



DECISION TO STRIKE OUT THE APPLICATION

of

CASE No. CH/97/89

Reza PERAK-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, Vice-President
Hasan BALIĆ
Rona AYBAY
Želimir JUKA
Miodrag PAJIĆ
Andrew GROTRIAN

Leif BERG, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application by Reza Perak-Mojsovski received by the Chamber on 21 November 1997 under Article VIII (1) of the Human Rights Agreement (“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/97/89;

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 follows:
2. The applicant is the owner of an apartment located at Topal Osman Paše 5 in Sarajevo. In accordance with the Law on Securing Housing for the (former) Yugoslav National Army ("JNA") (Official Gazette SRFY, No. 84/90), the applicant entered into a contract with the Army Housing Fund of the former JNA for the purchase of the apartment on 18 March 1992, having paid the purchase price due on 6 March 1992.
3. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina enacted a Decree with Force of Law (Official Gazette RBiH, No. 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, No. 6/92). It entered into force on the same date. This Decree was adopted as law by the Assembly of the RBiH on 18 January 1996 (Official Gazette RbiH, No. 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.
4. The applicant submitted an application regarding the matter to the Human Rights Ombudsperson for Bosnia and Herzegovina ("Ombudsperson") on 6 August 1997. On 21 November 1997 she submitted an application regarding the same matter to the Chamber.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was received by the Chamber on 21 November 1997 and registered on the same day. The applicant is represented by her authorised representative Mr. Petar Grabovac, a lawyer practising in Sarajevo.
6. On 9 March 1998 the Chamber considered the case and decided to transmit the application to the respondent Parties for their observations on the admissibility and merits under Rule 49 (3) (b) of its Rules. The Chamber sent this request on 6 April 1998.
7. By letter dated 8 June 1998 the Federation of Bosnia and Herzegovina submitted its observations on the application. No response was received from the State of Bosnia and Herzegovina.
8. On 11 August 1998 the Chamber requested the applicant to inform the Chamber whether she wished to proceed with the case, taking into consideration that the Chamber will not normally consider cases that have already been brought before the Ombudsperson and that if the applicant were to proceed with the case it was highly likely that the Chamber would eventually declare the application inadmissible.
9. By letter dated 20 August 1998 the applicant informed the Chamber that she no longer wished to pursue her application. This letter was transmitted to the respondent Parties on 31 August 1998 for information.
10. On 10 September 1998 the Chamber again considered the case, in light of the above developments.

III. COMPLAINTS

11. The applicant alleged that the retroactive annulment of her contract as a result of the Decree with Force of Law of 22 December 1995 (see para. 3 above) violated her rights guaranteed under Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

IV. OPINION OF THE CHAMBER

12. Article VIII (3) (a) of the Agreement provides, 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.”

13. According to the applicant's letter to the Chamber dated 20 August 1998, she no longer wishes to pursue the application before the Chamber. The Chamber notes that the applicant has an application regarding the same matter before the Ombudsperson. In accordance with Article V (2) and (4) of the Agreement, the Ombudsperson has the power to investigate the applicant's claim and issue findings. In accordance with Article V (5) of the Agreement, the Ombudsperson may also refer the application to the Chamber if she considers it appropriate to do so.

14. Under the above circumstances, the Chamber does not find it inconsistent with the objective of respect for human rights to accede to the applicant's request and strike out her application.

V. CONCLUSIONS

15. For the above reasons the Chamber unanimously

DECIDES TO STRIKE OUT THE APPLICATION.

(signed) Leif BERG
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber