



DECISION TO STRIKE OUT

Case no. CH/02/8874

Ibro MUSTAFIČIĆ

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. Manfred NOWAK
Mr. Vitimir 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 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 applicant's attempts to regain possession of his pre-war apartment located at ul. Svetog Save 65/14 (formerly, ul. Maršala Tita 65/14), in Doboj, the Republika Srpska.
2. The applicant filed a request for reinstatement on 22 March 1999 to the Ministry of Refugees and Displaced Persons, Department Doboj. On 19 November 2000 the Ministry issued a procedural decision establishing that the applicant was the occupancy right holder over the apartment in question and allowing him to repossess his apartment.
3. On 12 September 2000 the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant's occupancy right. The applicant filed a request for execution of this decision on 18 October 2000.
4. On 19 November 2000 the Ministry of Refugees and Displaced Persons requested the Municipal Assembly to provide alternative accommodation to the temporary occupant of the applicant's apartment. On 31 May 2001 the Ministry issued a procedural decision providing alternative accommodation in a retirement home to the temporary occupant. On 25 June 2002 the Ministry again issued a decision providing the applicant with alternative accommodation, this time in Lipac, in the family house of S.Č. Ten days before that, on 15 June 2002, the applicant concluded a 6-month lease with S.Č. for an apartment for the temporary occupant. On 25 June 2002 the Ministry issued a decision putting out of force its decision of 19 November 2000 and terminating the temporary occupant's right to occupy the applicant's apartment because the applicant had provided him with alternative accommodation in Lipac.
5. On 27 June 2002 the applicant entered into possession of his pre-war apartment, after having provided the temporary occupant with alternative accommodation. In his letter of 8 July 2002 the applicant informed the Chamber of his reinstatement and asked for higher compensation, alleging that he was forced to provide alternative accommodation to the temporary occupant at his own expense.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 13 February 2002.
7. On 27 June 2002 the applicant regained possession of his apartment. On 11 July 2002 the applicant confirmed that he entered into possession of his apartment. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain and increase his claim for compensation, since he alleges that he was forced to provide alternative accommodation to the temporary occupant at his own expense.

III. OPINION OF THE CHAMBER

8. 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."
9. 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.
10. 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.

11. 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.

12. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his property on 27 June 2002. That being so, the Chamber considers that the main issue raised in the application has been resolved. The Chamber further notes, however, that the applicant has expressed his intention to pursue the application before the Chamber in regard to his 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 his reinstatement, 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. 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.

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

IV. CONCLUSION

14. 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