



DECISION TO STRIKE OUT

Case nos. CH/00/4817, CH/00/5913 and CH/01/8547

Branislav MRAKIĆ, Dragan VJEŠTICA and Milorad BADNJAREVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

Case nos. CH/00/5411 and CH/01/8035

Josip RAFAJAC and Muhamed BULJUBAŠIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 May 2003, with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

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 to Article VIII(3)(c) of the Agreement and Rules 34, 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. In the following cases the applicants repossessed their property but none the less wish to maintain their claims for compensation.
2. 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.

A. CH/00/4817 Branislav MRAKIĆ

3. The application was introduced on 8 May 2000 and registered on the next day.
4. The applicant is a pre-war occupancy right holder over an apartment located at Ulica Gradačanka no. 68 in Sarajevo. The case concerns his attempts to regain possession over his pre-war apartment.
5. On 7 May 2001, the Chamber transmitted the application to the Federation of Bosnia and Herzegovina ("the Federation") for its observations on the admissibility and merits under Articles 8 and 13 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention.
6. On 21 June 2001, the Federation informed the Chamber that the applicant had entered into possession of his apartment on 21 March 2001.
7. On 26 July 2001, the applicant confirmed his repossession. However, he noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

B. CH/00/5411 Josip RAFAJAC

8. The application was introduced on 5 July 2000 and registered on 24 July 2000.
9. The case concerns the applicant's attempts to regain possession of his pre-war apartment located at Ulica Vidovska no. 11, in Gradiška.
10. On 1 April 2003, the applicant submitted information to the Chamber that he had regained possession of his pre-war property. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

C. CH/00/5913 Dragan VJEŠTICA

11. The application was introduced on 16 October 2000 and registered on the same day.
12. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to make an inventory list of movable property in the house and to forbid possible alienation of the property until he repossesses it. On 7 January 2002, the Chamber decided not to order the provisional measure requested.
13. The applicant is the pre-war owner of property and land located in Drvar. The case concerns his attempts to regain possession of his pre-war property.
14. On 21 November 2000, the Chamber transmitted the application to the Federation for its observations on admissibility and merits under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.
15. On 16 September 2002, the respondent Party informed the Chamber that on 8 April 2002, the applicant had regained possession of his property. The applicant confirmed that he entered into

possession of his property. However, he noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

D. CH/01/8035 Muhamed BULJUBAŠIĆ

16. The application was introduced on 18 October 2001 and registered on the same day.

17. The case concerns the applicant's attempts to regain possession of his pre-war property located at Ulica Miljkovac no. 99 in Doboj.

18. On 3 April 2003, the applicant submitted information to the Chamber that he had regained possession of his pre-war property on 16 January 2002. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

E. CH/01/8547 Milorad BADNJAREVIĆ

19. The application was introduced on 10 December 2001 and registered on 12 December 2001.

20. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to make an inventory list of movable property in the apartment and to forbid possible alienation of the property. On 7 January 2002, the Chamber decided not to order the provisional measure requested.

21. The case concerns the applicant's attempts to regain possession of his pre-war property, located at Ulica Skenderija no. 20, in Sarajevo.

22. On 12 April 2002, the applicant informed the Chamber that he had entered into possession of his apartment on 1 April 2002. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

III. OPINION OF THE CHAMBER

23. 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."

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

25. 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).

26. Taking into account that the applicants have been reinstated into their property, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main

issue of the applications has been resolved. The Chamber recognises that valid reasons may underlie the applicants' request to nonetheless 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" 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).

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

III. CONCLUSION

28. For these reasons, the Chamber, unanimously,

**JOINS THE APPLICATIONS and
STRIKES OUT THE APPLICATIONS.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel