



DECISION TO STRIKE OUT

Case no. CH/00/5826

Milan UZELAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

and

Case no. CH/01/7722

Milica NIKOLIĆ

against

BOSNIA AND HERZEGOVINA, THE REPUBLIKA SRPSKA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 May 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 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.

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3. The application was introduced on 28 September 2000 and registered on the next day.
4. The applicant is a pre-war occupancy right holder over an apartment located at Ulica Senada Mandića Dende no. 2, in Sarajevo. The case concerns his attempts to regain possession over his pre-war apartment.
5. On 8 May 2001, the Chamber transmitted the application to the respondent Party for its 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.
6. On 21 June 2001, the respondent Party submitted its written observations informing the Chamber that the applicant had regained possession of his apartment on 6 April 2001.
7. On 31 July 2001, the applicant confirmed that he had entered into possession of his apartment. The applicant noted that while he withdraws his complaints in this respect, he would like to maintain his claim for compensation.

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8. The application was introduced on 20 July 2001 and registered on the same day.
9. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary steps to protect her property against further destruction by the temporary occupant. On 8 September 2001, the Chamber decided not to order the provisional measure requested.
10. The applicant is the pre-war owner of property located at Ulica Đure Jakšića no. 14, in Brčko. The case concerns her attempts to regain possession of her pre-war property.
11. On 14 November 2001, the Chamber, by mistake, transmitted the application to the Federation of Bosnia and Herzegovina (the "Federation") for its observations on admissibility and merits under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.
12. On 14 December 2001, the Federation submitted its written observations on admissibility and merits.
13. On 18 January 2002, the Chamber informed the Federation that the case had been transmitted to it by mistake.
14. On 18 January 2002, the Chamber transmitted the application to Bosnia and Herzegovina and the Republika Srpska, as the respondent Parties, for their observations on the admissibility and merits under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.
15. On 22 March 2002, the Republika Srpska submitted its written observations.
16. On 24 January 2002, the Federation submitted additional observations stating that the Chamber had explicitly designated the Federation as the respondent Party in the case, although,

according to the application, it was not so; therefore, the Federation duly submitted its written observations. The Federation stated that it insists that the Chamber issue a decision in relation to it as the respondent Party.

17. On 6 May 2002, the applicant informed the Chamber that on 18 March 2002, she had entered into possession of her property. The applicant noted that while she withdraws her complaints in this respect, she would like to maintain her claim for compensation.

II. OPINION OF THE CHAMBER

18. 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.”

19. 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.

20. 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).

21. 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).

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

III. CONCLUSION

23. For these reasons, the Chamber, unanimously,

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

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel