



DECISION TO STRIKE OUT

Case no. CH/99/1635

Jozo NUJIĆ

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

I. FACTS

1. The case concerns the applicant's attempts to regain possession of his pre-war apartment located at ul. Kranjčevićeva br. 21 in Sarajevo, the Federation of Bosnia and Herzegovina. The apartment was allocated to Mr. V.K. for his temporary use.
2. On 16 May 1996, 23 February 1999 and 19 August 1999, the applicant submitted requests for repossession of the apartment in question to the Commission for Real Property Claims of Displaced Persons and Refugees (the "CRPC").
3. On 2 July 1998 the applicant submitted a request to the Administration for Housing Affairs of the Cantonal Ministry for Physical Planning, Housing and Utility Affairs (the "Administration") for repossession of his apartment. The case was communicated to the Ministry of Defence of the Federation of Bosnia and Herzegovina (the "Ministry") - Army Housing Fund that was competent for restoration of military apartments. However, because of changes to the competencies for deciding upon requests for repossession of apartments, the Army Housing Fund, once again, referred the case back to the Administration.
4. The applicant claims that on 26 March 2001, the Army Housing Fund of the Ministry offered that he move into the temporary occupant's pre-war apartment, *i.e.*, into Mr. V.K's pre-war apartment, in order to enable Mr. V.K to remain in the applicant's apartment. The applicant refused the offer.
5. Based on a procedural decision of the Administration of 20 April 2001, the applicant was reinstated into possession of his pre-war apartment on 4 June 2001.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 24 February 1999 and registered on 27 February 1999.
7. The applicant complained that his rights to private property have been violated. Additionally, he alleged that the proceedings before the municipal bodies have been intentionally prolonged in order to prevent his return. The applicant requested that the Chamber evict the temporary occupant from his apartment and reinstate him into possession of it.
8. On 4 May 2001 the applicant submitted a claim for compensation claim for pecuniary and non-pecuniary damages. Later he amended this claim to include increased damages and to include a claim on behalf of his wife for non-pecuniary damages.
9. On 22 May 2001 the application was transmitted to the respondent Parties for their observations on the admissibility and merits under Article 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.
10. On 13 June 2001 the applicant informed the Chamber that he had entered into possession of his apartment on 4 June 2001. On 23 July 2001 the Chamber received observations from the Federation of Bosnia and Herzegovina confirming that the applicant was reinstated into possession of the apartment on 4 June 2001.

III. OPINION OF THE CHAMBER

11. 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."

12. 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.

13. 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.

14. 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.

15. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his apartment on 4 June 2001. 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.

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

IV. CONCLUSION

17. 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