



DECISION TO STRIKE OUT

Case no. CH/98/1068

Kimeta ŠOŠO

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 2001 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitimir POPOVIĆ
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application 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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns a dispute between a divorced couple over an occupancy right over an apartment at Ulica Salke Lagumdžije 4, Sarajevo, in which they lived as a married couple until the outbreak of the war.

II. FACTS AND PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 17 November 1998.

3. The applicant acquired the occupancy right over the apartment in 1984. During the war she left Sarajevo.

4. In 1994, upon a request of the applicant's husband and in the applicant's absence, their marriage was dissolved by the Municipal Court II Sarajevo. Subsequently, the applicant's ex-husband obtained a court decision of 14 December 1994 confirming him as the exclusive occupancy right holder over the apartment.

5. On her return to Sarajevo in March 1996, the applicant attempted to regain possession of the apartment as well as recognition of her occupancy right over it. On 17 April 1996 she requested the Municipal Court to renew the proceedings which lead to the decision of 14 December 1994.

6. On 28 August 1998 the applicant requested from the Administration for Housing Affairs of Canton Sarajevo that she be reinstated into possession of the apartment pursuant to the Law on the Cessation of the Application of the Law on Abandoned Apartments. On 24 November 1999 the applicant entered into possession of the apartment in the presence of officials of the Administration for Housing Affairs. Six days later, on 1 December 1999, the Administration for Housing Affairs issued a procedural decision confirming the applicant's occupancy right over the apartment.

7. However, on 5 April 2000, acting upon a request of the applicant's ex-husband, the Administration for Housing Affairs issued a second procedural decision, ordering the applicant to vacate the apartment. On 10 April 2000 the applicant was notified that her forcible eviction was scheduled for 14 April 2000.

8. On 12 April 2000 the applicant requested that the Chamber prevent her eviction. On 13 April 2000 the President of the Second Panel issued an order requiring the respondent Party, as a provisional measure, to take all necessary steps to prevent the applicant's eviction. The respondent Party confirmed on the same day that the applicant's eviction would not go forward.

9. On 20 September 2000 the applicant informed the Chamber that she had been forcibly evicted from the apartment on that day, being permitted only to take her purse and personal documents. She submitted a copy of the minutes of the eviction which state that an inspector of the Administration for Housing Affairs and two officers of the Police Administration Novi Grad carried out the eviction; the minutes further state that the apartment was sealed and that it shall remained sealed until 30 September 2000, pending the final decision of the Municipal Court.

10. On 20 September 2000 the Chamber reminded the respondent Party that the Chamber's order for provisional measures was still in force. The respondent Party promised that it would comply with the Chamber's order. The applicant entered into the apartment again on 27 November 2000.

11. On 12 October 2000 the Municipal Court allowed the requested renewal of the proceedings. On 30 March 2001 the applicant obtained a final and binding court decision establishing her exclusive occupancy right over the apartment. According to this judgement, the applicant's ex-husband has no right to use the apartment, is not entitled to an emergency accommodation and is obliged to compensate the applicant for the costs of the court proceedings.

12. On 8 August 2001 the applicant informed the Chamber that she succeeded in resolving her case before the domestic authorities to her satisfaction, and that she wished to withdraw her application pending before the Chamber.

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 (a) the applicant does not intend to pursue his application; ... provided that such a result is consistent with the objective of respect for human rights."

14. The Chamber notes with serious concern that the respondent Party failed to respect the Chamber's order for provisional measures and evicted the applicant while that order was in force. None the less, the applicant has requested that the Chamber no longer continue with consideration of her application. Accordingly, the Chamber follows the applicant's request and decides to strike out the application.

15. The Chamber will withdraw its order for provisional measures with immediate effect.

IV. CONCLUSION

16. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION, and

WITHDRAWS ITS ORDER FOR PROVISIONAL MEASURES WITH IMMEDIATE EFFECT.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel