



DECISION TO STRIKE OUT THE APPLICATION

DELIVERED IN WRITING ON 22 JULY 1998

in

CASE No. CH/96/18

Aleksandra ČABAK (“A.C.”)

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting in a Plenary session on 13 July 1998 with the following Members present:

Michèle PICARD, President
Manfred NOWAK, Vice President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jacob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Vitomir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Aleksandra Čabak referred to the Chamber on 23 October 1996 by the Human Rights Ombudsperson for Bosnia and Herzegovina under Article V paragraph 5 of the Human Rights Agreement (“the Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered on 29 October 1996 under Case No. CH/96/18;

Adopted the following Decision striking out the application under Article VIII paragraph 3(a) of the Agreement and Rules 52 and 55 of its Rules of Procedure.

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Serbian descent. She resides in Hadžići, a municipality in the territory of Bosnia and Herzegovina. The applicant and her family moved to the Republika Srpska on 6 March 1996. She returned to her family house in Hadžići and registered herself as a resident there on 19 April 1996. The applicant's house belongs to her father, but on 22 April 1996 her father gave her written authority authorising her to act in her father's name in all matters connected with the house, including the authority to use, rent or sell the house. The Court of First Instance of Sarajevo endorsed this document on 23 April 1996.

2. On 8 May 1996, a Mr. Z.Č. received a procedural decision from the Hadžići Municipality temporarily allocating the house to him, under Article 9 of the Law on Abandoned Apartments. The decision describes the property as "the apartment-weekend house, the owner of which is unknown." The street number of the property is given as "bb" and the specific number of the property occupied by the applicant is not given. The decision states that "the apartment is allocated during the period of immediate danger of war and the state of war, at the longest for a year after the cessation of immediate danger or the state of war." The decision also states that the person to whom the apartment is allocated must move in within three days of the decision, or lose the right to the apartment. No reasons are given as to why the property is considered to have been abandoned. The decision states that an appeal against it can be submitted to the chief of the municipality within eight days after receipt of the decision. The decision further states that an appeal has no suspensive effect.

3. On 24 May 1996, Mr. Z.Č. came to the applicant's place of work and showed her the Decision. The applicant claimed that he demanded the keys to the property and threatened to break down the door with a Federal Police escort. Mr. Z.Č., however, never moved into the house. The applicant currently occupies the house.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was referred to the Chamber by the Ombudsperson on 23 October 1996 and registered by the Chamber on 29 October 1996. The Chamber considered the case on 4 and 8 November 1996 and decided to request that the respondent party not evict the applicant from the property in question pending the Chamber's consideration of the case. On 10 December 1996 the Chamber decided to invite the respondent Party to submit written observations on the admissibility and the merits of the application. The time limit for the submission of these observations was 28 February 1997. On 9 April 1997 the Chamber decided to declare the application admissible. On 13 June 1997 the Chamber held a hearing in the case. On 10 April 1998 the Federal Attorney's office of the Federation submitted its observations to the Chamber stating that the procedural decision temporarily allocating the house to Mr. Z.Č. was rendered ineffective and that the applicant was in fact never disturbed in the peaceful possession of her house.

5. In a telephone conversation on 22 April 1998, the applicant was asked if she wished to pursue her application before the Chamber, given the fact that Mr. Z.C. had never moved into her house. She explained that she regards the problem as solved. On 6 May 1998, the Registry sent the applicant a letter requesting that she confirm her wish to terminate her application in writing within three weeks. The Chamber has never received a reply to this letter.

III. COMPLAINTS

6. The applicant alleged a breach of her rights as guaranteed by Article 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") because she was not informed of the proceedings before the municipal administrative organ and was thus unable to protect her rights. She also alleged violations of Article 8 of the

Convention (right to respect for home), Article 1 of Protocol No. 1 to the Convention (right to respect for possessions) and Article 13 of the Convention (right to an effective remedy).

IV. OPINION OF THE CHAMBER

7. Article VIII paragraph 3(a) of the Agreement reads as following:

“The Chamber may decide at any point in its proceedings to ... strike out, an application on the grounds that (a) the applicant does not intend to pursue his application; ... ; provided that such result is consistent with the objective of respect for human rights.”

The applicant informed the Registry in the telephone conversation of 22 April 1998 that she no longer wishes to pursue her application before the Chamber. Moreover, she did not reply to the letter of 6 May 1998 within the time limit set by the Chamber. The Chamber therefore assumes that the applicant does not intend to pursue her application before the Chamber. In the circumstances, the Chamber finds it consistent with the objective of respect for human rights to strike out the application.

Order for provisional measures

8. The Chamber considers that the order for provisional measures is no longer appropriate and that it should be withdrawn.

V. CONCLUSIONS

9. For the above reasons the Chamber unanimously

DECIDES TO STRIKE OUT THE APPLICATION.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber