a finding of a violation of the Agreement. Apart from the delays that occurred in securing their reinstatement, 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 application to be continued after the main issue raised in the application has been resolved, and the Chamber considers that no such special circumstances are present in this application. In the circumstances, the Chamber finds that it would not be inconsistent with the objective of respect for human rights to strike out the application. Consequently, the claim for compensation cannot be considered.

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

IV. CONCLUSION

22. 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