



DECISION TO STRIKE OUT

CASE No. CH/96/16

Dušanka ĐURIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 14 October 1998 with the following members present:

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

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application referred by the Human Rights Ombudsperson for Bosnia and Herzegovina (“the Ombudsperson”) pursuant to Article V(7) of the Human Rights Agreement (“the Agreement”) set out in Annex 6 to the General Framework Agreement for Peace and in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(3) of the Agreement as well as Rule 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The facts of the case are based on the application and other documents in the case-file, including the decision dated 23 October 1996 of the Human Rights Ombudsperson for Bosnia and Herzegovina ("Ombudsperson") referring the case to the Chamber, and can be summarised as follows:

2. The applicant is a displaced person from Grahovo. In 1995 she entered into an oral agreement with Ms. Mara Durbić, the owner of the house located at Ključka 20 in Banja Luka, to live in an apartment located in that house. The applicant has lived in the apartment since that time.

3. On 22 August 1995 Ms. Durbić left for Canada. In her absence she authorized her daughter Ms. Ivka Radić to act on her behalf in matters concerning the house. This authorisation was confirmed in a certified document dated 25 June 1996.

4. On 1 July 1996 the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka ("Commission") issued a decision declaring the applicant an unlawful occupant of the apartment and ordering her to vacate the premises within three days. The decision was based on Article 10 of the Republika Srpska Law on Abandoned Property (RS Official Gazette No. 3/96).

5. On 4 July 1996 the applicant filed an appeal with the Ministry of Refugees and Displaced Persons in Banja Luka ("Ministry") against the Commission's decision. She stated that she had not formally applied for temporary accommodation but that she fulfilled all necessary criteria for the right to temporary use.

6. On 22 July 1996 the applicant initiated proceedings before the Court of First Instance in Banja Luka claiming "disturbance of possessions" (*tužba za smetanje posjeda*).

7. On 23 July 1996 officials from the Commission, accompanied by police, attempted to evict both the applicant and Ms. Radic from the house but did not succeed. Another attempt was made on 12 August 1996 but was again unsuccessful.

II. COMPLAINTS

8. The applicant complained that the attempts to deprive her of the apartment as well as various movable property in the apartment violated her rights to security of her person, respect for her home and property.

III. PROCEEDINGS BEFORE THE CHAMBER

9. On 23 October 1996 the Ombudsperson issued a decision referring the application to the Chamber. The application was registered by the Chamber on 25 October 1996. The applicant is represented by Ms. Ivka Radić.

10. On 8 November 1996 the Chamber issued an Order for provisional measures ordering the respondent Party not to evict the applicant from the apartment pending the Chamber's consideration of the case.

11. On 12 December 1996 the Chamber considered the case and decided to request the respondent Party to submit its observations on the admissibility and merits of the application. The respondent Party submitted its observations by letter dated 10 February 1997. In reply the applicant submitted observations by letter dated 14 March 1997.

12. On 24 February 1997 the Chamber invited the Ombudsperson to submit observations on the case. On 7 April 1997 the Ombudsperson submitted her observations.

13. On 6 June 1997 the Chamber again considered the case and decided to hold a public hearing. The hearing was held on 6 August 1997.

14. On 8 August 1997 the respondent Party submitted observations which stated, in relevant part, as follows:

- (1) The applicant had not been evicted from the apartment on the basis of the Commission's decision of 1 July 1996; and
- (2) The Government of the Republika Srpska had no interest in considering the apartment under the Republika Srpska Law on Abandoned Property nor in considering it abandoned; and
- (3) The applicant and the owner of the apartment should arrange for the use of the apartment in accordance with domestic law regulating relations between apartment owners and occupants.

15. On 12 August 1997 the Chamber requested the applicant to inform the Chamber whether the respondent Party's letter dated 8 August 1997 provided a sufficient basis for an amicable resolution of the case. No response was received to this request and on 13 November 1997 the Chamber repeated the request.

16. On 28 November 1997 the applicant's representative submitted a letter stating that the respondent Party's letter dated 8 August 1997 provided "a very satisfying basis" for an amicable resolution.

17. On 24 March 1998 the Chamber asked the applicant to inform the Chamber whether an amicable resolution had been reached, and to submit a copy of the relevant document. No response was received to this request and on 25 May 1998 the Chamber repeated the request.

18. On 2 June 1998 the applicant's representative submitted a letter stating that an amicable resolution had been reached and that consequently "the other party is to remain in the apartment until further notice, that is, until the matter is resolved under the Law on Abandoned Property".

19. On 14 July 1998 the Chamber considered the case and decided to request both the respondent Party and the applicant to clarify the terms of the amicable resolution that had been reached between them. In addition, the Chamber decided to ask the applicant's representative whether she continued to represent the applicant.

20. By letter dated 25 August 1998 the applicant's representative informed the Chamber that she continued to act as the applicant's representative and that the amicable resolution "still lasts" because the representative is "too weak to do anything" despite being "deprived of her rights". No clarification was received from the respondent Party.

21. On 9 September 1998 the Chamber again considered the case in light of the above developments.

IV. OPINION OF THE CHAMBER

22. Article VIII (3) of the Agreement provides as follows:

"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; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such result is consistent with the objective of respect for human rights."

23. The Chamber first notes that the parties did not inform the Chamber of the specific terms of the amicable resolution, nor provide a copy of such a document, despite being requested to do so.

24. The Chamber furthermore notes that in its letter of 8 August 1997, the respondent Party stated that it no longer considered the apartment to be abandoned nor the applicant to be an illegal occupant. Furthermore, the respondent Party stated that it had no intention to evict the applicant from the apartment, and indeed there do not appear to have been any attempts to evict the applicant since August 1996. The Chamber finds therefore that the applicant is no longer under threat of eviction.

25. The applicant's representative, in her letter dated 2 June 1998, informed the Chamber that an amicable resolution had been reached (see para. 18 above). The Chamber perceives this as an additional indication that the applicant is no longer under threat of being evicted from the apartment.

26. In light of the information received from the applicant and the respondent Party, the Chamber therefore finds that the applicant is no longer under threat of eviction and that the matter on which the application is based has thereby been resolved. In the circumstances, the Chamber finds it consistent with the objective of respect for human rights to strike out the application.

V. CONCLUSION

27. For these reasons, the Chamber, unanimously,

STRIKES OUT THE APPLICATION.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber