



DECISION TO STRIKE OUT

Case nos. CH/99/2754, CH/00/4896, CH/00/5550 and CH/00/6396

Nurudin HAMZIĆ, Fadil ZAHIROVIĆ, Sakib SULEJMANOVIĆ and Mirsada KARADŽA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications 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)(c) of the Agreement and Rules 34, 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The cases concern the applicants' attempts to regain possession of their pre-war property located in the territory of the Republika Srpska.

II. FACTS

A. Case no. CH/99/2754 Nurudin HAMZIĆ

2. The applicant is the occupancy right holder of an apartment located at Gavril Principa no. 14 in Bijeljina. On a date unknown to the Chamber, the applicant submitted a request for reinstatement into possession of his pre-war apartment to the Court of First Instance in Bijeljina. On 10 September 1996, the Court issued a decision confirming his occupancy right and allowing him to repossess the apartment.

3. On 10 November 1999, the applicant entered into possession of his apartment.

B. Case no. CH/00/4896 Fadil ZAHIROVIĆ

4. The applicant is the owner of a house located in Liskovac, Gradiška. On a date unknown to the Chamber, the applicant submitted a request for repossession of his property to the Ministry for Refugees and Displaced Persons, Department Gradiška. On 14 March 2000, the applicant appealed to the Administrative Inspection Service of the Ministry of Justice of the Republika Srpska, because the competent administrative organs had not yet decided on his request.

5. On 18 April 2001, the applicant entered into possession of his pre-war property.

C. Case no. CH/00/5550 Sakib SULEJMANOVIĆ

6. The applicant is the occupancy right holder of an apartment located at Panorama C 5/2A, in Vlasenica. On 16 June 1999, the applicant submitted a request for reinstatement into possession of his pre-war apartment to the Ministry for Refugees and Displaced Persons of the Republika Srpska. On 9 October 2000, the same Ministry issued a decision permitting the applicant to return to his apartment.

7. On 23 November 2000, the applicant entered into possession of his pre-war apartment

D. Case no. CH/00/6396 Mirsada KARADŽA

8. The applicant is owner of an apartment located at Banovića Strahinje no. 6 in Srpska Ilidža. On a date unknown to the Chamber, the applicant submitted a request for reinstatement into possession of her pre-war apartment to the Ministry for Refugees and Displaced Persons of the Republika Srpska, Department Srpska Ilidža. On 1 June 2000, the Ministry issued a decision permitting the applicant to return to her apartment. On 25 July 2001, the applicant appealed to the Republic Administrative Inspection Service in Banja Luka because the Department of the Ministry in Srpska Ilidža had not yet executed the decision of 1 June 2000.

9. On 5 June 2002, the applicant entered into possession of her apartment.

III. PROCEEDINGS BEFORE THE CHAMBER

10. The applications were introduced between 5 August 1999 and 30 November 2000.

11. In case nos. CH/00/5550 and CH/00/6396 the applicants requested the Chamber to issue an order for provisional measures preventing their eviction from property within the Federation of Bosnia and Herzegovina, which they temporarily occupied, until the conditions had been met for their

return into possession of their pre-war homes in the Republika Srpska. On 19 August 2000 and 9 January 2001, respectively, the Chamber refused the provisional measures requested.

12. On 11 August 2000, 21 September 2000 and 23 May 2002, the Chamber transmitted the applications to the respondent Party for its written observations on the admissibility and merits under Articles 6, 8, 13 and 14 of the European Convention on Human Rights (the “Convention”) and Article 1 of Protocol No. 1 to the Convention. Between 11 April 2001 and 23 July 2002, the respondent Party submitted its observations to the Chamber. Case no. CH/99/2754 was not transmitted to the respondent Party.

13. From 23 May 2001 to 4 July 2002, the applicants submitted information to the Chamber that they had regained possession of their pre-war property. All the applicants noted that while they withdraw their complaints in this respect, they would like to maintain their claims for compensation.

14. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber’s Rules of Procedure on the same day it adopted the present decision.

IV. OPINION OF THE CHAMBER

15. 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 ... (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.”

16. The Chamber notes that the applicants lodged their applications with a view to regaining possession of their property, and while the cases were still pending before the Chamber, they regained such possession. The Chamber further notes that although the applicants have been reinstated, they ask the Chamber to find a violation of their rights protected by the Agreement due to the time that elapsed between their request for reinstatement into possession of their pre-war property and the actual repossession. They also ask the Chamber to order the respondent Party to pay compensation to them in recognition of the damage, both pecuniary and non-pecuniary, suffered by them during the course of that time.

17. The Chamber recalls that under Article VIII(2)(e) of the Agreement, “the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds”. As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

18. Taking into account that the applicants have been reinstated into possession of their property, the Chamber considers that the ongoing alleged human rights violations have been brought to an end, and the main issue of each application has been resolved. The Chamber recognises that valid reasons may underlie the applicants’ requests to maintain their claims for compensation. However, in the light of the considerations discussed above, the Chamber finds that “it is no longer justified to continue the examination of the application[s]” within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is “consistent with the objective of respect for human rights”, as this “objective” must be understood to embrace not only the individual applicant’s human rights, but also the Chamber’s more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

19. The Chamber, therefore, decides to strike out the applications, pursuant to Article VIII(3)(c) of the Agreement.

V. CONCLUSION

20. For these reasons, the Chamber, unanimously,

**JOINS THE APPLICATIONS and
STRIKE OUT THE APPLICATIONS.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel