



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 September 1999)

Case no. CH/98/1495

Uroš ROSIĆ

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 is the holder of an occupancy right over an apartment in Prijedor, Republika Srpska ("the apartment"). On 5 November 1992 he was granted a permanent occupancy right over the apartment by the holder of the allocation right. On 31 July 1997 and again on 8 September 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry"), declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within three days under threat of forcible eviction. On 29 August 1997 the applicant appealed against the first decision. There has been no decision on this appeal to date. The applicant still occupies the apartment.

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

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applicant introduced his application to the Chamber on 20 November 1998. It was registered under the above case number on the same day.

4. The applicant requested that the Chamber order the respondent Party as a provisional measure to take all necessary steps to prevent him being evicted from the apartment.

5. On 24 November 1998 the President of the Chamber ordered, pursuant to Rule 36(2) of the Rules of Procedure, 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 the same day, pursuant to Rule 49(3)(b) of the Rules of Procedure, the application was transmitted 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 24 November 1998.

7. On 14 December 1998 the Chamber received observations on the case from the Commission. These were accepted by the Chamber as the observations of the respondent Party as the respondent Party at that time did not have an Agent to represent it before the Chamber.

8. On 5 February 1999 the observations of the respondent Party were transmitted to the applicant for his further observations. He was also invited to submit any claim for compensation he wished to make. On 25 February 1999, the applicant's written statement, which did not include a claim for compensation, were received.

9. On 5 February 1999 the Chamber received a submission from the person who had been allocated the apartment concerned in the application by the Commission. This person requested that the Chamber withdraw the order for provisional measures made in the case. The First Panel of the Chamber considered this submission at its session in May 1999 and decided not to withdraw the provisional measure issued in the case. The author of the submission and the parties to the case were informed of this decision on 24 May 1999.

10. On 24 May 1999 the applicant's written statement was transmitted to the Agent of the respondent Party for information.

11. The First Panel deliberated upon the admissibility and merits of the application on 8 June 1999. On 7 July 1999 the First Panel adopted its decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

12. 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.

13. The applicant is the holder of the occupancy right over an apartment located at Miloša Obrenovića F-12, Prijedor, Republika Srpska. On 5 November 1992, he was granted the occupancy right by the holder of the allocation right, the Agricultural and Food Processing School in Prijedor ("the School"). The applicant entered into a contract with the relevant housing company on 21 December 1992.

14. On 31 July 1997 the Commission issued a decision under Article 10 of the Law on the Use of Abandoned Property (see paragraph 20 below) declaring the applicant to be an illegal occupant of the apartment and ordering him to vacate it within three days under threat of forcible eviction. He appealed against this decision on 29 August 1997. He has not received any reply to this appeal to date. On 8 September 1998 the Commission issued a further decision in the same terms as that of 31 July 1997. The eviction of the applicant was scheduled for 19 November 1998 but was not executed.

15. On 2 September 1997 the applicant entered into an agreement with the School and with the Economic and Catering School in Prijedor. The applicant, since being allocated the right to occupy the apartment by the School, had ceased his employment with it and commenced employment with the Economic and Catering School. This contract states that the Economic and Catering School will seek to allocate another apartment to the applicant for his use. In this event, the apartment concerned would be returned to the school. Alternatively, the Economic School will, on an unspecified future date, transfer the allocation right over another apartment to the School.

16. The applicant still occupies the apartment.

B. Relevant legislation

1. The Law on the Use of Abandoned Property

17. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96; "the old law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the Official Gazette 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 old law, insofar as they are relevant to the present case, are summarised below.

18. Articles 2 and 11 of the old law define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the register 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 old 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 old 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 old 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 old 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.

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

23. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property (OG RS no. 38/98; “the new law”) establishes a detailed framework for persons to regain possession of property considered to be abandoned under the law. It puts the old law out of force.

24. Article 2 was amended by the Law on Amendments to the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, which was contained in a decision of the High Representative of 13 April 1999. The amended text reads as follows

“All administrative, judicial, and other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.

Any occupancy right or contract on use made between 1 April 1992 and 19 December 1998 is cancelled. A person who occupies an apartment on the basis of an occupancy right which is cancelled under this Article shall be considered a temporary user for the purposes of this Law.

A temporary user referred to in the previous paragraph who does not have other accommodation available to him/her has a right to a new contract for use of the apartment, if the occupancy right of the former occupant terminates under Article 16 of this Law or if a claim of the former occupant to repossess the apartment is rejected by the competent authority in accordance with this Law.

An occupancy right holder to an apartment as of 1 April 1992, who agreed to the cancellation of his/her occupancy right in exchange for another occupancy right which is cancelled under this Article, is entitled to make a claim for repossession of his/her former apartment in accordance with this Law.”

25. Article 16 of the new law reads as follows:

“A claim for repossession of an apartment may be filed within six months from the date of entry into force of this law.

If the occupancy right holder does not file a claim within the time-limit referred to in the previous paragraph, his or her occupancy right shall be cancelled.”

3. The Law on General Administrative Procedures

26. The Law on General Administrative Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) 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.

27. 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 dealt with under the Law on General Administrative Procedures.

28. 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.”

29. 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.

4. The Law on Administrative Disputes

30. Under Articles 3 and 18 of the Law on Administrative Disputes (OG 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.

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

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

6. The Decree on Court Taxation

32. Tariff 23 of the Decree on Court Taxation (OG 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

33. The applicant does not make any specific complaints of any violations of his human rights as protected by the Agreement. He complains that his right to occupy his apartment has been violated.

V. SUBMISSIONS OF THE PARTIES

34. The Commission, which submitted observations on behalf of the respondent Party (see paragraph 7 above) claims that the apartment is clearly abandoned property as the previous occupant left Republika Srpska. It claims that the applicant is an illegal occupant of the apartment and that the decision of the Commission ordering the applicant to vacate the apartment under threat of forcible eviction is designed to allow displaced persons to enter into possession of the property, in accordance with the provisions of the old Law.

35. The applicant states that the apartment cannot be considered to be abandoned property as he was validly allocated it by a decision of the holder of the allocation right over it. He claims that the Law on the Use of Abandoned Property was not in accordance with international law, hence the fact that it was replaced by the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (see paragraphs 23–25 above).

VI. OPINION OF THE CHAMBER

A. Admissibility

36. 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.

37. 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.

38. The applicant lodged an appeal to the Ministry against the decision of the Commission of 31 July 1997. However, the lodging of such an appeal does not have any suspensive effect.

39. 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 his appeal. Before doing so, he would have had to have lodged a reminder with the Ministry, which he 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 90 at current rates.

40. As the Chamber noted in the case of *Onić* (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), 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.

41. The Chamber considers that the non-suspensive effect of the appeal lodged by the applicant against the decision of the Ministry of 31 July 1997 raises a question of whether there is an effective remedy available to the applicant. In addition, the size of the fee he 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 him.

42. 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

43. 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

44. The applicant did not specifically allege a violation of his rights as protected by Article 8 of the Convention. The Chamber considers *proprio motu* that the case raises an issue under this provision. 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.”

45. The Chamber notes that the applicant has lived in the apartment since November 1992, when he was allocated the occupancy right over it by the School. It is therefore clear that the house is to be considered as his “home” for the purposes of Article 8 of the Convention.

46. 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 (case no. CH/96/31, *Turčinović*, decision on the merits delivered on 11 March 1998, paragraph 20, Decisions and Reports 1998). The decisions of the Commission declaring the applicant an illegal occupant of the apartment and ordering him to vacate it within three days under threat of forcible eviction therefore constitutes an “interference by a public authority” with his right to respect for his home.

47. 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.

48. The Chamber notes that the decision of the Commission dated 31 July 1997 ordering the applicant to vacate the apartment within three days under threat of forcible eviction was based on a record made by the Prijedor Municipal Secretariat for Urbanism and Housing-Communal Affairs (“the Secretariat”) dated 29 October 1996. This record noted the fact that the previous applicant had left the apartment on 20 October 1992. It also notes the fact that the applicant currently occupies the apartment “in accordance with the normal procedure for dealing with abandoned property”.

49. After the previous occupancy right holder left the Republika Srpska, the apartment was validly allocated to the applicant by the holder of the allocation right over it. This occurred on 5 November 1992, over three years before the date of entry into force of the old Law. Therefore, the apartment was not abandoned property when the Secretariat made its record on 29 October 1996. Articles 2 and 11 of the old Law defines abandoned property as real and personal property which has been abandoned by its owner or the holder of the occupancy right over it, and which is entered in the register of abandoned property.

50. On the date of entry into force of the old Law, the holder of the occupancy right over the apartment was the applicant, who resided in it at that time. It cannot therefore be considered to have been abandoned by him and accordingly the apartment cannot be considered to have been “abandoned property” either within the meaning of the old Law or in an autonomous sense.

51. Accordingly the decisions of the Commission of 31 July 1997 and 8 September 1998 did not comply with the requirements of the old Law and therefore the decisions of the Commission ordering the applicant to vacate 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.

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

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

53. The applicant did not specifically allege a violation of his rights as protected by Article 1 of Protocol No. 1 to the Convention. The Chamber considers *proprio motu* that the case raises an issue under this provision. Article 1 of Protocol No. 1 reads 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 by 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."

54. The Chamber must first consider whether the applicant's occupancy right over the apartment constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. The Chamber notes that the applicant was granted a permanent occupancy right over the apartment by the School on 5 November 1992. However, Article 2 of the new Law, as amended, (see paragraph 24 above) cancels all such occupancy rights and states that they shall be considered to be of a temporary nature.

55. If certain conditions as set out in the fourth paragraph of Article 2 are fulfilled, the applicant is entitled to a new contract for the use of the apartment (e.g. if the previous holder of the occupancy right does not seek to regain possession of the apartment and his or her occupancy right is accordingly terminated by Article 16 of the new Law). The new Law does not expressly state that the applicant is entitled to a new occupancy right, although as a person is not entitled to a contract for the use of an apartment unless he or she holds an occupancy right over it, it may be assumed that this is the intended meaning of the provision.

56. Therefore, under domestic law, the applicant possesses a temporary occupancy right over the apartment. The applicant has, however, the possibility to be granted a new contract for the use of the apartment. However, this will only be the case if he does not have alternative accommodation available to him. The applicant has stated that he does not have such accommodation available to him. The person who made a submission to the Chamber regarding the case contends that the applicant has alternative accommodation available to him at his father's house in Omarska, near Prijedor. The applicant denies this. The Chamber does not consider it necessary to decide upon this issue for the purposes of the present case. It considers that at present the applicant has a right to apply for his current temporary occupancy right over the apartment to be converted into a permanent one, in accordance with Article 2 of the new Law. The question of whether the applicant has alternative accommodation available to him is a factual question for the appropriate national authorities to determine in the event that the applicant applies for his occupancy right to effectively be converted into a permanent one.

57. Accordingly, if the previous holder of the occupancy right over the apartment does not seek to regain possession of the apartment within the time-limit set under the new Law, the applicant is in a position to obtain a permanent occupancy right.

58. The Chamber does not consider that the agreement that the applicant entered into on 2 September 1997 regarding the apartment (see paragraph 15 above) alters this state of affairs, as it relates to a possible future exchange of the apartment and does not of itself affect the right of the applicant to occupy the apartment.

59. The Chamber considers therefore that the applicant possesses a temporary occupancy right and is entitled to obtain a permanent occupancy right over the apartment, in accordance with the terms of Articles 2(3) and 16 of the new Law.

60. The Chamber has previously held that a permanent occupancy right constitutes a “possession” (see, *inter alia*, the above-mentioned decision in *Onić*, paragraph 55). The Chamber has also noted that the concept of “possessions” is to be understood in a broader sense and includes various assets. It also noted that the European Court of Human Rights has given a wide interpretation to the concept of possessions, holding that the notion covers a wide variety of interests with an economic value (case no. CH/97/93, *Matić*, decision on admissibility and merits delivered on 11 June 1999, paragraphs 73-74, Decisions January-July 1999).

61. Accordingly, the Chamber considers that the applicant’s temporary occupancy right constitutes a “possession” within the meaning of Article 1 of Protocol No. 1, in view of the fact that there is a possibility that he may be eligible to receive a permanent one, if he satisfies the conditions set out in Article 2 of the Law.

62. Having established that the applicant’s right to occupy the house constitutes his possession, the Chamber next finds that the decision of the Commission declaring the applicant to be an illegal occupant of the apartment and ordering him to vacate it interfered with his right to peaceful enjoyment of that possession within the meaning of the first sentence of Article 1 of Protocol No. 1.

63. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

64. The Chamber notes that the decision ordering the applicant’s eviction from the apartment was not in accordance with the old Law (see paragraph 51 above). Accordingly, the requirements of national law have not been adhered to and therefore the interference was not “subject to conditions provided for by law” as required by Article 1 of Protocol No. 1 to the Convention.

65. Accordingly, there has been a violation of the applicant’s rights as protected by Article 1 of Protocol No. 1 to the Convention.

VII. REMEDIES

66. 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.

67. The Chamber notes that in accordance with its order for proceedings in the case the applicant was afforded the possibility of claiming compensation or other relief. He did not do so, but requests that the eviction procedure against him be terminated and that he be allowed to remain in the apartment.

68. The Chamber notes that the old Law has been put out of force by the adoption of the new Law. However, this does not of itself remove the threat to the applicant that he would be evicted, as the new Law does not put out of force decisions ordering evictions under the old Law.

69. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decisions of the Commission of 31 July 1997 and 8 September 1998 ordering the eviction of the applicant from the apartment in question and to allow the applicant to remain in possession of the apartment, subject to the terms of the new Law.

VIII. CONCLUSION

70. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the decisions of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Prijedor of 31 July 1997 and 8 September 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the apartment he currently occupies 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 the decisions of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Prijedor of 31 July 1997 and 8 September 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the apartment he currently occupies, constitute a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, to order the Republika Srpska to take all necessary steps to revoke the decisions of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Prijedor of 31 July 1997 and 8 September 1998 and to allow the applicant to enjoy undisturbed occupancy of the apartment in accordance with the terms of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, as amended; 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