



DECISION TO STRIKE OUT

Case nos. CH/01/7411 and CH/01/7540

Dragan DURĐELIJA and Vaso RADEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 February 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

A. Case no. CH/01/7411 Dragan ĐURĐELIJA

1. The case concerns the applicant's attempts to regain possession of his pre-war apartment, located at Himze Polovine no. 35 in Sarajevo, the Federation of Bosnia and Herzegovina.
2. On 17 July 1998 the applicant filed a request to repossess the apartment in question to the Administration for Housing Affairs of Canton Sarajevo (the "Administration").
3. On 8 June 1999 the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) issued a decision confirming the applicant's occupancy right.
4. On 22 September 1999 the Administration issued a procedural decision establishing that the applicant is the occupancy right holder over the apartment in question and allowing him to repossess the apartment.
5. On 30 November 1999 the applicant filed requests for execution of the CRPC decision to the Administration.
6. On 30 May 2000 the applicant filed request for execution of the procedural decision of 22 September 1999 to the Administration.
7. On 26 November 2001 the applicant entered into possession of his pre-war apartment.

B. Case no. CH/01/7540 Vaso RADEVIĆ

8. The case concerns the applicant's attempts to regain possession of his pre-war apartment, located at Nusreta Šišića Dede no. 11 in Sarajevo, the Federation of Bosnia and Herzegovina.
9. On 26 June 1998 the applicant filed a request to repossess the apartment in question to the Administration.
10. On 7 May 1999 the Administration issued a procedural decision establishing that the applicant is the occupancy right holder over the apartment in question and allowing him to repossess the apartment.
11. On 24 August 1999 the applicant filed request for execution of the procedural decision of 7 May 1999 to the Administration.
12. On 9 December 1999 the CRPC issued a decision confirming the applicant's occupancy right.
13. On 8 March 2000 the applicant filed requests for execution of the CRPC decision to the Administration.
14. On 27 February 2002 the applicant entered into possession of his pre-war apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

15. The applications were introduced on 18 April and 25 May 2001, respectively.
16. On 14 November 2001, the Chamber transmitted case no. CH/01/7411 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.

17. On 14 December 2001, the respondent Party provided information to the Chamber that the applicant Dragan ĐURĐELIJA had regained possession of his apartment on 26 November 2001. On 16 January 2002, the applicant confirmed that he had entered into possession of his apartment. The applicant noted, however, that he would like to maintain his claim for compensation.

18. On 10 April 2002, the applicant Vaso RADEVIĆ informed the Chamber that he had regained possession of his apartment on 27 February 2002 and he asked Chamber to adopt a decision on admissibility and merits in relation to his other request. The Chamber understands this statement to mean that the applicant would like to maintain his claim for compensation.

III. OPINION OF THE CHAMBER

19. 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.”

20. The Chamber notes that the applicants lodged their applications with a view to regaining possession of their apartments, 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 requests for reinstatement into possession of their pre-war apartments 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.

21. 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).

22. Taking into account that the applicants have been reinstated into possession of their apartments, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main issue raised in the applications 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[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 applicants’ 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).

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

IV. CONCLUSION

24. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATIONS.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel