



DECISION ON THE CLAIM FOR COMPENSATION

DELIVERED ON 29 JULY 1998 BY NOTIFICATION IN WRITING

in

CASE No. CH/96/8

Stjepan BASTIJANOVIĆ

against

the State of Bosnia and Herzegovina

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 15 July 1998 with the following Members present:

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

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the claim for compensation submitted by Stjepan Bastijanović against the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina following the Decision of the Human Rights Chamber of 3 November 1997 on the merits of Case No. CH/96/8, between the same applicant and respondent Parties;

Adopts the following Decision on the said claim under Article XI of the Human Rights Agreement contained in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina (the "Agreement").

I. INTRODUCTION

1. The applicant, Stjepan Bastijanović, contracted in 1992 to buy from the then Yugoslav National Army (“JNA”) an apartment in Sarajevo which he occupied pursuant to an occupancy right. His contract was annulled by legislation which was passed shortly after the entry into force of the General Framework Agreement for Peace in Bosnia and Herzegovina (the “General Framework Agreement”) in December 1995. The applicant complained that the annulment of his contract violated his property rights as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (the “Convention”). The Human Rights Chamber, in its Decision on the Merits of the case delivered on 3 November 1997, decided that the applicant’s rights as guaranteed by Article 6 and Article 1 of Protocol No. 1 to the Convention had been violated. It further decided to reserve for further consideration the question whether any other remedies should be ordered against the respondent Parties and to allow the applicant to submit any claim he wished to make in that respect before 9 February 1998.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina (the “Ombudsperson”) on 23 July 1996 in accordance with Article V(5) of the Agreement. The Chamber considered the case and requested the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina as respondent Parties to submit written observations on the admissibility and merits of the case. A time-limit expiring on 30 September 1996 was fixed for the receipt of these observations. No observations were received from either respondent Party. The case was declared admissible by the Chamber on 4 February 1997.

3. The respondent Parties were requested to submit observations on the merits of the case on 1 April 1997. The Minister of Justice of the Federation submitted observations in May 1997 in which he stated that the Federation adhered to the observations submitted in a similar case before the Chamber, CH/96/9 Radoslav Marković v. State of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina. There it had questioned the responsibility of the Federation for the matters at issue. No observations were received from the State.

4. On 10 April 1997, the Chamber decided to hold a public hearing in the case and in Case Nos. CH/96/3 Branko Medan v. State of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina and CH/96/9 Radoslav Marković v. State of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina also. The hearing was held on 4 June 1997 and the applicants in all three of the cases concerned appeared in person. The Federation was represented by its Agent, Mr. Džemaludin Mutapčić and by Ms. Nura Pinjo, legal representative of the Ministry of Defence. The State was not represented. At the close of the hearing, the Federation requested that it be allowed to submit further observations. It was allowed to do so by the Chamber, as an exceptional measure. These further observations were submitted on 17 June 1997. The applicant also submitted further observations. The Chamber deliberated on the merits of the case on 6 and 7 August 1997 and also on 7, 9 and 10 October 1997. On 10 October 1997, the Chamber ordered the joinder of the case and the other two cases referred to above, in which a public hearing had been held on the same day.

5. On 3 November 1997, the Chamber adopted its Decision in the three cases. The conclusions read as follows:

“50. For the reasons given above the Chamber:

- 1. **Decides** by eleven votes against one that the passing of legislation providing for the retroactive nullification of the applicants’ contracts for the purchase of their apartments involved violations by Bosnia and Herzegovina of the applicants’ rights under Article 1 of protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and that Bosnia and Herzegovina has thereby breached its

obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

- 2. **Decides** by eleven votes against one that the recognition and application within the Federation of the legislation providing for the retroactive nullification of the applicants' contracts involves violations by the Federation of Bosnia and Herzegovina of the applicants' rights under Article 1 of Protocol No. 1 to the Convention and that the Federation is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement;
- 3. **Decides** by a unanimous vote that the continuing adjournment since 14 December 1995 of the civil proceedings instituted by the applicants involves violations by the Federation of the applicants' rights to access to court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention and that the Federation is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement;
- 4. **Decides** by a unanimous vote that it is unnecessary to examine the applicants' complaints based on Article 13 of the Convention;
- 5. **Decides** by eleven votes against one to **order** the Federation of Bosnia and Herzegovina to take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;
- 6. **Decides** by a unanimous vote to **order** the Federation of Bosnia and Herzegovina to lift the compulsory adjournment of the court proceedings instituted by the applicants and to take all necessary steps to secure the applicants' right of access to court;
- 7. **Decides** by a unanimous vote to **order** the Federation of Bosnia and Herzegovina to report to it by 8 January 1998 on the steps taken by it to give effect to this Decision;
- 8. **Decides** by a unanimous vote to reserve for further consideration the question whether any other remedies should be ordered against either respondent Party and to allow the applicants to submit before 9 February 1998 any claim they wish to put forward in that respect."

6. The applicant's claim for compensation was received at the Registry on 9 February 1998.

7. The Federation's observations were received on 24 February 1998. Further observations submitted by the Federation were received by the Registry on 31 March 1998. These observations were submitted to the applicant for his comments on 19 May 1998. The Chamber considered the claim for compensation on 15 July 1998.

III. THE APPLICANT'S CLAIM FOR COMPENSATION

8. The applicant claimed US\$20,000 as compensation in respect of the following matters:

- the failure to allow him to be registered in the land register as the owner of the apartment which he had purchased;

- the continuing adjournment of the civil proceedings initiated by him on 10 February 1995;

- the suffering he was subjected to as a result of adverse comments made in the media, intimating that he was seeking to benefit improperly by seeking to be registered as the owner of the apartment in question and

-the failure of the respondent Parties to comply with the Decision of the Chamber.

IV. THE RESPONDENT PARTY'S OBSERVATIONS

9. On 14 February 1998, the Federal Attorney's Office wrote to the Federation House of Peoples, the Federation House of Representatives, the President of the Federation, the Vice-President of the Federation, the Prime Minister and Deputy Prime Minister of the Government of the Federation and the President of the Court of First Instance I in Sarajevo. This letter reminded the addressees of the Chamber's Decision and the Orders contained therein and informed them of the applicant's compensation claim. The addressees were requested to inform the Federal Attorney's Office of any steps taken to comply with the Orders of the Chamber by 10 March 1998.

10. On 31 March 1998, the Agent of the Federation submitted further observations on the claim for compensation. This letter informed the Chamber that the Co-Chairman of the Council of Ministers of Bosnia and Herzegovina and the Public Attorney's Office of Bosnia and Herzegovina had submitted appeals to the Constitutional Court of Bosnia and Herzegovina on 23 December 1997 and 30 December 1997 respectively. These appeals were against the decision in the present case and in Case Nos. CH/96/3 Branko Medan v. State of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina and CH/96/9 Radoslav Marković v. State of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina.

11. The civil proceedings instituted by the applicant on 10 February 1995 seeking his registration in the land register as the owner of the apartment in question are still adjourned. He has not yet been entered in the land register as the owner of the apartment in question.

12. The Federation, in its observations on the applicant's claim for compensation, challenged both the substance of the applicant's claim and the amount, stating that it was too high. The Federation submitted that the applicant's claim was unsubstantiated. He had never been disturbed in his enjoyment of his apartment. No evidence had been provided regarding any media articles concerning the applicant, so it was impossible to hold the Federation responsible for any such articles.

13. The Federation further stated that the Decision of the Human Rights Chamber was not sufficient to enable the applicant to be registered as the owner of the apartment in the land register as this would prejudice the court proceedings instituted by the applicant. In addition, legislation passed by the Federation legislature would credit the sum originally paid by the applicant for his apartment against the purchase price for that apartment under this new legislation.

14. In conclusion, the Federation reiterated its view that the claim was too high and requested that the Chamber reject it in its entirety.

V. OPINION OF THE CHAMBER

15. The applicant claimed compensation in respect of the failure by the Federation to allow him to be registered as the owner of the apartment in question. The Chamber notes that he at no time was threatened with being evicted from his apartment. In addition, he did not seek to deal with his property rights in the apartment in any way, for example by selling it or by using it as security for any loan or other matter. As a result, the applicant cannot be said to have suffered any damage to date as a result of his inability to be registered as owner. The Chamber does not therefore consider it appropriate to award the applicant any sums in respect of this matter.

16. The applicant also claimed compensation in respect of the adjournment of the proceedings initiated by him before the Court of First Instance I in Sarajevo on 10 February 1995, by which he sought to be registered as the owner of the apartment. The Chamber first notes that it only has jurisdiction *ratione temporis* in respect of matters arising after 14 December 1995, the date upon

which the General Framework Agreement came into force. Accordingly, it can only consider the adjournment of the applicant's proceedings insofar as it has continued after that date.

17. The Chamber also notes that the applicant has not submitted details of any costs incurred by him in respect of these proceedings and that he was not represented by a lawyer. As a result, the Chamber does not have before it any evidence of any loss suffered as a result of the adjournment of the proceedings. Consequently, the Chamber does not consider it appropriate to award the applicant any sums in respect of that adjournment.

18. The applicant also claimed compensation in respect of alleged adverse comments made about him by the authorities in the media. He did not provide, as the Federation pointed out in its observations, any evidence to support this claim. It is accordingly impossible for the Chamber to establish whether such statements were actually made, whether they could be attributed to persons for whose actions the Federation is responsible or whether the applicant suffered any damage as a result of their being made. As a result, the Chamber does not consider it appropriate to award the applicant any sums in this respect.

19. Finally, the applicant claimed compensation in respect of the failure of the respondent Parties to implement the Decision of the Chamber. The Chamber notes with serious concern that its Decision has not yet been implemented. Nonetheless, it cannot be stated that the applicant has suffered financial loss at this stage. The question of compensation does not therefore arise.

20. For these reasons, the Chamber by 13 votes to 1

DECIDES TO REJECT THE REQUEST FOR COMPENSATION

(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 concurring opinion by Mr. Andrew Grotrian.

SEPARATELY PARTLY DISSENTING OPINION OF MR. ANDREW GROTRIAN

I voted against the Chamber's decision to reject the applicant's claim for compensation.

I agree with the majority of the Chamber that the applicant has not mentioned any loss or damage which should be remedied by an award of compensation at this stage. However he has undoubtedly sustained material damage through the annulment of his contractual rights. In accordance with the Chamber's decision on the merits of the case such damage should be remedied by the Federation of Bosnia and Herzegovina taking "all necessary steps by way of legislative or administrative action to render ineffective the annulment of the ... contract." (See para. 52(5) of the Decision on the Merits). If that order is complied with by the Federation within a reasonable time it should effectively restore the applicant to his original position and I would not regard any further remedy by way of compensation as being appropriate.

Regrettably, however, the Federation has not complied with the Chamber's order and as far as I am aware it has shown no intention of doing so in the foreseeable future. In these circumstances it can be foreseen that the applicant may suffer loss or damage, flowing from the annulment of his contract, which should be remedied by an award of compensation. He may, for example, feel compelled to safeguard his position and minimise his loss, by purchasing his apartment under the new privatisation legislation and incur expense in doing so.

In these circumstances I do not consider that the question of monetary relief is altogether "ready for decision" (see Rule 59 of the Rules of Procedure). In my opinion the Chamber should therefore have reserved the question in part, under Rule 59, by expressly reserving to the applicant the right to make a further compensation claim in future in the event that the Federation does not comply with the Chamber's order.

It is possible that such a course is left open to the applicant by the Chamber's decision but I do not find that sufficiently clear.

(signed) Andrew GROTRIAN