DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

CASE No. CH/98/645

Nada BLAGOJEVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 15 April 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Leif BERG, 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 Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of undeclared nationality. She occupies an apartment in Teslić, Republika Srpska ("the apartment"). On 27 December 1991, the applicant entered into a rental agreement with the owner of the apartment. This contract was renewed by the parties on a number of occasions, the latest being on 31 December 1996 for a period of five years. This latest contract was certified by the Municipal Court in Teslić. On 17 June 1996, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Teslić ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") issued a decision concerning the apartment. This decision declared the applicant to be an illegal occupant of the apartment and ordered her to vacate it within three days under threat of forcible eviction. The applicant was served with this decision on an unknown date in April 1998.

2. The case raises issues principally under Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No.1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applicant introduced her application to the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") on 23 April 1998. On the same day, the Ombudsperson transmitted the application to the respondent Party for its observations on the admissibility and merits. She also indicated to the respondent Party that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Ombudsperson not to evict the applicant from her home until the Ombudsperson had had an opportunity to examine the application more thoroughly.

4. The application was referred to the Chamber by the Ombudsperson by a decision dated 25 May 1998 taken under Article V(5) of the Agreement. The application was registered at the Chamber on 26 May 1998.

5. On 27 May 1998, the President of the Chamber ordered, pursuant to Rule 36(2), the respondent Party to refrain from evicting the applicant from the apartment. The order stated that it would remain in force until the Chamber has given its final decision in the case, unless it was withdrawn by the Chamber before then.

6. On 10 June 1998 the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 19 July 1998.

7. No observations were received from the respondent Party.

8. On 19 October 1998, the applicant was requested to submit a written statement and any claim for compensation or other relief which she wished to make. This statement, which did not contain a claim for compensation, was dated 2 December 1998 and received by the Chamber on 23 December 1998, outside the time-limit laid down by the Chamber's Order concerning the organisation of the proceedings in the case.

9. On 20 January 1999, the applicant's written statement was transmitted to the agent of the respondent Party. It was also sent to the Ombudsperson, who was invited to submit any written observations which she wished to make on the case. On 2 February 1999, the Ombudsperson informed the Chamber that she would not intervene in the proceedings before the Chamber.

10. The First Panel deliberated upon the admissibility and merits of the application on 9 February 1999 and 13 March 1999. On 15 April 1999, the First Panel adopted its decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

11. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

12. The applicant occupies an apartment located at Karađorđeva lamela No. E3, Teslić, Republika Srpska. On 27 December 1991, she entered into a contract with the owner of the apartment, a Ms. H.H., a private individual who had purchased the apartment. The parties entered into further contracts concerning the apartment on 15 May 1992, 15 February 1994 and 31 December 1996. The main terms of the contract of 31 December 1996 are that it is valid for a period of five years. A monthly rent of KM 20 is payable. The contract provides for early termination by the landlord in the event of non-payment of the rent for three consecutive months or damage caused to the apartment by the applicant. At the end of the contract term, if the applicant continues to occupy the apartment with the consent of the landlord, the agreement is deemed to be continued. This latest contract was verified by the Municipal Court in Teslić.

13. On 17 June 1996, the Commission issued a decision declaring the applicant to be an illegal occupant of the apartment under Article 10 of the Law on the Use of Abandoned Property (see paragraph 21 below). This decision ordered the applicant to vacate the apartment within three days of the date of delivery, under threat of forcible eviction. The applicant received this decision on an unspecified date in April 1998. She appealed to the Ministry on 13 April 1998, on the basis that she could not be considered to be an illegal occupant of the apartment as she had entered into a contract with the owner which entitled her to use it. In addition, she stated that she had occupied the apartment since before 6 April 1992. Accordingly, she could not be considered to be an illegal occupant. The applicant has not received any response to this appeal to date.

14. On 8 April 1998, the Commission issued a conclusion ("*Zaključak*"), scheduling the eviction of the applicant for 24 April 1998. On 22 April 1998, the applicant appealed to the Ministry against this decision. She has not received any reply to this appeal to date. The applicant has not been evicted from the apartment.

B. Relevant legislation

1. Constitution of the Republika Srpska

15. Article 56 of the Constitution of the Republika Srpska ("the Constitution") reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated against payment of equal compensation."

16. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

> "During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

2. The Law on the Use of Abandoned Property

17. The Law on the Use of Abandoned Property ("*Službeni Glasnik Republike Srpske*", "SG RS", No. 3/96) ("the Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the *Službeni Glasnik* on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the Law, insofar as they are relevant to the present case, are summarised below.

18. Articles 2 and 11 of the Law define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the record of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

19. Article 3 of the Law states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

20. Article 10 of the Law states that if a person enters into possession of abandoned property without a decision of the appropriate commission, that commission shall issue a decision ordering the person to leave the property concerned. An appeal may be lodged to the Ministry by the recipient within three days of its receipt. The lodging of an appeal to the Ministry does not suspend the execution of the decision.

21. Article 15 of the Law reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
>
> 1. to the families of killed soldiers
> 2. war invalids with injuries in categories I-V
> 3. war invalids with injuries in categories V-X
> 4. qualified workers of whom there is a lack in the Republika Srpska."

22. Article 15A of the Law (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

23. The Law also provides, in Article 17, for the accommodation of refugees and displaced persons in properties still occupied, if there is insufficient abandoned property available to accommodate them. This may be done in cases where the current occupiers of a property have over 15 square metres of space per household member.

24. Articles 39 and 40 of the Law set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

25. Article 49 of the Law reads as follows:

> "Lease agreements as well as agreements relating to the use and protection of abandoned apartments and other property entered into after 6 April 1992 between an owner or user who has left the territory of the Republika Srpska and other persons are null and void."

26. Article 53 of the Law reads as follows:

> "The owners or users of real and other property situated in the Republika Srpska who left the territory of the Republika Srpska after 6 April 1992 cannot deal with their property through an authorised person.
>
> Contracts or agreements referred to in the above paragraph relating to the disposal of real and other property concluded after the entry into force of this Law are invalid. In such situations, certification of the signatures of parties to such a contract may not be carried out by the responsible authorities.
>
> (...)"

27. Article 56 of the Law states that the procedure of allocation of abandoned property is to be carried out in accordance with the provisions of the Law on Administrative Procedures (*Službeni List* of the Socialist Federative Republic of Yugoslavia, "SL SFRY", No. 47/86), if not otherwise specified in the Law.

28. Under Article 62, the Law is to enter into force on the day after its publication in the Official Herald of the Republika Srpska.

3. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

29. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property (SG RS No. 38/98) establishes a detailed framework for persons to regain possession of property considered to be abandoned under the Law. It puts the Law on the Use of Abandoned Property out of force.

4. The Law on Administrative Procedures

30. The Law on Administrative Procedures was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

31. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Procedures.

32. Article 8 reads as follows:

> "(1) Before making a decision a party has to be given the opportunity to express his or her opinion on all the facts and circumstances that are of importance in making an administrative decision.
>
> (2) A decision may be made without hearing the opinion of a party only if provided by law."

33. Article 135(1) requires all relevant facts to be ascertained prior to the making of a decision. Under Article 247, a decision on an appeal must be made within two months of the lodging of such appeal.

5. The Law on Administrative Disputes

34. Under Articles 3 and 18 of the Law on Administrative Disputes (SG RS No. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25(1), if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued within 7 days of the lodging of such a reminder, the applicant may initiate an administrative dispute.

6. The Decision on Cessation of State of War and Immediate Threat of War

35. The Decision on Cessation of State of War and Immediate Threat of War (SG RS No. 15/96) was adopted on 19 June 1996 and entered into force on 8 July 1996.

7. The Decree on Court Taxation

36. Tariff 23 of the Decree on Court Taxation (SG RS No. 7/97), issued on 2 April 1997, prescribes a fee of YUD 1,000 for the lodging of an administrative dispute.

IV. COMPLAINTS

37. The applicant does not make any specific complaints of any violations of her human rights as protected by the Agreement. She complains generally of the decision of the Commission declaring her to be an illegal occupant of the apartment and of its conclusion ordering her eviction from it.

V. SUBMISSIONS OF THE PARTIES

38. The respondent Party has not made any submissions regarding the application.

39. The applicant maintains her complaint and also states that there has been no decision on the appeal which she filed to the Ministry.

VI. OPINION OF THE CHAMBER

A. Admissibility

40. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

41. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. The Chamber notes that the respondent Party has not suggested that there is any "effective remedy" available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

42. The applicant lodged an appeal to the Ministry against the decision of the Commission of 17 June 1998. However, the lodging of such an appeal does not have any suspensive effect.

43. The Chamber notes that there has been no decision on this appeal to date. It would have been open to the applicant to commence administrative proceedings before the Supreme Court of the Republika Srpska in respect of the failure of the Ministry to issue a decision on her appeal. Before doing so, she would have had to have lodged a reminder with the Ministry, which she has not done. The Ministry would then have a seven day period in which to issue its decision. The applicant could then have initiated an administrative dispute before the Supreme Court. However, the fee required for the initiation of an administrative dispute is YUD 1,000, which is approximately KM 100 at current rates.

44. As the Chamber noted in the case of *Onić v. Federation of Bosnia and Herzegovina* (Case No. CH/97/58, decision of 12 January 1999, paragraph 38), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11) the remedies available to an applicant must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. In addition, when applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

45. The Chamber considers that the non-suspensive effect of the appeal lodged by the applicant against the decision of the Ministry of 17 June 1996 raises a question of whether there is an effective remedy available to the applicant. In addition, the size of the fee she would have had to pay to initiate an administrative dispute before the Supreme Court raises an issue in this regard. These factors, together with the fact that the respondent Party did not seek to argue that there was any effective remedy available to the applicant, leads the Chamber to conclude that no such remedy is in fact available to her.

46. The Chamber does not consider that any of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

47. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

48. The applicant did not specifically allege a violation of her rights as protected by Article 8 of the Convention. In her decision referring the case to the Chamber (see paragraphs 3 and 4 above) under Article V(5) of the Agreement, the Ombudsperson stated that the case raised an issue under Article 8 of the Agreement. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. Article 8 reads as follows:

> "Everyone has the right to respect for ..., his home ...
>
> 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."

49. The Chamber notes that the applicant has lived in the apartment since December 1991. It is therefore clear that the apartment is to be considered as her "home" for the purposes of Article 8 of the Convention. The Chamber has already held that the threatened eviction of a person from their home constitutes an "interference by a public authority" with the exercise of the right to respect for home (*Turčinović v. Federation of Bosnia and Herzegovina*, Case No. CH/96/31, Decision of 11 March 1998 Decisions and Reports 1998, paragraph 20). The decision of the Commission of 17 June 1996 ordering the applicant's eviction from the apartment therefore constitutes an "interference by a public authority" with her right to respect for her home. This decision has not been revoked to date and accordingly the interference is ongoing.

50. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and "was necessary in a democratic society" (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

51. The Chamber notes that Article 2 of the Law requires a property to be entered into the minutes of abandoned property before it can be allocated to a person within the categories set out in Article 15. The respondent Party has not provided any evidence that any such entry was made in respect of the apartment in the present case. Nor is there any other indication available to the Chamber that such an entry was made. Therefore, the requirements of the Law were not adhered to in the present case. Accordingly, the decision of the Commission of 17 June 1996 cannot be considered to have been "in accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention.

52. Even if the decision of the Commission of 17 June 1996 could be considered to be "in accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention, it must also have pursued a legitimate aim and be "necessary in a democratic society". Even if the aim of the law can be considered to be a legitimate one, the means adopted to achieve those aims are not proportional. The aim of the Law is the provision of accommodation for refugees and displaced persons on the territory of the Republika Srpska. This may be considered to be a legitimate aim, given the large number of such persons whom the Republika Srpska is required to accommodate. However, the retrospective nullification by Article 49 of the Law (see paragraph 25 above) of the applicant's contracts (see paragraph 12 above), which she had entered into in good faith, and in

accordance with the terms of which she has occupied the apartment since December 1991, cannot be considered to be proportional to that aim.

53. Accordingly, the Chamber considers that there has been a violation of the applicant's rights as guaranteed by Article 8 of the Convention.

2. Articles 6 and 13 of, and Article 1 of Protocol No. 1 to, the Convention

54. In view of its findings under Article 8 of the Convention, the Chamber does not consider it necessary to examine the case under Articles 6 and 13 of, and Article 1 of Protocol No. 1 to, the Convention.

VII. REMEDIES

55. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

56. The Chamber notes that in accordance with its order for proceedings in the case the applicant was afforded the possibility of claiming compensation. She did not do so, but requests that she be allowed to remain in the apartment.

57. The Chamber notes that the Law has been put out of force by the adoption of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. However, this does not of itself remove the threat to the applicant that she would be evicted, as the new Law does not put out of force decisions ordering evictions under the Law.

58. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decision of the Commission ordering the eviction of the applicant from the apartment in question and to take no further steps to disturb the applicant's occupancy of the apartment in accordance with the terms of her contract with the owner.

VIII. CONCLUSION

59. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Teslić of 17 June 1996 declaring the applicant an illegal occupant and ordering her, under threat of eviction, to vacate the apartment she currently occupies, constitutes a violation of her right to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. unanimously, that it is not necessary to rule on the application under Articles 6 and 13 of, and Article 1 of Protocol No. 1 to, the Convention;

4. unanimously, to order the Republika Srpska to revoke the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Teslić of 17 June 1996 and to allow the applicant to enjoy undisturbed occupancy of the apartment in accordance with the terms of her contract with the owner of 31 December 1996; and

5. unanimously, to order the Republika Srpska to report to it by 11 September 1999 on the steps taken by it to comply with the above order.

(signed)	(signed)
Leif BERG	Michèle PICARD
Registrar of the Chamber	President of the First Panel