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

Case no. CH/98/1232

Nedeljko STARČEVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 1999 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 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 Serb origin. He is the holder of an occupancy right over an apartment in Doboj, Republika Srpska. On 18 June 1997 the applicant was granted a permanent occupancy right over the apartment by the holder of the allocation right. On 12 October 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Doboj ("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 14 October 1998 the applicant appealed against the decision. There has been no decision on this appeal to date. The applicant still occupies the apartment.

2. The case raises issues primarily under Article 8 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced to the Chamber on 19 October 1998 and registered the same day. The applicant requested that the Chamber order the respondent Party as a provisional measure to take all necessary steps to prevent his eviction from the apartment.

4. On 21 October 1998 the Vice-President of the Second Panel ordered, pursuant to Rule 36(2) of the Rules of Procedure, the respondent Party to refrain from evicting the applicant from the apartment.

5. On 29 October 1998, 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. The observations were due by 29 December 1998. However, no observations were received from the respondent Party within that time-limit.

6. On 18 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 15 February 1999. On 26 February 1999 the statement was transmitted to the respondent Party for information.

7. On 15 April 1999 the respondent Party submitted observations on the admissibility and merits of the application. The Chamber decided to accept these observations, notwithstanding the fact that they were received outside the time-limit set by the Chamber. On 6 May 1999 the applicant's observations in reply were received. On 25 May 1999 these observations were transmitted to the respondent Party for information.

8. The Chamber deliberated upon the admissibility and merits of the application on 3 November 1999. It decided to request the respondent Party to inform it whether the apartment was registered as abandoned property. A deadline expiring on 26 November 1999 was set for the receipt of this information. No reply was received from the respondent Party. On 6 December 1999 the Chamber adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. 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.

10. The applicant occupies an apartment located at Jug Bogdana 55/37, Doboj, Republika Srpska. On 18 June 1997 he was granted the occupancy right over the apartment by the holder of

the allocation right, ODP "Bosanka" Doboj, a publicly owned company where he is employed. The previous holder of the occupancy right, a Bosniak who had worked at Bosanka, had left the Republika Srpska. On 25 December 1997 the applicant entered into a contract with the relevant housing company.

11. On 12 October 1998 the Commission issued a decision under the Law on the Use of Abandoned Property and the Instructions on the Allocation of Abandoned Immovable and Other Property, ordering the applicant to vacate the apartment within three days under threat of forcible eviction on the basis that he had alternative accommodation available to him.

12. On 14 August 1998 the applicant appealed against this decision. He has not received any decision on this appeal to date. On 19 October 1998 the Commission issued a conclusion scheduling the applicant's eviction for 23 October 1998. The applicant still occupies the apartment.

B. Relevant legislation

1. The Law on the Use of Abandoned Property

13. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96, "the old law") 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.

14. Articles 2 and 11 define "abandoned property" as real and personal property which has been abandoned by its owners or users 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.

15. Article 3 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 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 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."

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

18. 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 old law. It entered into force on 19 December 1998 and put the old law out of force.

19. Article 2 of the new law 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 and by the Decision on the Law on Amendments to the Law on Cessation of the Application of the Law on the Use of Abandoned Property, made by the High Representative on 27 October 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 or 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 or her occupancy right and who subsequently received another occupancy right which is cancelled under this Article, is entitled to make a claim for repossession of his or her former apartment in accordance with this Law."

3. The Law on General Administrative Procedures

20. 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.

21. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General 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.

22. 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

23. 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 paragraph 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 Instructions on the Allocation of Abandoned Immovable and Other Property

24. Article 20 of the Instructions on the Allocation of Abandoned Immovable and Other Property (OG RS no. 9/96) grants commissions the power to invalidate decision of other organs allocating property considered to be abandoned under the old law.

IV. COMPLAINTS

25. The applicant does not make any specific complaint of a violation of any of his rights as guaranteed by the Agreement. He complains in a general manner of the attempts to evict him from the apartment. The Chamber interprets this as an allegation that his rights as protected by Article 8 of the Convention have been violated.

V. FINAL SUBMISSIONS OF THE PARTIES

26. The respondent Party claims that the applicant has not sought to avail himself of the domestic remedies available to him and that therefore the application should be declared inadmissible under Article VIII(2)(a) of the Agreement. It further states that the apartment is abandoned property and, in accordance with Article 15 of the old law, could only be allocated to refugees or displaced persons. In addition, the applicant is the owner of a house in Mali Prnjavor, near Doboj, and lived there with his parents before the war.

27. The applicant states that the house referred to by the respondent Party is owned by his brother and that therefore he has no right to live there. He denies that he lived there before the war. He asks that he be allowed to remain in the apartment and that if the prewar occupant of it returns to Doboj, he will seek to come to an amicable solution with that person regarding the apartment.

VI. OPINION OF THE CHAMBER

A. Admissibility

28. 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.

29. 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 specified any "effective remedy" that it considers to be available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

30. The applicant lodged an appeal to the Ministry against the decision of the Commission of 12 October 1998. However, the lodging of such an appeal does not have any suspensive effect.

31. 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 in respect of the failure of the Ministry to issue a decision on his appeal. Before doing so, he would have had to lodge a reminder with the Ministry, which he has not done. The Ministry would then have a seven day period in which to issue a decision. Following the expiry of that period, the applicant could then have initiated an administrative dispute before the Supreme Court.

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

33. The Chamber considers that the non-suspensive effect of the appeal lodged by the applicant against the decision of the Ministry of 12 October 1998 raises the question whether there is an effective remedy available to the applicant. This factor, together with the fact that the respondent Party did not specify what effective remedy it considered to be available to the applicant, leads the Chamber to conclude that no such remedy was in fact available to him.

34. The Chamber does not consider that any other ground for declaring the case inadmissible has been established. Accordingly, the case is declared admissible.

B. Merits

35. 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.

36. The applicant did not specifically allege a violation of his rights as guaranteed by Article 8 of the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent party for its observations on the admissibility and merits. This provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

37. The respondent Party claimed that the apartment had clearly been abandoned property and could therefore be allocated only to persons within the categories set out in Article 15 of the old law.

38. The Chamber has noted that the applicant has lived in the apartment since June 1997, when he was allocated the occupancy right over it. It is therefore clear that the apartment is to be considered as his "home" for the purposes of Article 8 of the Convention.

39. The Chamber has already held that the threatened eviction of a person from his home constitutes an "interference by a public authority" with the exercise of the right to respect for his home (case no. CH/96/31, *Turčinović*, decision on the merits delivered on 11 March 1998, paragraph 20, Decisions and Reports 1998). The decision of the Commission ordering the applicant to vacate it within three days under threat of forcible eviction therefore constitutes an "interference by a public authority" with that right.

40. 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 38). There will be a violation of Article 8 if any one of these conditions is not satisfied.

41. The Chamber notes that Article 2 of the old law requires a property to be entered into the register of abandoned property in order to be registered as abandoned property and allocated to a person within the categories set out in Article 15. Although specifically requested to do so, the respondent Party has not provided any evidence that such an 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.

42. Therefore, it has not been established that the requirements of the old law were adhered to in the present case. Accordingly, the attempts of the Commission to get the applicant to vacate the apartment cannot be considered to have been "in accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention. In these circumstances, it is not necessary to examine whether the other requirements under that provision have been met and in particular whether the old law can, in the context of the present case, be considered to be a "law" within the meaning of Article 8 paragraph 2.

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

VII. REMEDIES

44. 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.

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

46. 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.

47. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decision of the Commission of 12 October 1998 ordering the eviction of the applicant from the apartment in question and to allow the applicant to enjoy undisturbed occupancy of the apartment, subject to the terms of the new law, in particular with reference to the right of the pre-war occupancy right holder to regain possession of the apartment.

VIII. CONCLUSION

48. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Doboj of 12 October 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the apartment he currently occupies constitutes a violation of his right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, to order the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Doboj of 12 October 1998 and to allow the applicant to enjoy undisturbed occupancy of the apartment subject to the terms of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, as amended; and

4. unanimously, to order the Republika Srpska to report to it, within three months of the date of the present decision becoming final 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