



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

Case no. CH/98/271

Meliha FILIPOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 November 1999 with the following members present:

Mr. Rona AYBAY, Acting President
Mr. Hasan BALIĆ
Mr. Dietrich RAUSCHNING
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, resident in Banja Luka, Republika Srpska. On 23 January 1995 she rented her apartment (one floor of her house) to Mr. L.N. (“the occupant”). Since the occupant has not been complying with his contractual obligations she tried to terminate the contract. On 15 March 1996 the applicant initiated proceedings before the Municipal Court in Banja Luka, requesting termination of the contract. Her request is still pending before the court.

2. On 18 June 1998 the Commission for Accommodation of Refugees and Administration of Abandoned Property (“the Commission”) issued a decision allocating the apartment to the occupant. The decision was quashed by a judgment of the Supreme Court of the Republika Srpska, and the case was sent back to the Commission for consideration. The Commission again allocated the apartment to the occupant. The applicant appealed to the Ministry for Refugees and Displaced Persons (“the Ministry”) and the case is still pending before it.

3. The case raises issues principally under Articles 6 and 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 23 February 1998 and registered on 10 April 1998. On 29 September 1998 the Chamber requested the applicant to submit additional information about any developments in the proceedings. On 15 October 1998 the applicant’s additional information was received. From the applicant’s submission it appeared that there were no developments in the proceedings.

5. The case was transmitted to the respondent Party for its observations under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The respondent Party’s observations were due by 18 March 1999. No observations were received within that time-limit.

6. On 22 April 1999 the applicant was invited to submit any further observations and claim for compensation she wished to make.

7. On 18 May 1999 the applicant submitted her further observations which contained a compensation claim. This compensation claim was transmitted to the respondent Party for any further observations by 24 June 1999. No observations have been received.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

8. The facts of the case have not been contested by the respondent Party and can be summarised as follows.

1. The lease contract and the attempts to terminate it

9. On 23 January 1995 the applicant entered into a lease contract with the occupant regarding the above-mentioned apartment. The occupant did not comply with his contractual obligations, and the applicant decided to terminate the contract. On an unspecified date in 1996 the applicant tried to deliver a written termination of the contract to the occupant, but he refused to receive it. On 15 March 1996 the applicant initiated civil proceedings before the Municipal Court in Banja Luka requesting the court to terminate the contract and order the occupant to return the apartment into her possession.

10. The Municipal Court scheduled a hearing in the case and on that occasion the occupant submitted a copy of the decision mentioned in paragraph 11 below. There have been no further

developments in the proceedings to date. On 10 December 1996 the Regional Court in Banja Luka adopted a general standing that the civil courts were not competent to deal with cases involving abandoned property. Therefore the applicant claims that she has no prospect of success in the court proceedings.

2. The first set of administrative proceedings

11. On 18 June 1996 the Commission issued a decision allocating the right to use the property to the occupant. The property was allocated to him on the ground that the premises were surplus of the applicant's housing space. The applicant and other owners of the house appealed against the decision to the Ministry. They appealed on the ground that the decision named only one co-owner – the applicant – and one of her sisters who was no longer the co-owner of the property. They further stated that they had exchanged the property with a certain Mr. R.B, and that they had cancelled the lease contract. On 7 October 1996 the Department of the Ministry (“the Department”) refused their appeal. The Department examined the owners' complaints and found that there had been no irregularities in the proceedings.

12. On 29 October 1996 the applicant initiated an administrative dispute before the Supreme Court of the Republika Srpska against the Department's decision of 7 October 1996. On 10 April 1997 the Supreme Court passed a judgement by which it, *ex officio*, invalidated the decision as it had been taken by an organ that was not competent to examine the appeal. The case-file was then sent to the Ministry for reconsideration.

13. After it had been sent to the Ministry the file apparently got lost. The applicant contacted the Supreme Court and the Ministry, but both organs claimed that they did not have the file. On 9 April 1998 the applicant received a letter from the Ministry in which it was stated that the Supreme Court's decision has never been received by the Ministry. On the same day the applicant received a letter from the Supreme Court from which it appears that the file was received by the Ministry on 3 July 1997.

3. The second set of administrative proceedings

14. On 4 August 1998 the applicant unofficially received a decision of the Ministry, dated 4 May 1998, by which the Commission's decision of 18 June 1996 was invalidated and the case was sent to the Commission for reconsideration. The decision of the Ministry was based on the owners' complaint that one of the persons named to be the owner of the property is not the owner at all, and that there are more co-owners of the property than were named in the decision. The Commission was instructed to establish the facts of the case properly, and then to examine whether there was any surplus of housing space.

15. The applicant then addressed the Commission, requesting them to conduct the proceedings as instructed by the Ministry. On 22 October 1998, after re-examining the case, the Commission issued a decision again allocating the property to the occupant. The decision was delivered to the applicant on 22 December 1998. The applicant appealed to the Ministry on 5 January 1999. There have been no developments in the proceedings to date.

B. Relevant legislation

1. The Law on the Use of Abandoned Property

16. Article 17 of the Law on the Use of Abandoned Property (Official Gazette of Republika Srpska – hereinafter “OG RS” – no. 3/96) reads as follows:

“If persons referred to in Article 1 of this Law (i.e. refugees and displaced persons) cannot be accommodated in the apartments and residential buildings referred to in Article 11 of this Law, then they will be temporarily accommodated in apartments and residential buildings in which there is a surplus of housing space. There is a surplus of housing space if there is more than 15 m² per member of a family household. They will be accommodated according to the following criteria:

- into the apartments of the owners of users that have not regulated their military obligation;
- into the apartments of owners or users if members of their family household left Republika Srpska;
- into the other residential buildings where there is a surplus of housing space.

Temporary accommodation in the objects referred to in the preceding paragraph will last as long as the temporary users of those premises are not provided with an alternative accommodation.”

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

17. The Law on the Cessation of Application of the Law on the Use of Abandoned Property (OG RS no. 38/98) puts the old Law on the Use of Abandoned Property out of force.

18. Article 2 states that all decisions made under the old law granting temporary or permanent rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new law.

19. Article 3 gives the owner, possessor or user of real property who abandoned 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” and “user” shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned.

20. Article 7 states 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. Article 8 states that such claims may be filed with the responsible body of the Ministry (i.e. the local Commission). This Article also sets out the procedure for the lodging of claims and the information that must be contained in such a claim.

3. The Law on General Administrative Proceedings

21. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter “OG SFRY” – no. 47/86) is set out to be a *lex generalis*, and applies when an issue is not regulated by the Law on the Use of Abandoned Property. Article 218 of the Law on General Administrative Proceedings sets out time-limits for issuing decisions. If a case concerns an issue which does not require separate investigation proceedings or other immediate action, the decision should be issued and delivered to the claimant within 30 days from the date the request was filed. In all the other cases, the decision should be issued and delivered within two months from the day the request was filed.

22. The appeal against the first instance administrative decision is to be filed to the second instance body through the first instance body. Even if the appeal was sent directly to the second instance body that organ will forward it to the first instance body (Article 233).

23. Article 238 reads as follows:

“(1) When the organ that issued the decision finds that the appeal is allowed, filed within time-limit and by the authorised person (...), that organ is obliged to send the appeal to the organ competent to deal with it. This has to be done immediately, at the latest within 15 days from the day the appeal was received.

(2) The first instance organ is obliged to forward, with the appeal, all the documents related to the case.”

24. Under Article 247, the decision on the appeal has to be issued within two months from the day the appeal was lodged. Article 248 sets out that the second instance organ is to send its decision and the case-file to the first instance, which is then obliged to deliver the decision to the

parties within eight days from the day it received the case-file.

4. The Law on Administrative Disputes

25. Article 61 of the Law on Administrative Disputes (OG RS no. 12/94) sets out that after the court has invalidated a decision and ordered a new decision to be issued, such a decision needs to be made within 30 days from the day of delivery of the court's judgment.

26. Under Article 63, if the competent organ does not issue a decision within 30 days, a party to the proceedings can submit a reminder. If the organ does not issue decision within seven days, the party can request the court (i.e. the Supreme Court) to make a decision. Then the court will request the competent organ to give reasons for not complying with its obligation. If the reasons are not satisfactory or not received within the next seven days the court will issue the decision itself.

5. The Law on Basic Property Relations

27. Article 43 of the Law on Basic Property Relations (OG SFRY no. 6/80) provides for one of the co-owners of a property to initiate proceedings for the protection of the whole property or only his or her part of the property.

IV. COMPLAINTS

28. The applicant generally complains of a violation of her property rights and the treatment she has had before the administrative bodies and the Supreme Court.

V. SUBMISSIONS OF THE PARTIES

29. The respondent Party has not submitted any observations in the case. The applicant maintains her complaints. She further requests to be paid compensation in the amount of 700 German Marks (DEM) per month starting from 1 July 1996, as lost rent for the premises (which makes DEM 25,200 as of May 1999). The sum is based on the fact that the applicant was renting the ground floor of the house for DEM 1,300 during the same period (a copy of the contract submitted). The applicant's reasons for claiming a lower amount in compensation are that the occupant is using a smaller apartment than the one the applicant rented and that it is on the second floor of the house.

VI. OPINION OF THE CHAMBER

A. Admissibility

30. 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.

1. As to the alleged violation of the applicant's property rights

31. To the effect that the applicant has complained of allocation of her property to other persons the Chamber notes that in accordance with the Law on the Cessation of Application of the Law on the Use of Abandoned Property the applicant has the right to request the return of her apartment into her possession. This request can be lodged at any time. The Chamber notes that the applicant has not filed such a request as to date. She has not sought to demonstrate that such a request would be ineffective.

32. Accordingly, the Chamber decides not to accept this part of the application pursuant to Article VIII(2)(a) of the Agreement, as the applicant has not demonstrated that the effective domestic remedies have been exhausted.

2. As to the alleged violation of Article 6 of the Convention

33. The applicant has complained of the administrative proceedings and the proceedings before the courts. The Chamber notes that the respondent Party has not put forward any objection to the admissibility of the case. It has not suggested that the case should be declared inadmissible on any of the grounds as set out in Article VIII(2) of the Agreement. Since this part of the case does not appear to be *prima facie* inadmissible, the Chamber finds no obstacles to considering the merits of the application.

34. Accordingly, the Chamber decides to accept this part of the application pursuant to Article VIII of the Agreement.

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.

1. Article 6 of the Convention

36. The applicant generally complains of irregularities in the administrative proceedings. The respondent Party has not submitted any observations.

37. Article 6 of the Convention, insofar as relevant to the present case, reads as follows:

“1. 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....”

38. The Chamber has already established that the right to enjoyment of one’s property is a civil right within the meaning of Article 6 of the Convention (see e.g. case no. CH/98/777, *Pletilić*, decision on admissibility and merits delivered on 8 October 1999, paragraph 97, to be published).

39. The Chamber notes that the applicant initiated various proceedings in order to regain possession of her property, none of which was successful. The Chamber needs to consider these proceedings as a whole. But firstly, the Chamber needs to consider whether the administrative proceedings the applicant has initiated fall within the scope of Article 6 of the Convention. The European Court of Human Rights has held that the character of the legislation which governs how the matter is to be determined (ordinary court, administrative body etc) is of little consequence (see e.g. the *Ringeisen v. Austria* judgment of 16 July 1971, Series A no. 13, p. 39, paragraph 94). Therefore, the Chamber considers that it can evaluate the conduct of the administrative proceedings in determining whether there has been a violation of the applicant’s right to a hearing within a reasonable time.

40. The period of time the Chamber should take into consideration is three years and eight months (as of November 1999), starting from 15 March 1996, when the applicant initiated civil proceedings before the Municipal Court.

41. The Chamber has held that the factors to be taken into account in determining whether the length of civil proceedings has been reasonable are as follows: the complexity of the case, the conduct of the applicant and the conduct of the national authorities (see e.g. case no. CH/98/1237, *F.G.*, decision on admissibility and merits delivered on 8 October 1999, paragraph 47, to be published).

(a) The complexity of the case

42. According to the documents in the case-file the case does not appear to be a complex one. It is about the owner requesting the court and administrative organs to enable her to regain possession of her apartment. Her ownership is not disputed.

(b) The conduct of the applicant

43. There is no information in the case-file that there has been any conduct on the part of the applicant which could be considered as causing a delay in the proceedings. The respondent Party has not attempted to demonstrate that the delay in the case could have been caused by the applicant's actions.

(c) The conduct of the national authorities

44. The Chamber notes that the applicant initiated court proceedings on 15 March 1996. These proceedings are still pending before the Municipal Court, without any developments since October 1996. Taking into consideration the standing of the Regional Court in Banja Luka (see paragraph 10 above) the applicant had no prospect of success in these proceedings.

45. The administrative bodies that were competent to deal with the applicant's case apparently failed to follow the time-limits set out in the Law on General Administrative Proceedings, which is a *lex generalis* to the Law on the Use of Abandoned Property. The applicant's case-file got lost on its way from Pale (where the Supreme Court was sitting at that time) to Banja Luka. The Ministry denied that it had ever got the file back. However, according to the Supreme Court the case-file was received in the Ministry in Banja Luka on 3 July 1997. The Ministry was obliged to decide in accordance with the Supreme Court's judgment by 3 August 1997. But it took ten months – until 4 May 1998 – for the Ministry to comply with the judgment, and then another four months for it to be delivered to the applicant. It took another five months for the Commission to issue a new decision and then two months to deliver it to the applicant. The applicant's case is currently at the same stage of the proceedings as it was on 14 August 1996.

46. The Chamber further notes that on 5 January 1999 the applicant appealed against the Commission's decision of 22 October 1998, and that there have been no developments in the proceedings upon her appeal, although the Ministry was obliged to decide upon it by 5 March 1999 (see paragraph 20 above).

47. Having regard to the above, the Chamber finds that the respondent Party can be held responsible for the delay of the case.

48. Accordingly, the Chamber considers that the applicant's right to a "hearing within a reasonable time", as provided for by Article 6 paragraph 1 of the Convention has been violated.

VII. REMEDIES

49. 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. The Chamber is not necessarily bound by the claims of an applicant.

50. The applicant requests to be enabled to enter into possession of the apartment and to be compensated for the lost rent in the amount of DEM 700, starting from July 1996.

51. However, in the view of the findings in paragraphs 31-32 above, the Chamber must reject the applicant's claim for compensation under this title.

52. The Chamber notes that it has found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention. It considers it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's proceedings are decided upon by the Ministry within the time-limits provided for by the Law on General Administrative Proceedings and that the continued proceedings are conducted entirely in accordance

with the applicant's rights as guaranteed by the Agreement.

53. Furthermore, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to have her case decided before the domestic organs.

54. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 500 Convertible Marks (*Konvertibilnih Maraka*) in recognition of her suffering as a result of her inability to have her case decided within a reasonable time.

55. Additionally, the Chamber awards 4% interest as of the date of expiry of the three-month period set for the implementation of the present decision, on the sum awarded in the preceding paragraph.

VIII. CONCLUSIONS

56. For these reasons, the Chamber decides,

1. unanimously, to declare inadmissible the part of the application concerning the allocation of the applicant's property;
2. unanimously, to declare the remainder of the application admissible;
3. unanimously, that the conduct of the Ministry for Refugees and Displaced Persons and the Commission for Accommodation of Refugees and Administration of Abandoned Property in Banja Luka constituted a violation of the applicant's right to a hearing within a reasonable time within the meaning of Article 6 paragraph 1 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, to order the respondent Party to take all necessary steps to ensure that the applicant's proceedings before the Ministry are decided upon within the time-limits as specified by the Law on General Administrative Proceedings and in accordance with the applicant's rights as guaranteed by the Agreement;
5. unanimously, to order the respondent Party:
 - (a) to pay to the applicant within three months of the delivery of this decision the sum of 500 (five hundred) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for mental suffering;
 - (b) to pay simple interest at the rate of 4 (four) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above three-month period until the date of settlement;
6. unanimously, to reject the remainder of the applicant's compensation claim; and
7. unanimously, to order the Republika Srpska to report to it by 10 March 2000 on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Rona AYBAY
Acting President of the First Panel