



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 September 2000)

Case no. CH/98/1221

Ljiljana OKULIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 July 2000 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting 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 Articles VIII(2) and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina, to regain possession of an apartment located at Aleja Svetog Save no. 34 in Banja Luka, over which she holds the occupancy right. She lived in the apartment until 1996, when she vacated it in accordance with a decision of the municipality of Banja Luka. She was allocated another smaller apartment, located at Zmaj Jovine 14 in Banja Luka, which she occupied until April 2000. The applicant initiated various administrative and judicial proceedings to regain possession of the apartment located at Aleja Svetog Save, and on 4 April 2000 succeeded in doing so.
2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 13 October 1998 and registered on the same day.
4. The applicant requested that the Chamber order the Republika Srpska as a provisional measure to take all necessary steps to prevent her eviction from the apartment she occupied at the time, located at Zmaj Jovine 14. On 27 October 1998 this request was refused by the President of the Chamber.
5. On 7 June 1999 the applicant's renewed request that the Chamber order a provisional measure preventing her eviction was refused by the Second Panel of the Chamber.
6. On 16 June 1999 the application was transmitted to the respondent Party for its observations on its admissibility and merits, which were received on 29 July 1999.
7. The applicant's further observations, including a claim for compensation, were received on 28 October 1999 and transmitted to the respondent Party on 12 November 1999, whose observations in reply were received on 28 December 1999.
8. On 21 March 2000 the applicant again requested the Chamber to order the respondent Party as a provisional measure to take all necessary steps to prevent her eviction from the apartment she occupied at the time. This request was refused by the Chamber on 6 April 2000. On 30 May 2000 the applicant submitted a further claim for compensation.
9. On 7 March, 12 May and 7 June 2000 the Chamber considered the admissibility and merits of the application. On 6 July 2000 it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

10. The facts of the case as they appear from the submissions of the Parties and the documents in the case-file may be summarised as follows.
11. On 15 December 1982 the relevant organ of the Municipality of Banja Luka decided that the applicant was entitled to succeed into the occupancy right over an apartment located at Aleja Svetog Save 34 ("apartment 1"). On 15 February 1983 she entered into a contract for the use of the apartment and thereby became the holder of the occupancy right over it.
12. On 25 December 1995 the Secretariat for Economy of the Municipality of Banja Luka granted the applicant the occupancy right over an apartment located at Zmaj Jovine 14 ("apartment 2"). At the same time, her occupancy right over apartment 1 was terminated and this apartment was allocated to another person. The decision was stated to be taken in pursuance of the need for rationalisation of housing space in Banja Luka. The legal basis for this decision was stated to be

Articles 23 and 24 of the Law on Housing Relations, as amended (see paragraphs 28-30 below). The decision gave the applicant the right to lodge a complaint against it within eight days to the Executive Board of the Municipality of Banja Luka. She did not do so, claiming that the person who was allocated apartment 1 was the brother of the then Prime Minister of the Republika Srpska, and in the prevailing circumstances she had no prospect of success in seeking to avail herself of any remedies available to her.

13. Following the decision purportedly terminating her occupancy right, the applicant left apartment 1 in February 1996 and entered into possession of apartment 2, which she occupied until she regained possession of apartment 1 on 4 April 2000.

14. The pre-war occupant of apartment 2, which was never declared to be abandoned property, initiated court proceedings to seek to regain possession of it. On 3 February 1998 the Court of First Instance in Banja Luka issued a decision determining that that person was the holder of the occupancy right over it and annulled the contract for the use of it which the applicant had entered into. It also ordered the applicant to vacate the apartment within 15 days under threat of forcible execution. On 28 August 1998 the applicant's appeal against this decision was refused by the Regional Court in Banja Luka. On 12 October 1998 the applicant lodged a request for review of this decision to the Supreme Court of the Republika Srpska. According to the latest information available to the Chamber, there has been no decision on this request to date. The Court of First Instance in Banja Luka issued a number of conclusions authorising the eviction of the applicant from apartment 2. The last of these scheduled her eviction for 7 April 2000.

15. The applicant applied to the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission"), requesting that it issue a decision confirming her occupancy right over apartment 1. On 17 December 1998 it issued a decision in these terms. The applicant applied to the Court of First Instance, requesting that it order the enforcement of this decision. On 2 April 1999 the court issued its decision and refused to accept her request. The reason it gave for this decision was that the decision of the Annex 7 Commission was not enforceable under the law of the Republika Srpska. On 20 April 1999 the applicant appealed to the Regional Court in Banja Luka against this decision, where her appeal is still pending.

16. On 15 May 1998 the applicant initiated proceedings before the Court of First Instance in Banja Luka against the Municipality of Banja Luka, the Republika Srpska, the relevant housing company and the then occupant of apartment 1. In these proceedings she requested that the decision of the municipality of 25 December 1995 (see paragraph 12 above) be annulled, as well as the contract for use of the apartment between the person who occupied it and the housing company. She also requested that she be entitled to regain possession of it, on the basis that she was the legal holder of the occupancy right over it. On 6 May 1999 the court issued a decision confirming that the applicant was the holder of the occupancy right over apartment 1, declared the contract for use of the apartment between the occupant and the housing company to be void *ab initio* and ordered that person to vacate it within fifteen days. The Republika Srpska appealed to the Regional Court in Banja Luka against the part of the decision declaring the then occupant's contract for the use of the apartment to be void *ab initio*. It did not appeal against the substance of the decision. This appeal is still pending.

17. On 25 April 1999 the applicant applied to the Commission for the Accommodation of Refugees and Displaced Persons and Administration of Abandoned Property in Banja Luka, a department of the Ministry for Refugees and Displaced Persons, to regain possession of apartment 1. On 6 August 1999 it issued a decision in these terms, ordering the then occupant of the apartment to vacate it. On 4 April 2000 the Commission executed this decision and the applicant regained possession of apartment 1. At the same time, she vacated apartment 2.

B. Relevant legislation

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

18. The Law on Cessation of Application of the Law on Use of Abandoned Property of 11 December 1998 (Official Gazette of the Republika Srpska – hereinafter “OG RS” - no. 38/98; “the 1998 law”), as amended, establishes a detailed framework for persons to regain possession of property considered to be abandoned. It puts the Law on the Use of Abandoned Property (OG RS no. 3/96), out of force.

19. Article 3 gives the owner, possessor or user of real property who left such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date of its becoming abandoned. Article 4 states that the terms “owner”, “possessor” or “user” shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

20. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as “temporary users”) in order to allow the previous owner, possessor or user to return.

21. Upon receipt of an application, the responsible body shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the 1998 law to be provided with alternative temporary accommodation. If it determines that this is the case, the relevant body of the Ministry (i.e. the local Commission) shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

22. Any failure of the responsible authority to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

23. Article 8 provides that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Such claims may be filed with the responsible body of the Ministry. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

24. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

25. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Proceedings and treated as an expedited procedure.

26. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and the property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances, which shall be agreed upon by the Office of the High Representative. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

27. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained

in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

2. The Law on Housing Relations

28. The Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 14/84, as amended) establishes a legal regime governing the allocation of socially owned property.

29. Article 23 reads as follows:

“An apartment may be allocated for the use of only one occupancy right holder.”

30. Article 24 states, *inter alia*, that socially owned apartments are allocated for use by a decision of the holder of the allocation right over the apartment. Factors to be taken into account by the holder of the allocation right in allocating apartments include the housing situation of the worker concerned and the number of members of his or her family household.

IV. COMPLAINTS

31. The applicant complains of violations of her rights as guaranteed by Articles 6, 8 and 13 of the Convention and also that she has been discriminated against in the enjoyment of those rights.

V. SUBMISSIONS OF THE PARTIES

32. The Republika Srpska refers to the fact that the applicant has initiated judicial and administrative proceedings before the relevant organs of the Republika Srpska, which are still pending. It therefore claims that the applicant has not exhausted the domestic remedies available to her and that the application is therefore inadmissible on this ground.

33. The applicant maintains her complaint. She complains of the length of time it took her to regain possession of apartment 1 and that she had to initiate various judicial and administrative proceedings to this end.

VI. OPINION OF THE CHAMBER

A. Admissibility

34. 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.

35. 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.

36. The Chamber first notes that on 25 December 1995 the applicant's occupancy right over apartment 1 was purportedly terminated (see paragraph 12 above). The applicant did not appeal against this decision, even though she had the right to do so. The applicant claims that the reason for this was that she had no prospect of success. She has not, however, substantiated her claim in this regard. A claim that the remedies available to a person would be ineffective, without any substantiation, cannot support a finding that a person should be relieved of the obligation under the Agreement to exhaust them. This is borne out by the fact that the applicant has now regained possession of apartment 1 in pursuance of a decision of the Ministry. Accordingly, the part of the application concerning the decision of 25 December 1995 is to be declared inadmissible as the applicant did not seek to exhaust the domestic remedies available to her against that decision, nor has she shown that they would have been ineffective in her case.

37. According to Article VIII(3) of the Agreement, the Chamber may at any stage decide, *inter alia*, to strike out an application on a number of grounds, including if the matter has been resolved, provided that this is consistent with the objective of respect for human rights.

38. The applicant complained of the refusal of the Court of First Instance in Banja Luka to order the enforcement of the decision of the Annex 7 Commission of 17 December 1998 (see paragraph 15 above). However, despite this refusal, she has now regained possession of the apartment concerned and therefore the part of the application concerning her regaining possession of apartment 1 has been resolved.

39. Therefore the Chamber considers it appropriate to strike out the part of the application relating to the applicant's reinstatement into apartment 1.

40. Accordingly, the remaining issue in the case is the conduct of the proceedings initiated by the applicant on 15 May 1998 before the Court of First Instance in Banja Luka (see paragraph 16 above). These proceedings (i.e. the appeal from the decision of the Court of First Instance of 6 May 1999) have been pending for a total of over two years. They therefore raise an issue under Article 6 of the Convention as regards the length of the proceedings. The Chamber therefore considers that this part of the application should be declared admissible under Article 6 of the Convention.

41. Accordingly, the application is to be declared admissible insofar as it relates to the conduct of the proceedings initiated by the applicant on 15 May 1998.

B. Merits

42. 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.

43. The applicant complains of the length of the proceedings leading to her regaining possession of apartment 1. This complaint is to be considered under Article 6 paragraph 1 of the Convention which, insofar as relevant, provides as follows:

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

44. The respondent Party did not submit any observations under this provision.

45. The Chamber recalls that it has previously held that a dispute concerning an apartment over which a person holds an occupancy right falls within the ambit of Article 6 paragraph 1 of the Convention (see, e.g., case no. CH/97/93, *Matić*, decision on admissibility and merits delivered on 11 June 1999, paragraph 80, Decisions January-July 1999).

46. The Chamber notes that the applicant initiated proceedings before the Court of First Instance in Banja Luka on 15 May 1998, requesting that she be entitled to regain possession of apartment 1.

47. The court issued a decision in her favour on 6 May 1999, which the Republika Srpska, one of the defendants, partly appealed against (see paragraph 16 above). This appeal is still pending. These proceedings have therefore been pending for over two years. The issue may now, however, be moot, as the applicant has regained possession of apartment 1.

48. The Chamber must consider whether these proceedings have lasted a reasonable time, as required by Article 6 of the Convention. In the *Čuturić* case (no. CH/98/1171, decision on admissibility and merits delivered on 8 September 1999, paragraph 32, Decisions August-December

1999), the Chamber held that the factors to be taken into account in deciding whether the length of proceedings has been reasonable are as follows: the complexity of the case, the conduct of the applicant and the conduct of the national authorities.

(i) *The complexity of the case*

49. According to the information available to the Chamber, the dispute was not a complicated one. Under the appropriate law in force in the Republika Srpska, the applicant is the holder of the occupancy right over apartment 1 and entitled to regain possession of it.

(ii) *The conduct of the applicant*

50. There is no information available to the Chamber which would tend to indicate that the applicant is responsible for the delay.

(iii) *The conduct of the national authorities*

51. The Chamber notes that the Court of First Instance issued its decision on the applicant's proceedings on 6 May 1999, just under one year after she initiated them. The Republika Srpska then lodged an appeal against this decision, claiming that part of the decision was incorrect (see paragraph 16 above). This appeal is still pending.

52. The Chamber considers that, although the proceedings have been pending for over two years, this period, while of concern, is not so unreasonably long as to constitute a violation of the rights of the applicant under Article 6 of the Convention.

53. Therefore, the facts of the case do not disclose a violation by the Republika Srpska of any of the rights of the applicant as guaranteed by the Agreement.

VIII. CONCLUSION

54. For the above reasons, the Chamber decides,

1. unanimously, to declare the part of the application relating to Article 6 of the European Convention on Human Rights admissible;
2. unanimously, to strike out the part of the application relating to the reinstatement of the applicant into the apartment located at Aleja Svetog Save 34 in Banja Luka;
3. unanimously, to declare the remaining part of the application inadmissible; and
4. unanimously, that there has been no violation of the rights of the applicant as guaranteed by Article 6 of the Convention.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel