



DECISION TO STRIKE OUT THE APPLICATION

in

CASE No. CH/97/87

Ljubo MOJSOVSKI

against

Bosnia and Herzegovina

and

Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 10 September 1998 in a Panel composed of the following members:

Michèle PICARD, President
Dietrich RAUSCHNING
Rona AYBAY
Želimir JUKA
Hasan BALIĆ
Miodrag PAJIĆ
Andrew GROTRIAN

Leif BERG, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Ljubo Mojsovski received by the Chamber on 21 November 1997 under 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 and registered on the same day under Case No. CH/97/87;

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

I. FACTS

1. The facts are based on the application and appended documents and can be summarised as set out below.
2. The applicant is the owner of an apartment located at Džemala Bijedića Street No. 64/4, Sarajevo. In accordance with the Law on securing housing for the (former) Yugoslav National Army ("JNA") (Official Gazette Socialist Federal Republic of Yugoslavia 84/90), the applicant entered into a contract for the purchase of the apartment from the JNA and paid the purchase price due on 14 February 1992.
3. On 23 February 1994, the applicant instituted civil proceedings before the Court of First Instance II in Sarajevo, seeking his registration in the Land Registry as the owner of the apartment concerned. There were no developments in these proceedings until 10 February 1995, when the proceedings were suspended. This was done in accordance with a Decree with Force of Law issued by the Presidency of the then Republic of Bosnia and Herzegovina ("R BiH") on 3 February 1995 (Official Gazette RBiH 5/95), which came into force on 10 February 1995.
4. On 22 December 1995, the Presidency of RBiH issued a Decree with Force of Law (Official Gazette RBiH 50/95) amending the Law on the transfer of the resources of the former Socialist Federal Republic of Yugoslavia to the RBiH (Official Gazette RBiH 6/92). It entered into force on the same date. This Decree was adopted as a law by the Assembly of RBiH on 18 January 1996 (Official Gazette RBiH 2/96). The effect of the Decree was to invalidate all contracts for the purchase of apartments from the former JNA made under the Law on securing housing for the JNA.
5. The applicant applied to the Chamber on 21 November 1997. He also made an application to the Human Rights Ombudsperson for Bosnia and Herzegovina (the "Ombudsperson") on 6 August 1997.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was received by the Registry of the Chamber on 21 November 1997 and was registered on the same day. The applicant is represented by Petar Grabovac, a lawyer practising in Sarajevo.
7. On 11 August 1998, the Registrar of the Chamber wrote to the applicant's representative, informing him that the Chamber does not normally consider cases that are pending before the Ombudsperson and that the case would in all likelihood be declared inadmissible by the Chamber. The Registrar asked whether, in view of this fact, the applicant wished to proceed with his application to the Chamber. The applicant's representative, in a letter dated 20 August 1998 and received by the Registry on 21 August 1998, requested that the application before the Chamber be withdrawn.
8. The application was considered by the Panel at its session on 10 September 1998.

III. COMPLAINTS

9. The applicant alleged a violation of his rights as guaranteed by Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention"), which guarantees the right to peaceful enjoyment of one's possessions. He claimed that this was as a consequence of the retroactive annulment of his contract to purchase the apartment in question by the Decree with Force of Law of 22 December 1995 (see paragraph 4 above).

10. The applicant also alleged that the suspension of the civil proceedings he instituted before the Court of First Instance II in Sarajevo on 23 February 1994 constituted a violation of his rights as guaranteed by Article 6 of the Convention.

IV. OPINION OF THE CHAMBER

11. Article VIII (3)(a) of the Agreement states, in relevant part, 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 the applicant does not intend to pursue his application ... provided that such result is consistent with the objective of respect for human rights.”

12. The applicant’s representative has requested that the application made to the Chamber be withdrawn. The Chamber notes that the applicant has lodged an application to the Ombudsperson. Accordingly, the Ombudsperson has the power to investigate the applicant’s claim and issue findings (per Article V(2) and (4) of the Agreement). In addition, in accordance with Article V(5) of the Agreement, the Ombudsperson may refer the case to the Chamber if she considers it appropriate to do so.

13. The Chamber therefore has no reason to believe that to accede to the applicant’s request would in any way be inconsistent with the objective of respect for human rights.

V. CONCLUSION

14. For the above reasons the Panel, unanimously,

DECIDES TO STRIKE OUT THE APPLICATION.

(signed) Leif BERG
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber