



DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 10 September 1999

CASE No. CH/98/764

Milan KALIK

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 July 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. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Anders MÅNSSON, 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. He occupies a house located at Srđe Slopogleđe 40, Banja Luka, Republika Srpska ("the house"). On 11 August 1997, the applicant entered into an agreement with the owner of the house, in which he had lived since 1993. This agreement, in the form of an authorisation, entitles the applicant to occupy the house until the agreement is terminated. In addition, the agreement will terminate if a law is passed by the State with such effect. The agreement was certified on the same day by the Municipality of (Bosanski) Petrovac in the Federation of Bosnia and Herzegovina. On 13 July 1998 officials of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") came to the house with members of the police and attempted to evict the applicant and his family. This attempt was unsuccessful and the officials said they would return to evict the applicant again. The applicant still occupies the house.

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 application was introduced on 13 July 1998 and registered on the same day. The applicant requested that the Chamber order the respondent Party as a provisional measure to take all necessary steps to prevent the applicant's eviction from the house.

4. On 14 July 1998, the President of the Chamber ordered, pursuant to Rule 36(2), the respondent Party to refrain from evicting the applicant from the house. 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.

5. On 4 August 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 4 September 1998.

6. No observations were received from the respondent Party.

7. On 22 January 1999, the applicant was requested to submit a written statement and any claim for compensation or other relief which he wished to make. This statement, which did not contain a claim for compensation, was received by the Chamber on 12 February 1999.

8. On 23 February 1999, the applicant's written statement was transmitted to the Agent of the respondent Party for information.

9. The First Panel deliberated upon the admissibility and merits of the application and adopted its decision on 7 July 1999.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

10. 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.

11. The applicant, together with his family, occupies a house located at Srđe Slopogleđe 40, Banja Luka, Republika Srpska. On 11 August 1997, he entered into an agreement with the owner of the house. The main terms of this agreement, which is in the form of an authorisation, are that the applicant is required to maintain the house in good condition. The authorisation is valid until

terminated or until such time as a law is passed by the State which renders it invalid. The agreement was certified on the same day by the Municipality of (Bosanski) Petrovac in the Federation of Bosnia and Herzegovina.

12. On 13 July 1998 officials from the Commission came to the house with members of the police and attempted to evict him. They did not give him a copy of any decision ordering his eviction, even after being specifically requested to do so. The eviction was not successful. The officials stated that they would return later to evict the applicant. The applicant still occupies the house.

B. Relevant legislation

1. The Law on the Use of Abandoned Property

13. The Law on the Use of Abandoned Property ("Official Herald of the Republika Srpska", "OG 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 Official Herald 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.

14. 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.

15. 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.

16. 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.

17. 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."

18. 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.

19. 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."

20. 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.

(...)”

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

21. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property (OG 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.

IV. COMPLAINTS

22. The applicant claims that his right to a fair hearing in the determination of his civil rights and obligations, as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) has been violated. He also claims that his rights as protected by Article 8 of the Convention (right to respect for, *inter alia*, home) and by Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions) have been violated.

V. SUBMISSIONS OF THE PARTIES

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

24. The applicant maintains his complaint and requests that he be allowed to remain in the house.

VI. OPINION OF THE CHAMBER

A. Admissibility

25. 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.

26. 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.

27. As the Chamber noted in the case of *Onić v. The 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.

28. The Chamber notes that the applicant has never received any decision of the Commission or other authority concerning his occupation of the house. He was only orally informed that he would be evicted.

29. The Chamber notes that the Law provides for appeals to be made against decisions declaring persons to be illegal occupants of property (see paragraph 16 above). However, in this case the applicant never received any such decision. Accordingly, he could not avail of this right of appeal. Accordingly, the Chamber does not consider that there is any domestic remedy available to the applicant which he should be required to exhaust.

30. 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

31. 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

32. The applicant claimed to be a victim of a violation of his right to respect for his home as guaranteed by Article 8 of the Agreement. Article 8 reads as follows:

“1. Everyone has the right to respect for ... his home ...

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.”

33. The Chamber notes that the applicant has lived in the house since 1993. It is therefore clear that it is to be considered as his “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 (*Blagojević v. The Republika Srpska*, Case No. CH/98/645, Decision of 11 June 1999, paragraph 49). The attempts of the Commission to evict the applicant from the house therefore constitute an interference by the respondent Party with the applicant’s right to respect for his home.

34. 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.

35. 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 house in the present case. Nor is there any other indication available to the Chamber that such an entry was made. In addition, the applicant was never given any decision of the Commission issued under Article 10 of the Law. Accordingly, the attempts of the Commission to evict the applicant from the house cannot be considered to have been “in accordance with the law” within the meaning of paragraph 2 of Article 8 of the Convention.

36. 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

37. 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

38. 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.

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

40. 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. This would appear to remove the threat to the applicant that he would be evicted, although in view of the actions of the Commission previously, it cannot be ruled out that further illegal attempts to evict him might be made.

41. The Chamber therefore considers it appropriate to order the respondent Party to take all necessary steps to ensure that the Commission will take no further steps to disturb the applicant in his possession of his house.

VIII. CONCLUSION

42. For the above reasons, the Chamber decides:

1. unanimously, to declare the application admissible;
2. unanimously, that the attempts of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka to evict the applicant from the house concerned in the application constitute a violation of his right to respect for his 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 ensure that the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka allows the applicant to enjoy undisturbed occupancy of the house concerned in the application in accordance with the terms of his agreement; and
5. unanimously, to order the Republika Srpska to report to it by 10 December 1999 on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel