



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 6 July 2000)

Case no. CH/98/774

Sead KARAMEHMEDOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 June 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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 Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The application deals with the attempts of the applicant to regain possession of a part of an apartment in Sarajevo, over which he previously held an occupancy right. It raises issues under Articles 6 and 8 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 15 July 1998 and registered on the same day. The applicant is represented by Mr. Seid Hadžiselimović, a lawyer practising in Sarajevo.

3. At the outset, the applicant requested that the Chamber issue a provisional measure to enable him to swiftly move into the apartment in question and in the meantime to secure his accommodation needs until a final solution to his housing situation is found. The Chamber rejected this request on 12 November 1998.

4. On 29 January 1999 the application was transmitted to the Federation of Bosnia and Herzegovina under Article 6 paragraph 1 of the Convention. On the same day, the applicant was requested to provide further information regarding the domestic proceedings in the case. The applicant replied on 18 February 1999 and the respondent Party on 26 March 1999.

5. Further submissions were received from the applicant on 14 October 1998, on 29 April, 4 May, 25 June, 2 and 19 July, and 19 October 1999, and on 7 February and 15 May 2000.

6. The Chamber considered the application on 12 November 1998 and on 13 May and 7 June 2000. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

7. The applicant held an occupancy right over an apartment at Ulica Džemala Bijedića 242 in Ilidža. After his divorce, his ex-wife obtained the occupancy right over the apartment by virtue of a court decision of 2 October 1991. The applicant had the right to use part of the premises until other accommodation could be found for him according to Article 20 paragraph 1 in conjunction with Article 7 paragraph 3 of the Law on Housing Relations (see paragraph 15 below).

8. On 18 September 1995 the applicant and his ex-wife had to leave the apartment due to the hostilities in the area. After the conclusion of the General Framework Agreement and the integration of Ilidža into the territory of the Federation of Bosnia and Herzegovina the applicant's ex-wife returned to the apartment, but forcibly prevented the applicant from moving into it thereafter.

9. On 26 June 1996 the applicant initiated proceedings before the Municipal Court II in Sarajevo against his ex-wife with a view to repossess the part of the apartment in which he had already lived before the war. On 8 April 1997 the court decided in favour of the applicant and ordered his ex-wife to allow him to use the part in question until his housing needs were otherwise met.

10. On 19 June 1997 the applicant's ex-wife appealed against the judgment of the Municipal Court to the Cantonal Court in Sarajevo. On 6 October 1997 the Cantonal Court quashed the appealed judgment as being seriously flawed. The Cantonal Court reasoned that the Municipal Court had not correctly established the facts and had misapplied the law and, accordingly, ordered that the case be returned to the latter court for reconsideration.

11. According to the applicant, at least 12 Municipal Court hearings were scheduled, but no decision was taken. Apparently, the hearings were either not attended by the defendant or they were postponed due to "lack of evidence". The proceedings before the Municipal Court are still pending to date.

B. Relevant domestic law

12. Article 10 of the Law on Civil Procedure (Official Gazette of the Federation of Bosnia and Herzegovina no. 42/98) provides:

“The court is obliged to ensure that the proceedings are conducted without delay ... and not to allow any abuse of the rights attributed to the parties in the proceedings.”

13. Article 105 paragraph 1 of the Law on Civil Procedure reads:

“The court may postpone a hearing if it is necessary in order to obtain evidence or for other justified reasons.”

14. Article 20 paragraph 1 of the Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 14/84, 12/87 and 36/89) provides:

“The divorced party, whose occupancy right ceased by virtue of a court decision, is obliged to leave the apartment ... as soon as his or her accommodation is secured otherwise.”

15. Article 7 paragraph 3 of the Law on Housing Relation provides:

“A person who requests the dislodging is obliged to secure an appropriate apartment or other alternative accommodation.”

IV. COMPLAINTS

16. The applicant complains that the court proceedings in his case have been pending for an unreasonable time, and that the lawyer of his ex-wife has influenced the judges at the Municipal and Cantonal Court to act in favour of his client. The applicant also states that he is in a desperate position since he has no income and is in a bad state of health. He claims that he is not able to afford his current alternative accommodation. The application raises issues under Articles 6 and 8 of the Convention.

V. SUBMISSIONS OF THE PARTIES**A. The respondent Party**

17. The Federation of Bosnia and Herzegovina states that it is not able to recognise what act could have violated any rights of the applicant as provided in the Convention. It is also argued that the application is inadmissible because domestic remedies have not been exhausted. As to the merits, the Federation denies that the proceedings in the applicant's case have yet exceeded a reasonable length of time, asserting that in housing and property law matters a time of up to six years could be considered as reasonable for a court to determine a dispute such as the one in the present case.

B. The applicant

18. The applicant alleges that the Municipal Court has postponed various hearings without good cause, amongst other things due to the failure of the defendant to be present. He states that his case is not complex in nature and that the decisive facts are not in dispute. Moreover, the applicant asserts that the defendant's strategy is to stall a decision as long as possible and that the court tolerates it, contrary to the applicable provisions of the Law on Civil Procedure (see paragraph 12 above).

VI. OPINION OF THE CHAMBER

A. Admissibility

19. Before considering the case on the merits the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

20. The Federation argues that the applicant has not exhausted domestic remedies since there is not yet a final decision in his case.

21. The Chamber notes that the applicant claims that the determination of his dispute was not conducted within a reasonable time, whereas the respondent Party has argued that domestic remedies have not yet been exhausted. As it has not been demonstrated that there exists a possibility to remedy this complaint, the Federation's arguments must be rejected.

22. The Chamber concludes that there is no effective remedy at disposal for the purposes of Article VIII(2)(a) of the Agreement that the applicant could be required to exhaust.

23. As no other ground for declaring the application inadmissible has been established, the Chamber finds that it is admissible.

B. Merits

24. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 6 of the Convention

25. The Chamber will next consider the allegation that there has been a violation of Article 6 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time and by an impartial tribunal. The relevant parts of Article 6 paragraph 1 provide as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by an ... impartial tribunal ..."

(a) The length of the proceedings

26. The Chamber recalls that the applicant instituted civil proceedings on 26 June 1996 with a view to regain possession of part of the apartment in question. A judgment was issued by the Municipal Court on 8 April 1997. However, it was quashed by the Cantonal Court on 6 October 1997. Since that date, the proceedings have been pending before the Municipal Court, during which a great number of hearings have been scheduled, rescheduled and postponed.

27. The Chamber considers that the period of time to be considered started on 26 June 1996. As of June 2000, the proceedings have lasted for four years.

28. When assessing the reasonableness of the length of proceedings for the purpose of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case, the conduct of the applicant and the authorities and the matter at stake for the applicant (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

29. The issue underlying the present application is whether the applicant is entitled to use part of an apartment until his housing needs are otherwise met. The Chamber notes that the same issue was already decided by a court judgment of 2 October 1991. It is true that the Municipal Court has to

take into account the events occurring since that date and of their potential relevance to the case. Nonetheless, the Chamber does not consider it to be a case so complex in nature as to require the Municipal Court more than two and a half years to determine it.

30. The Chamber notes that there is no indication that the length of the proceedings can be attributed to the conduct of the applicant, nor has the respondent Party made an allegation to that effect.

31. The Chamber also considers that a swift determination of the case by the Municipal Court would have been of great importance to the applicant, who has lived at different places for the time of the pending proceedings and whose health is apparently in a bad condition. Having regard to the above, in particular the fact that the domestic court proceedings have been pending for four years, the Chamber finds that there has been a violation of the applicant's right to a hearing within a reasonable time within the meaning of Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

(b) The impartiality of the domestic courts

32. Concerning the applicant's particular allegation of a "special relationship" between the lawyer of the applicant's ex-wife and some of the judges of the courts of first and second instance, the Chamber finds that the applicant has not presented sufficient evidence to support that allegation. The Chamber does therefore not find it necessary to consider this question any further.

2. Article 8 of the Convention

33. The Chamber will next examine, *proprio motu*, if there has also been a violation of Article 8 of the Convention in that the applicant was prevented to enter his home because the proceedings in his case have not been determined within a reasonable time. The relevant parts of Article 8 of the Convention read 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 in accordance with the law
..."

34. The Chamber notes that the applicant has lived in the apartment in question until the dissolution of his marriage in 1991, and thereafter until such time as he was forced to leave. The Chamber has previously held that links that persons in similar situations as the applicant in the present case retain to their dwellings are sufficient for them to be considered as their "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/659 et al., *Pletilić and others*, decision on admissibility and merits delivered on 10 September 1999, paragraphs 165-166, Decisions August-December 1999). It is therefore clear that the apartment in question is to be considered as the applicant's home for the purposes of Article 8 of the Convention. The fact that the occupancy right over the apartment was conferred on his ex-wife by the decision of 2 October 1991 does not alter this finding since the applicant was entitled to continue living there by virtue of the same decision.

35. The Chamber notes that the applicant and his ex-wife were both forced to leave the apartment because of fear for their safety as a result of the hostilities. After the end of the war, the applicant's ex-wife returned to the apartment and prevented the applicant from entering it. Although this action clearly cannot be attributed to the respondent Party, the Chamber finds that there has been an interference with the applicant's right to respect for his home in that the court proceedings instituted by him on 26 June 1996 have not lead to a determination of his claim within a reasonable time (see above).

36. The European Court of Human Rights has previously held that there can be a positive obligation on a state to safeguard the enjoyment of this right towards an individual (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, paragraph 32). Taking this into account, the Chamber finds that the respondent Party is under an obligation to ensure that the civil proceedings in

the applicant's case are conducted with the necessary speed in order to effectively protect his right to respect for his home. The Chamber has already found that the proceedings initiated by the applicant have not been carried out within a reasonable time within the meaning of Article 6 of the Convention. Given that also the Law on Civil Procedure calls for a speedy resolution of the dispute, the Chamber cannot find that the interference was "in accordance with the law". It follows that it has not been justified under the terms of paragraph 2 of Article 8 of the Convention.

37. To conclude, the Chamber is of the opinion that there has also been a violation of the right of the applicant to respect for his home as guaranteed by Article 8 of the Convention. This violation is ongoing as the applicant's claim for repossession has been left undecided for an unreasonable period of time. The Federation of Bosnia and Herzegovina is responsible for this violation.

VII. REMEDIES

38. Under Article XI(b) of the Agreement the Chamber must next address the question what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found.

39. In the present case, the Chamber finds it appropriate to order the respondent Party to take all necessary steps in order to ensure that the applicant's case, currently pending before the Municipal Court in Sarajevo, is determined by that court in an expeditious manner.

VIII. CONCLUSIONS

40. For these reasons, the Chamber decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the failure of the Municipal Court to decide on the applicant's claim constitutes a violation of the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;
3. by 5 votes to 2, that the failure of the Municipal Court to decide on the applicant's claim within a reasonable time constitutes a violation of the applicant's right to respect for his home within the meaning of Article 8 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
4. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the Municipal Court in Sarajevo determines the applicant's pending case in an expeditious manner; and
5. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber, within one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel