DECISION ON THE CLAIM FOR COMPENSATION

DELIVERED IN WRITING ON 22 JULY 1998

in

CASE NO. CH/96/27

Rifat BEJDIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 14 July 1998, with the following members present:

Michèle PICARD, President
Manfred NOWAK, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jakob MÖLLER
Giovanni GRASSO
Miodrag PAJIĆ
Vitomir POPVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the claim for compensation submitted by Rifat Bejdić against the Republika Srpska following the Decision of the Human Rights Chamber of 14 January 1998 on the admissibility and merits of the Case No. CH/96/27, between the same applicant and the respondent Party.

Adopts the following Decision on the said claim under Article XI paragraph 1 of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

I. INTRODUCTION

1. In August 1995 the applicant's son and his family were forcibly evicted by a Mr. B.S. from an apartment on the first floor of a house in Banja Luka owned by the applicant. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which ordered the eviction of Mr. B.S.. Several attempts were made to execute the Court's decision. These were unsuccessful because the police did not take any action to assist the Court officials. Eventually, in September 1996, the apartment was allocated to Mr. B.S..

2. The Chamber found in its Decision of 14 January 1998 on the admissibility and the merits of the case that the non-enforcement of the Court's decision and the failure of the Republika Srpska to comply with its positive obligation under the Convention to secure the rights and freedoms guaranteed thereunder, as well as the allocation of the apartment to Mr. B.S., involved a breach of Article 1 of Protocol No. 1 to the European Convention of Human Rights (henceforth "the Convention") and of Article 6 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The case originated in an application referred to the Chamber by a decision of the Human Rights Ombudsperson of Bosnia and Herzegovina dated 20 November 1996. On 3 September 1997 the case was considered by the Chamber together with the cases of Blentić and "M.J." v. Republika Srpska (Case Nos. CH/96/17 and 28) which concerned similar issues. On 8 October 1997 the Chamber held a public hearing in these cases. Throughout the proceedings the applicant was represented by his son, Mr. Semko Bejdić.

4. On 3 December 1997 the Chamber delivered its decision on the admissibility and merits of the case. The conclusions containing the steps to be taken by the respondent Party to remedy the above mentioned violations of the applicant's rights under the Agreement read as follows:

> "40. For the above reasons the Chamber **decides** as follows:
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> ...
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> 5. By eleven votes against two to **order** the respondent Party to revoke the aforementioned Decision of 23 September 1996 allocating the property to Mr. Babić;
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> 6. By eleven votes against two to **order** the respondent Party to take effective measures to restore to the applicant possession of the apartment referred to in the relevant orders of the Court of First Instance in Banja Luka;
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> 7. By eleven votes against two to **order** the respondent Party to report to it before 14 March 1998 on the steps taken by it to comply with the above order;
>
> 6. By eleven votes against two to **reserve** to the applicant the right to apply to it before 14 April 1998 for any monetary relief or other redress he wishes to claim.

5. By a letter of 2 January 1998 the Public Attorney submitted a letter to the Chamber of the President of the Court of First Instance of Banja Luka, dated 31 December 1997 by which the President of the Court of First Instance informs the Attorney that the executive proceedings, initiated by Mr. Bejdić had been terminated and that Mr. Bejdić had entered into possession of his house on 31 October 1997.

6. The applicant's claim for compensation was received by the Human Rights Ombudsperson for Bosnia and Herzegovina on 18 March 1998 and transmitted to the Chamber, which received the claim on 20 March 1998. This claim was transmitted to the respondent Party for its observations on 22 March 1998.

7. On 12 May 1998 the Chamber received the respondent Governments observations on the applicant's claim for compensation.

III. THE APPLICANT'S CLAIM FOR COMPENSATION

8. The applicant's claim, presented by his son, consists of four different items:

(a) The applicant alleges that the person occupying the first floor apartment of his house between 18 August 1995 and 31 October 1997 caused serious damage to the house and also removed several of the applicant's possessions. The applicant claims a sum of 36.000 DEM for compensation in relation to this part of his claim.

(b) The applicant also claims pecuniary damage in relation to rent for the period between 18 August 1995 and 31 October 1997, amounting to 7.800 DEM.

(c) The applicant alleges that the maltreatment of his wife, his children, his parents and of himself had caused non-pecuniary damage and he claims a sum of 50.000 DEM in this respect.

(d) Eventually, the applicant claims 1.000 DEM for his expenses and lawyer's fees.

IV. THE RESPONDENT PARTY'S OBSERVATIONS

9. The respondent Party considered in its letter of 2 January 1998 that the matter had been solved as the applicant has moved into his house already on 31 October 1997.

10. The respondent Party's observations relating to the specific claims of the applicant of 20 March 1998 can be summarised as follows:

(a) As regards the applicant's first claim (paragraph 8. (a) above) the respondent Party states that the damage of the house was caused by a private person and not by the respondent Party. Therefore the respondent Party cannot be held responsible for the damage to the house. Additionally, as regards the items allegedly stolen, the applicant did not submit, at the time of his reinstatement in his home, any claim for the restoration of his movable property. In any case, these claims must be brought before the domestic civil courts.

(b) The respondent Party's observations contain no specific reply to the applicant's claim set out in paragraph 8. (b) above.

(c) As regards the applicant's claim set out in paragraph 8. (c) above the respondent Party states that any maltreatment of the applicant or his family had not been carried out by the respondent Party or any individual acting on its behalf. Any such claims should be addressed by the applicant to the domestic civil courts.

(d) Regarding the last item set out in paragraph 8. (d) above the respondent Party states that this item should also not be considered by the Chamber because the applicant has already been awarded a sum of 304 Dinars by the Court of First Instance's judgement of 5 February 1995 in respect of costs incurred before that court, which has to be paid by the illegal occupant of his house, who was the defendant in the proceedings.

V. OPINION OF THE CHAMBER

11. Regarding the applicant's first claim (paragraph 8. (a) above) the Chamber notes that the alleged damage to the house and the alleged loss of movable property would not have occurred if the eviction of the illegal occupant of the apartment had been effected at an earlier stage. However, the Chamber agrees with the respondent Party that the alleged damage to the house and the alleged losses of moveable property have not been directly caused by the respondent Party or any person acting on its behalf but by the illegal occupant of the apartment. The respondent Party can not therefore be held responsible for it.

12. As regards the applicant's claim (paragraph 8 (b) above) relating to the compensation for rent, the Chamber accepts that the rent in question was the rent which the illegal occupant would have had to pay to the applicant had he been the lawful tenant of the apartment. The Chamber held in its Decision on the admissibility and the merits that the violations found originated in the non-enforcement of the judgement of the Court of First Instance in Banja Luka of 3 May 1996 requiring the occupant of the apartment to transfer it into the possession of the applicant. A causal link between the non-execution of the judgement and the loss of rent for the illegally occupied apartment, exists and the respondent Party has to be held responsible for the damage suffered by the applicant in this respect.

13. The applicant claims the amount of 300 DEM per month for the period from 18 August 1995 to 31 October 1997. On the information available the amount of 300 DEM per month does not appear excessive as the rent for an apartment in the Banja Luka area. However, as regards the period during which the respondent Party can be held responsible the Chamber finds that the relevant period began on 31 May 1996, when the first eviction of the illegal occupant was scheduled but failed, and ended on 31 October 1997, when the applicant regained possession over the apartment. This adds up to seventeen months. The Chamber therefore finds a sum of 5.100 DEM appropriate to compensate the applicant in this respect.

14. The applicant's claims for compensation for the maltreatment (paragraph 8. (c) above) of his wife and children, his parents and of himself has not been further specified by the applicant. As far as the claim is related to the forcible eviction of the applicant's son's wife and their two children the Chamber follows its Decision in the case of Saša GALIĆ v. The Federation of Bosnia and Herzegovina (Decision of 12 June 1998, Case No. CH/97/40, paragraph 71) and finds that the alleged ill-treatment of the applicant's family is not within the scope of the case before the Chamber. No allegations of ill-treatment of the applicant himself have been substantiated in the proceedings before the Chamber.

15. As regards the applicant's claim for compensation in relation to his expenses and lawyer's fees (paragraph 8. (d) above) the Chamber agrees with the respondent Party that the applicant's expenses and lawyer's fees before the domestic court were covered by the sum of 304 Dinar awarded by the Court of First Instance in Banja Luka. However, the Chamber finds that the applicant should be awarded the sum of 250 DEM for expenses relating to the proceedings before the Chamber.

IV. CONCLUSION

16. For the reasons given above the Chamber **decides**:

1. By 11 votes to 2 to **order** the respondent Party to pay to the applicant, within three months, the sum of 5.100 KEM (five thousand one hundred Konvertibilne Marke) in respect of pecuniary injuries;

2. By 11 votes to 2 to **order** the respondent Party to pay to the applicant, within three months, a sum of 250 KEM (two hundred and fifty Konvertibilne Marke) in respect of expenses incurred in the proceedings before the Chamber;

3. By 11 votes to 2 that simple interest at an annual rate of 4 % will be payable over this sum or any unpaid portion thereof from the day of expiry of the above mentioned three month period until the date of settlement;

4. Unanimously to reject the remainder of the applicant's claims for pecuniary injuries.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate dissenting opinion by MM. Miodrag PAJIĆ and Vitomir POPOVIĆ.

DISSENTING OPINION OF MR. PAJIć AND MR. POPOVIć

In the above case, the conditions for initiating proceedings before the Human Rights Chamber and issuing a decision on the merits have not been fulfilled considering that the applicant, pursuant to Article 1 of the Agreement, did not exhaust all the legal means and remedies that are placed at his disposal within the jurisdiction of the Republika Srpska as a respondent Party. For the above reasons, it was not possible to consider and to decide on this application. Therefore, in accordance with Article 8 paragraph 2 (a) of the Agreement, the application should have been rejected.

Namely, in this concrete case, the applicant was, on the basis of the provisions of the effective legal regulations (Code of Obligations), under the obligation to initiate the proceedings before the Court of First Instance in Banja Luka and to claim compensation from the respondent Party, i.e., from those who caused the damage in the first place. Obviously, the damage was not caused by the Republika Srpska as a respondent Party. It was caused by the accused who was one of the parties in the proceedings initiated before the Court of First Instance in Banja Luka upon the applicant's request to have the house returned to him.

Therefore, it is not only that the applicant did not exhaust all legal remedies, but he directed the claim regarding the possible responsibility for the damage against the Republika Srpska as a respondent Party. However, the Republika Srpska, according to the effective legal regulations, could not have a standing as a party in dispute.

Proceedings initiated upon the applicant's claim for compensation for the damage suffered are not in any way consequential upon the proceedings initiated before the Court of First Instance in Banja Luka for returning the house into the applicant's possession. In particular, there is no link with the damage caused that the Republic of Srpska as a respondent Party might be responsible for. On the contrary, the general regulations of the Code of Obligations, that are applicable in the Republika Srpska and in the Federation of BiH as well, and that were taken over from the Swiss legislature (1911), begin with the general presumption that **"whoever imposes damage to a person, is obliged to compensate him for the same damage he caused."** It is obvious that the respondent Party did not cause this damage and that it is not, thereby, obliged to provide for compensation, nor can it have a liability in these proceedings. The same position is held in continental and Anglo-Saxon law.

We feel that it is necessary to emphasize the well-known fact that during the time in question, about 100 000 refugees from Krajina sought temporary and emergency accommodation in Banja Luka. There was a special regulation in effect at that time, one that put the owners of additional residential space under the obligation to accept those refugees and to accommodate them this additional space without being compensated for. Therefore, the request of the applicant for compensation in relation to the rent, is absolutely groundless.

For the above reasons, we maintain the opinion that the application did not fulfil the conditions for considering the merits of the case according to the Agreement and the Rules of Procedure, and thereby, it should have been rejected as invalid, i.e., to refuse the request of the applicant as groundless concerning the Republika Srpska.

(signed) Miodrag Pajić

(signed) Vitomir Popović