



DECISION ON THE ADMISSIBILITY AND ON THE MERITS

of

Case No. CH/96/17

Mehmed BLENTIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 5 November 1997, with the following members present:

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

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of the Application by Mehmed BLENTIĆ against the Republika Srpska, registered under Case No. CH/96/17;

Adopts the following Decision on the admissibility and merits of the case under Article VIII paragraph 2 and Article XI of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rules 52, 57 and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, and his wife were forcibly evicted from their privately owned house in Banja Luka, by a Mr D.V. in September 1995. The applicant instituted proceedings before the Court of First Instance in Banja Luka which ordered the eviction of Mr D.V. Several attempts were made to execute the Court's decision but without results because the police did not take any action to assist court officials. The case concerns non-enforcement of the court decision and raises issues under Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"), and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was referred to the Chamber by decision of the Human Rights Ombudsperson for Bosnia and Herzegovina (hereinafter "the Ombudsperson") dated 23 October 1996 and taken under Article V paragraph 5 of the Human Rights Agreement (hereinafter "the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

3. The Chamber considered the case on 4 February 1997 and decided under Rule 49 (3) (b) of its Rules of Procedure to give notice of the application to the Republika Srpska as respondent Party and invite it to submit written observations on the admissibility and merits of the application. In accordance with Rule 51 of its Rules of Procedure the Chamber fixed a time-limit expiring on 27 March 1997 for submission of these observations. The respondent Party submitted its observations by letter dated 1 April 1997. The applicant and the Ombudsperson were given the opportunity to submit written observations in reply but no observations were received from them.

4. On 3 September 1997 the case was considered by the Chamber together with the cases of Bejdić and "M.J." v. Republika Srpska, which concerned similar issues. The Chamber decided to hold a public hearing on the admissibility and merits of the three cases on 8 October 1997. The applicant informed the Chamber that he could not be present at the hearing because the eviction of the squatter in his apartment was scheduled for 9 October 1997. The Chamber decided to proceed with the hearing and to excuse the applicant from attendance.

5. The public hearing was held on 8 October 1997 in Sarajevo. The applicant was not represented. The respondent Party was represented by its Agent, Mr. Stevan Savić. The Ombudsperson was represented by Ms Simona Granata, Deputy Ombudsperson, Mrs Valerija Šaula, Senior Legal Expert, and Mr Zlatko Kulenović, Senior Legal Expert.

6. Following the hearing the applicant submitted further information by telephone concerning the attempted eviction on 9 October 1997.

III. ESTABLISHMENT OF THE FACTS

7. The facts of the case as they appear from the parties' submissions and the documents in the case file are not generally in dispute and may be summarised as follows.

8. The applicant and his wife, Zlata Blentić, are the owners of a house at Ulića Miloša Obilića No. 14 in Banja Luka, which they occupied as their home. On 19 September 1995 they were forcibly turned out of the house by a Mr Duško Vještica, ("Mr D.V."), a Serbian refugee from Drvar. According to the applicant they were roughly treated and threatened with guns by four armed police and given five minutes to leave.

9. The applicant and his wife instituted proceedings against Mr D.V. before the Court of First Instance in Banja Luka on or about 9 October 1995, seeking to recover possession of their property. Mr D.V. did not appear in court and on 2 November 1995 the Court issued a decision by default. It found that the applicant and his wife had been disturbed in their possession of the property and ordered Mr. D.V. to vacate the house immediately and at the latest within 24 hours.

10. Mr. D.V. did not comply with the above order. The decision became final and binding. On 21 November 1995 the Court of First Instance issued a procedural decision on the execution of the earlier decision. This again ordered Mr. D.V. to vacate the applicant's house immediately and within 24 hours at the latest and further stated that if he did not obey the order execution of the decision should be carried out by an official of the Court with the assistance of a security organ. This executory decision did not lead to any result either.

11. On 6 December 1995 the Court of First instance issued an executory conclusion, which ordered that the decision of 21 November 1995 should be carried out on 18 December 1995. This conclusion provided that the execution should be carried out so that an official of the court, "assisted by the public security organ and the public police," should restore the previous state of possession and ensure the return of the applicant and his wife to the house, free from property and persons connected with the respondent, Mr D.V.

12. On 18 December 1995 the applicant attempted to have Mr. D.V. evicted with the assistance of the police. A crowd of some eighty people gathered at the scene and obstructed the carrying out of the eviction by court officials. The police, however, undertook no action under the terms of the eviction order. According to the respondent Party they did not use the means of coercion within their competence because of fears for the security of the applicant and other persons.

13. The Court of First Instance has issued executory conclusions ordering the eviction of Mr D.V. on a number of occasions since. In particular Mr. D.V.'s eviction was scheduled for 1 February 1996, 16 March 1996, 9 April 1996, 27 June 1996, 2 April 1997 and 9 October 1997 but on none of these occasions was the eviction carried out. It appears that on each occasion a similar situation arose, namely that a crowd assembled to obstruct the eviction and the police took no action.

IV. FINAL SUBMISSIONS OF THE PARTIES

A. The Applicant

14. In his application the applicant submitted that the failure to enforce the court order in his favour involved the violation of his rights to the following: property; family life and home; civil proceedings within a reasonable time before an impartial body; effective legal protection by authority and the enjoyment of his rights and freedoms without discrimination on national grounds.

B. The Respondent Party

15. The respondent Party submits that the Chamber should not deal with the case while it is still pending before the courts of the Republika Srpska. It also submits that in view of the circumstances there has been no violation of the applicant's rights.

C. The Ombudsperson

16. The Ombudsperson submits that the Chamber should find that there have been violations of the applicant's rights under Articles 6 (1) and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and that there have consequently been breaches of Article I of the Agreement.

V. OPINION OF THE CHAMBER

A. Admissibility

17. Before considering the case on its merits the Chamber must decide whether to accept the case taking into account the admissibility criteria set out in Article VIII paragraph 2 of the Agreement.

18. The respondent Party has suggested that the Chamber should not deal with the case whilst it is still pending before the courts of the Republika Srpska. The Chamber has considered this argument in the light of paragraph 2 (a) of Article VIII of the Agreement, which, so far as relevant, provides as follows:

“2. The Chamber shall decide which applications to accept. ... In so doing the Chamber shall take into account the following criteria:

(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...”

19. In relation to the rule concerning exhaustion of domestic remedies in Article 26 of the Convention, the European Court of Human Rights, in the case of *Akdivar v. Turkey*, has stated the following:

“Under Article 26 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness...” (*Akdivar v. Turkey*, Judgement of 16 September 1996, para. 66).

The Court also stated that in applying the rule it is necessary to “take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants” (*ibid*, para. 69). These principles should also be taken into account, in the Chamber’s opinion, in the application of the criterion concerning exhaustion of remedies in Article VIII paragraph 2 (a) of the Agreement.

20. The Chamber notes that it is still open to the applicant to make further attempts to enforce the judgement in his favour by seeking further executory conclusions from the Court in Banja Luka and attempting to have them enforced by court officials with the assistance, if needed, of the police. However he has already made repeated attempts to remedy his situation by this means and they have been unsuccessful. The applicant has thus had “normal recourse” to this remedy and it has proved to be ineffective in practice. Use of this remedy, even if successful, would also not remedy the applicant’s complaint in so far as it relates to the failure of the authorities to enforce the judgement during the period to date. The Chamber therefore finds that there is no obstacle to the admissibility of the application under Article VIII paragraph 2 (a) of the Agreement.

21. The Chamber finds no other ground for declaring the application inadmissible under Article VIII paragraph 2 of the Agreement. It points out however that it has no competence under the Agreement to consider whether any violation of the applicant’s human rights occurred before the Agreement came into force (see Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision on Admissibility dated 13 September 1996). It concludes that the application should therefore be accepted as admissible and examined on its merits in so far as it relates to violations of the applicant’s human rights which are alleged to have occurred since the Agreement came into force on 14 December 1995.

B. The Merits

22. Under Article XI of the Agreement the Chamber must, in the present decision, address the question whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement. In terms of Article I of the Agreement the Parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms” including the rights and freedoms provided for in the Convention. The Chamber will therefore consider whether the failure of the authorities to enforce the court order obtained by the applicant and his wife has involved a breach of the applicant’s rights under the Articles of the Convention which have been invoked in the proceedings.

1. Article 8 of the Convention

23. The Chamber has first considered the case in the light of Article 8 of the Convention, which provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

24. The question which arises is whether the failure of the authorities to enforce the judgement in question involved a violation of the applicant’s right to respect for his “home.” The Chamber has already found that the applicant and his wife occupied the house in question as their home before they were turned out by Mr D.V. (see para. 8 above). It also follows from the findings of the Banja Luka Court of First Instance that the initial eviction of the applicant and his wife and their continued exclusion from the house by Mr D.V. have been illegal. In the Chamber’s opinion the facts of the case therefore reveal a continuing unlawful interference on the part of Mr D.V. with the applicant’s right to respect for his home.

25. According to the applicant members of the police of the respondent Party participated in his initial unlawful eviction, which occurred before the Agreement came into force. It has not however been suggested, and on the evidence before it the Chamber does not consider it established, that the police or other public authorities of the respondent Party have taken an active role in maintaining the applicant’s continued exclusion from the house since 14 December 1995. It is suggested however, by the applicant and the Ombudsperson, that the respondent Party is responsible for the applicant’s continued exclusion because the police have been passive and have failed to give necessary assistance to the court officials in carrying out the eviction of Mr D.V.. The respondent Party has maintained that the police were justified by considerations of public safety in not taking an active role.

26. The European Court of Human Rights has held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees, and that in this context, as in others, a fair balance must be struck between the general interest and the interests of the people concerned (see e.g. *Marckx v. Belgium*, 1979 Series A No. 31, para. 31; *Airey v. Ireland*, 1979 Series A No. 32, para. 32; *X & Y v. Netherlands*, 1985 Series A No. 91, paras. 23 *et seq*; *Velosa Barreto v. Portugal*, 1995 Series A No. 334, para. 23). Furthermore in considering whether a fair balance has been struck in relation to the positive obligations flowing from the first paragraph of Article 8, the aims mentioned in the second paragraph also have a certain relevance (*Lopez Ostra v. Spain*, 1994 Series A No. 303C, para. 51).

27. In the Chamber’s opinion the obligation effectively to secure respect for a person’s home implies that there must be effective machinery for protecting it against unlawful interference of the kind which the applicant has suffered. In particular there must be effective machinery for restoring possession in accordance with the orders of a court. In the present case the applicant has been

unlawfully excluded from his home for over two years. The police have given no assistance to court officials in repeated attempts, starting on 18 December 1995, to enforce the order of the court for the eviction of the unlawful occupant and have tolerated repeated obstruction of the officials in the execution of their duty.

28. The Chamber recognises that the authorities responsible for carrying out an eviction may face a difficult task if they are obstructed by people opposed to the eviction, and that they may legitimately find it necessary in some circumstances to delay taking action for reasons of public order. They are bound however to take steps to deal with such a situation. In the context of Article 11 of the Convention the European Court of Human Rights has held that a State is under a positive obligation to take reasonable and appropriate measures to protect lawful demonstrations from violence by counter demonstrators, although the authorities cannot guarantee a successful outcome and have a wide discretion as to the means to be used (*Plattform Ärzte für das Leben v. Austria*, 1988 Series A No. 139, paras. 30 - 34). In the Chamber's opinion in the situation which has arisen in the present case Article 8 imposes a similar positive obligation on the public authorities to take effective, reasonable and appropriate measures to deal with the difficulties posed by the assembly of people obstructing the applicant's return to his home. In the present case there is no evidence that the police have ever taken any action at all to assist the court officials or to prevent the systematic obstruction of their work over a period of almost two years. The information before the Chamber indicates that they have been entirely passive at each eviction attempt, despite the fact that the Law on Executive Procedure in force in the Republika Srpska provides for the police to support the authorities responsible for the execution of court decisions. Furthermore no attempt has been made to prosecute those responsible for obstructing the execution of the order of the court, although this would have been possible under domestic law.

29. In the Chamber's opinion such a situation is incompatible with the rule of law and involves a breach of Article 8 of the Convention by the respondent Party.

2. Article 1 of Protocol No. 1 to the Convention

30. Article 1 of Protocol No. 1 to the Convention provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

31. The European Court of Human Rights has held that this provision "guarantees in substance the right of property" and "comprises three distinct rules." The first rule, in the first sentence of Article 1, lays down the general principle of the peaceful enjoyment of possessions. The second rule, in the second sentence, covers deprivation of possessions and makes it subject to certain conditions. The third rule, in the second paragraph, concerns the State's right to enforce laws controlling the use of property. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property (see e.g. *Scollo v. Italy*, 1995 Series A No. 315, para. 26). Where a measure affecting property is not within the ambit of either the second or the third rule, it is necessary to consider whether there has been a violation of the first rule, for which purpose it must be determined "whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights" (*Sporrong & Lönnroth v. Sweden*, 1982 Series A No. 52, para. 69).

32. The present case is not concerned with an expropriation by the public authorities of the Republika Srpska or with the application of laws controlling the use of property. It relates to a failure by the authorities to protect the applicant against a continuing unlawful interference with his property rights. In the Chamber's opinion the case must therefore be considered under the first, general rule in Article 1. This general rule may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights (see para. 26 above; see also

Application No. 20357/92, *Whiteside v. United Kingdom*, 76A DR, p. 80). The Chamber notes, furthermore, that it is implicit in the Court's Judgement in the case of *Scollo v. Italy* (*sup. cit.*) that such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction. In the present case the Chamber considers, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that the failure of the authorities to take the necessary measures to enforce the court order obtained by the applicant involved a failure effectively to secure his right to peaceful enjoyment of his possessions. There has therefore been a breach of his rights under Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

33. Article 6 of the Convention, so far as relevant, provides as follows:

"1. In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by (a) ...tribunal..."

The applicant and the Ombudsperson suggest that the applicant's rights under this provision have been violated by reason of the failure to enforce the court order.

34. The European Court of Human Rights has held that Article 6 applies to enforcement proceedings following on the decision of a tribunal within its scope (*Scollo v. Italy*, 1995 Series A No. 315C; *Hornsby v. Greece*, Judgement of 19 March 1997). In particular in the *Hornsby* case it pointed out that Article 6 embodies the "right to a court" and stated that:

"...that right would be rendered illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should prescribe in detail procedural guarantees afforded to litigants...without protecting the implementation of judicial decisions, to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention...Execution of a judgement given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6; moreover the Court has already accepted this principle in cases concerning the length of proceedings" (para. 40 of the Judgement).

35. In the *Scollo* case the Court found that prolonged delay in the enforcement of a judgement giving the applicant entitlement to the possession of an apartment had involved a breach of Article 6 of the Convention, pointing out that "the inertia of the competent administrative authorities" engaged the responsibility of the State (paras. 44 - 45 of the *Scollo* Judgement). In the *Hornsby* case it found that by failing over a period of five years to take the necessary measures to comply with a judicial decision the relevant authorities had "deprived the provisions of Article 6 (1) of the Convention of all useful effect" and that there was therefore a breach of that Article (para. 45 of the *Hornsby* Judgement). In the Chamber's opinion the situation is similar in the present case, where the police have been passive despite the obligation on them to assist in the execution of the court decision. The inertia of the competent authorities thus involves a breach of the applicant's right to a determination of his civil rights within a "reasonable time" and has also deprived Article 6 (1) of all useful effect.

36. The Chamber therefore finds that there has been a violation of the applicant's rights under Article 6 (1) of the Convention.

4. Articles 13 and 14 of the Convention

37. During the proceedings it has also been suggested that the applicant has been the victim of a violation of his rights under Article 13 of the Convention, which guarantees the right to an "effective remedy" where a violation of the Convention occurs. This question was not pursued at the hearing

and in view of the conclusions it has reached in relation to the other Articles of the Convention referred to above, the Chamber finds it unnecessary to examine it further.

38. The applicant has also alleged that he was the victim of a violation of Article 14 of the Convention, which prohibits discrimination in relation to the enjoyment of Convention rights. This matter was also not pursued at the hearing and no evidence of the alleged discrimination was put forward. In these circumstances, having regard to the other findings it has made, the Chamber also finds it unnecessary to examine the case under Article 14.

VI. REMEDIES

39. Under Article XI paragraph 1 (b) of the Annex 6 Agreement the Chamber must address the question what steps shall be taken by the respondent Party to remedy the breaches of the Agreement which it has found. In the present case the Chamber considers it appropriate to order the respondent Party to take effective measures to restore to the applicant his possession of the house in question. It will also order the respondent Party to report to it before 3 February 1998 on the steps taken by it to comply with this order. The Chamber will also reserve to the applicant the right to apply to it before 3 March 1998 for any monetary relief or other redress he wishes to claim.

VII. CONCLUSIONS

40. For the above reasons the Chamber **decides** unanimously:

- 1. That the failure of the authorities of the respondent Party to enforce the court decision in the applicant's favour involves a violation by the respondent Party of the applicant's rights under Article 8 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;
- 2. That the aforesaid failure also involves a violation by the respondent Party of the applicant's rights under Article 1 of Protocol No. 1 to the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;
- 3. That the aforesaid failure also involves a breach by the respondent Party of the applicant's rights under Article 6 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;
- 4. To **order** the respondent Party to take effective measures to restore to the applicant possession of the house referred to in the relevant orders of the Court of First Instance in Banja Luka;
- 5. To **order** the respondent Party to report to it before 3 February 1998 on the steps taken by it to comply with the above order;
- 6. To **reserve** to the applicant the right to apply to it before 3 March 1998 for any monetary relief or other redress he wishes to claim.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber