



DECISION TO STRIKE OUT

Case nos. CH/99/3390, CH/99/3414 and CH/99/3419

Milimir BJELOGLAV, Sadija LJAMOVIĆ and Čedo KOVAČ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 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

1. The cases concern the applicants' attempts to regain possession of their pre-war apartments. All the applicants are represented by Ms. Senija Poropat, a lawyer practising in Sarajevo.

II. STATEMENT OF FACTS AND PROCEEDINGS

A. CH/99/3390 Milimir BJELOGLAV

2. The application was introduced on 22 December 1999 and registered on the same day.

3. The applicant complained of his inability to repossess his pre-war apartment located at Trg heroja no. 20, in Sarajevo.

4. On 11 September 1998 the applicant submitted a claim to repossess his apartment to the Administration for Housing Affairs of the Sarajevo Canton ("Administration"). Since there was no decision upon his request, the applicant appealed to the Ministry for Urban Planning, Housing and Communal Affairs of the Sarajevo Canton ("Ministry"), due to the "silence of the administration".

5. On 12 November 1998, acting on the applicant's request, the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant as an occupancy right holder over the apartment and allowing him to repossess it.

6. On 16 November 1999 the applicant requested enforcement of the CRPC decision.

7. On 31 July 2000 the Administration issued a decision, confirming applicant to be an occupancy right holder over the apartment and allowing him to repossess it.

8. On 24 August 2000 the applicant requested enforcement of the Administration decision.

9. On 21 February 2001 the applicant was reinstated into possession of his pre-war apartment.

10. On 12 March 2001 the representative of the applicant submitted a letter informing the Chamber that he had entered into possession of his pre-war apartment. She withdrew the applicant's claim to regain possession of the apartment before the Chamber. However, she stated that he would like to maintain his request for compensation for damages and for costs and expenses that he had incurred in the proceedings.

B. CH/99/3414 Sadija LJAMOVIĆ

11. The application was introduced on 5 February 1999 and registered on 6 February 1999.

12. The applicant complained of her inability to repossess her pre-war apartment located at Ulica Nahorevska no. 4/II, in Sarajevo.

13. On 23 September 1998 the applicant submitted a claim to repossess her apartment to the Administration for Housing Affairs of the Sarajevo Canton ("Administration"). Since there was no decision on her request, the applicant appealed to the Ministry for Urban Planning, Housing and Communal Affairs of the Sarajevo Canton ("Ministry"), due to the "silence of the administration".

14. As there was no decision from the Ministry in the time prescribed by the law, the applicant initiated an administrative dispute against the Ministry before the Cantonal Court in Sarajevo due to the "silence of the administration".

15. On 7 July 1999 the Cantonal Court in Sarajevo issued a decision ordering the Ministry to issue a decision on the applicant's request within 30 days. The applicant appealed against this decision of the Cantonal Court.

16. On 12 April 2001 the Administration issued a decision confirming the applicant to be an occupancy right holder over the apartment and allowing her to repossess it.

17. On 12 June 2001 the applicant was reinstated into possession of her pre-war apartment.

18. On 31 July 2001 the representative of the applicant submitted a letter informing the Chamber that the applicant had entered into possession of her pre-war apartment. She withdrew her claim to regain possession of the apartment before the Chamber. However, she explicitly stated that the applicant would like to maintain her request for compensation for pecuniary and non-pecuniary damages and for costs and expenses that she had incurred in the proceedings.

C. CH/99/3419 Čedo KOVAČ

19. The application was introduced on 24 December 1999 and registered on 28 December 1999.

20. The applicant complained of his inability to repossess his pre-war apartment located at Ulica Husrefa Redžića no. 20, in Sarajevo.

21. On 21 August 1998 the applicant submitted a claim to repossess his apartment to the Administration for Housing Affairs of the Sarajevo Canton ("Administration"). Since there was no decision on his request, the applicant appealed to the Ministry for Urban Planning, Housing and Communal Affairs of the Sarajevo Canton ("Ministry"), due to the "silence of the administration".

22. As there was no decision from the Ministry in the time prescribed by the law, on 27 November 1998 the applicant initiated an administrative dispute against the Ministry before the Cantonal Court in Sarajevo due to the "silence of the administration".

23. On 26 October 2000 the representative of the applicant submitted a letter informing the Chamber that the applicant had entered into possession of his pre-war apartment on 10 October 2000. She withdrew the applicant's claim to regain possession of the apartment before the Chamber. However, she explicitly stated that the applicant would like to maintain his request for compensation for pecuniary and non-pecuniary damages and for costs and expenses that he had incurred in the proceedings.

III. OPINION OF THE CHAMBER

24. 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."

25. 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 request 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 as well as for cost and expenses, suffered by them during the course of that time.

26. 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).

27. Taking into account that the applicants have been reinstated into possession of their apartments, the Chamber considers that the ongoing alleged human rights violations have been brought to an end and the main issue of the applications has been resolved. The Chamber recognizes 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 applications" 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 recognized human rights (Articles I and II of the Agreement).

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

IV. CONCLUSION

29. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel