



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

Case no. CH/98/1785

Milomir RADULOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 November 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina. He occupies a house in Banja Luka, Republika Srpska in accordance with an authorisation of the owner of the house, which was certified on 30 September 1994 by the Municipal Secretariat for General Administration ("the Secretariat"). On 14 December 1996, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry"), issued a decision concerning the house. This decision declared the applicant to be an illegal occupant and ordered him to vacate the house within three days, under threat of forcible eviction. The applicant was served with this decision on 17 December 1998.

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

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applicant introduced his application on 18 December 1998. He requested that the Chamber order the respondent Party as a provisional measure to take all necessary steps to prevent his eviction from the house.

4. On 31 December 1998 the Vice-President of Panel I made an order in the above terms, in accordance with Rule 36(2) of the Chamber's Rules of Procedure. The case was also transmitted to the respondent Party for its observations on the admissibility and merits. Such observations were due by 31 January 1999. No observations were received from the respondent Party, however.

5. On 23 June 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 3 September 1999, outside the time-limit set. The Chamber decided nevertheless to accept the applicant's statement. On 14 September 1999 it was transmitted to the Agent of the respondent Party for information.

6. The Chamber deliberated upon the admissibility and merits of the application on 4 November 1999 and on the same date adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

7. 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.

8. The applicant occupies a house located at Kolubarska 10, Republika Srpska since 1990 with the permission of the owner. On 30 September 1994 the owner of the house authorised the applicant in writing to reside in the house. This authorisation was certified by the Secretariat. The owner of the house left Banja Luka around this time.

9. On 14 December 1998 the Commission issued a decision declaring the applicant to be an illegal occupant of the house under Article 10 of the Law on the Use of Abandoned Property (see paragraph 13 below). This decision ordered the applicant to vacate the house within three days of the date of delivery, under threat of forcible eviction. The applicant received this decision on 17 December 1998. On the following day he appealed to the Ministry, on the basis that he could not be considered to be an illegal occupant of the house as he occupied it with the written consent of the owner. The applicant has not received any response to this appeal to date. He still occupies the house.

B. Relevant legislation**1. The Law on the Use of Abandoned Property**

10. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter “OG RS” – no. 3/96) was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the OG RS on 26 February 1996 and entered into force the following day. It established a legal framework for the administration of abandoned property. Accordingly, it defined what forms of property were to be considered as abandoned and set out the categories of persons to whom abandoned property could be allocated. The provisions of that law, insofar as they are relevant to the present case, are summarised below.

11. Articles 2 and 11 define “abandoned property” as real and personal property which has been abandoned by its owners and which is entered in the records of abandoned property. Types of property which could be declared abandoned include apartments (both privately and socially owned) and houses.

12. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, under 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.

13. 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 receipt. The lodging of an appeal to the Ministry does not suspend the execution of the decision.

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

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

3. The Law on Administrative Disputes

15. 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.

IV. COMPLAINTS

16. The applicant does not make any specific complaints of any violations of his human rights as protected by the Agreement. He complains generally of the decision of the Commission declaring him to be an illegal occupant of the house.

V. SUBMISSIONS OF THE PARTIES

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

18. The applicant maintains his complaint and also states that there has been no decision on the

appeal which he filed to the Ministry.

VI. OPINION OF THE CHAMBER

A. Admissibility

19. 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.

20. 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.

21. The applicant lodged an appeal to the Ministry against the decision of the Commission of 14 December 1998. However, the lodging of such an appeal does not have any suspensive effect.

22. 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 lodge 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.

23. 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 of the personal circumstances of the applicants.

24. The Chamber considers that the non-suspensive effect of the appeal lodged by the applicant against the decision of the Ministry of 14 December 1998 raises a question of whether there is an effective remedy available to him. This, 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.

25. The Chamber considers that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

26. 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.

27. 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.”

28. The Chamber notes that the applicant has lived in the house since August 1990. It is therefore clear that it is to be considered as his “home” for the purposes of Article 8 of the Convention. The Chamber has already held that the threatened eviction of a person from his or her home constitutes an “interference by a public authority” with the exercise of the right to respect for home (see 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 of 14 December 1998 ordering the applicant’s eviction from the house therefore constitutes an “interference by a public authority” with his right to respect for his home. This decision has not been revoked to date and accordingly the interference is ongoing.

29. 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.

30. The Chamber notes that Article 2 of the Law on the Use of Abandoned Property requires a property to be entered into the register of abandoned property before it can be allocated to a person within the categories set out in Article 15. The respondent Party has not provided any evidence that any such entry was made in respect of the house in question. Nor is there any other indication available to the Chamber that such an entry was made. Therefore, the requirements of domestic law were not adhered to in the present case. Accordingly, the decision of the Commission of 14 December 1998 cannot be considered to have been “in accordance with the law” within the meaning of paragraph 2 of Article 8 of the Convention.

31. The Chamber further notes that the aim of the Law on the Use of Abandoned Property is the provision of accommodation for refugees and displaced persons on the territory of the Republika Srpska. This may be considered to be a legitimate aim, given the large number of such persons whom the Republika Srpska is required to accommodate. However, the Chamber considers that the eviction of persons from properties which they occupy with the consent of the legal owner, without the provision of any compensation or alternative accommodation, cannot be considered to be proportional to that aim.

32. 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

33. 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.

34. The Chamber notes that the applicant does not claim compensation, but requests that he be allowed to remain in the house.

35. The Chamber notes that the Law on the Use of Abandoned Property has been put out of force by the adoption of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. However, this does not of itself remove the threat to the applicant that he would be evicted, as the new law does not affect the validity of decisions ordering evictions under the old law.

36. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decision of the Commission of 14 December 1998 ordering the eviction of the applicant from the

house in question and to take no further steps to disturb the applicant's occupancy of the house in accordance with the terms of the authorisation of the owner.

VIII. CONCLUSION

37. 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 Banja Luka of 14 December 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house 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 revoke the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka of 14 December 1998 and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of the authorisation of the owner of the house; 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)
Michèle PICARD
President of the First Panel