



## **DECISION TO STRIKE OUT**

**Case nos. CH/00/5023, CH/00/5842 and CH/01/7546**

**Fevzija NOVALIĆ, Željko and Ljubica ČAPALIK and Ljubica UMIČEVIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

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. The applications were introduced between 2 June 2000 and 29 May 2001 and registered on the date on which they were submitted.
2. The cases concern the applicants' attempts to regain possession of their pre-war property located within the territory of the Federation of Bosnia and Herzegovina. All the applicants eventually repossessed their property; however, all the applicants further informed the Chamber that they would like to maintain their claims for compensation.
3. 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.

## **II. FACTS AND PROCEEDINGS BEFORE THE CHAMBER**

### **1. Case no. CH/00/5023 Fevzija NOVALIĆ**

4. The applicant is the owner of two houses located at ulica Ivce Marušića nos. 1 and 5 in Busovača. On a date unknown to the Chamber, the applicant submitted a request for repossession of his pre-war properties to the Secretariat for Geodetic and Property-Legal Affairs of Busovača Municipality (the "Secretariat"). On 19 January 2000, the Secretariat issued a procedural decision allowing him to repossess his pre-war properties.
5. On 6 June 2000, the Chamber ordered the respondent Party, as a provisional measure, to take all necessary steps to preserve the moveable property of the applicant in his houses and business premises. On the same day, the Chamber transmitted the case to the respondent Party for its observations on the admissibility and merits under Articles 6 and 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.
6. On 9 June 2000, the respondent Party informed the Chamber that it submitted the order for a provisional measure to the competent organ, the Busovača Municipal Service. On 10 July 2000, the respondent Party submitted its observations.
7. On 23 August 2000, the applicant entered into possession of his pre-war properties, and he informed the Chamber about this repossession on 6 December 2001.

### **2. Case no. CH/00/5842 Željko and Ljubica ČAPALIK**

8. The applicants are the owners of the business premises located at Zmaja od Bosne no. 49 in Sarajevo. On 19 May 1997, the Municipal Court II in Sarajevo, in civil proceedings initiated by the Municipality of Novo Sarajevo, issued a procedural decision annulling the contract on rent of the business premises in question and ordered the applicants to hand it over possession to the Public Housing Company "Sarajevostan". The applicants appealed to the Cantonal Court in Sarajevo, and on 3 July 2000, the Cantonal Court decided to annul the first instance judgment. On 12 July 2000, the Municipality Court II issued a court settlement allowing the applicants to enter into possession of premises in question after payment of 11,165 KM to the JSP "Sarajevostan" for unpaid rent. On 3 July 2000, the Municipality of Novo Sarajevo issued a procedural decision confirming the applicants' right to regain possession of their pre-war property.
9. On 19 September 2001 the applicants entered into possession of their business premises, and they informed the Chamber of this repossession on 1 October 2001.

### 3. Case no. CH/01/7546 Ljubica UMIČEVIĆ

10. The applicant is the owner of the apartment located at Rudarska no.77b in Mostar, Municipality of Mostar-Zapad. On 15 July 1998, the applicant submitted a request for reinstatement into possession of her apartment to the competent organ of the Municipality of Mostar-Zapad. On 14 April 1999, the applicant appealed to the second instance organ, the Ministry of Construction, Physical Planning and Environment of the Hercegovinačko-Neretvanski Canton, due to the “silence of the administration”. On 13 March 2000, the applicant initiated an administrative dispute before the Cantonal Court in Mostar, requesting the Cantonal Court to issue a judgment on repossession of the apartment in question.

11. On 24 October 2001, the Chamber transmitted the case to the respondent Party for its observations on the admissibility and merits under Articles 6, 8 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention. On 25 December 2001, the respondent Party submitted its observations.

12. On 20 February 2002, the applicant entered into possession of her pre-war apartment, and she informed the Chamber of this repossession on 26 February 2002.

### III. OPINION OF THE CHAMBER

13. 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.”

14. 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 understandably 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.

15. 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).

16. 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 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).

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

**IV. CONCLUSION**

18. For these reasons, the Chamber, unanimously,

**STRIKES OUT THE APPLICATIONS.**

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel