DECISION TO STRIKE OUT

Case no. CH/02/8788

Hariz JAŠAREVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 12 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting 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 Rule 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 property, *i.e.* land, a house, and business premises located in Šepak in the Zvornik Municipality, the Republika Srpska.

2. The applicant was recognised as the legal possessor of the property in Šepak by a decision of the Commission for Real Property Claims of Displaced Persons and Refugees (the "CRPC") of 1 February 2000. On 30 August 2001 the Ministry of Refugees and Displaced Persons (the "Ministry"), Zvornik Department, issued a conclusion approving enforcement of the CRPC decision. On 14 December 2001, the applicant complained to the Ministry urging execution of the conclusion on enforcement.

3. On 16 December 2001, the First instance Court in Zvornik (the"Court") made an inventory list of the applicant's movable property in the house. According to the Court, the house itself was not damaged.

4. On 22 July 2002, the applicant entered into possession of his pre-war property.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 4 February 2002 and registered on the same date. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to reinstate him immediately into possession of his property and to prevent the temporary occupant or any other person from alienating his real estate and movable property. On 4 June 2002, the Chamber decided not to order provisional measures requested.

6. In the application the applicant complained that the authorities of the Republika Srpska had failed to decide upon his requests for reinstatement. The applicant alleged that his rights protected by Article 13 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention had been violated.

7. On 17 June 2002, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

8. On 24 June 2002, the applicant submitted a compensation claim.

9. On 19 August 2002, the respondent Party submitted its observations on the admissibility and merits of the application. On 2 September 2002, the respondent Party submitted further observations, including information that the applicant had been reinstated into possession of his property on 22 July 2002. On 9 September 2002, the applicant confirmed by a letter that he had entered into possession of his property on 22 July 2002. However, the applicant noted that his property was devastated and that he would like to maintain his claim for compensation.

III. OPINION OF THE CHAMBER

10. 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."

11. The Chamber notes that the applicant lodged his application with a view to regaining possession of his property, and while the case was still pending before the Chamber, he regained such possession.

12. 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.

13. 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.

14. Turning to the facts of the present case, the Chamber notes that the applicant was reinstated into possession of his property on 22 July 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.

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

IV. CONCLUSION

16. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel