



DECISION TO STRIKE OUT

Case no. CH/02/8195

Miloš KLJAJIĆ

against

THE REPUBLIKA SRPSKA

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

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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

I. INTRODUCTION

1. The application was introduced on 25 January 2002.
2. The applicant complains of the non-enforcement of a procedural decision, dated 22 December 1999, issued by the Ministry for Refugees and Displaced Persons, Department in Gradiška. This procedural decision recognised the applicant as the pre-war occupant of the apartment situated at Vidavdanska 8 G in Gradiška and at the same time terminated the right of the person living in the apartment at the time to use it.
3. In the application, the applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary steps to ensure his reinstatement into his pre-war apartment. He further claimed compensation for pecuniary damages for his rental expenses in the amount of 5,000 KM and for non-pecuniary damages in the amount of 6,000 KM.
4. On 8 August 2002, the applicant informed the Chamber in writing that he had repossessed his pre-war apartment on 4 July 2002. From this letter it can be inferred that the applicant considers his case satisfactorily resolved.
5. In the circumstances, the applicant's request for issuance of an order for provisional measures is moot.

II. OPINION OF THE CHAMBER

6. 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."
7. 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.
8. 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.
9. 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 appears that the domestic authorities have taken appropriate and effective action in good faith 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. Such a decision to strike out, however, will depend upon the circumstances of the particular case, including the stage the proceedings have reached when the Chamber is informed of the applicant's reinstatement. Nonetheless, the Chamber retains the option of proceeding to a decision on the merits of any particular case, provided the other facts of the case so warrant.
10. Turning to the facts of the present case, the Chamber notes that the applicant has been reinstated into possession of his apartment on 4 July 2002, during the early phases of the proceedings before the Chamber. That being so, the Chamber considers that the main issue raised in the application has been resolved. The Chamber further notes that the applicant set forth a claim for compensation. The Chamber observes that it can only award compensation if it makes a finding of a violation of the Agreement. The applicant has 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. The Chamber, therefore, decides to strike out the application, pursuant to Article VIII(3) of the Agreement.

III. CONCLUSION

11. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel