



DECISION ON COMPENSATION

Cases nos. CH/96/3 and CH/96/9

Branko MEDAN and Radosav MARKOVIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 15 May 1999, with the following members present:

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

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the claims for compensation submitted in the aforementioned cases;

Adopts the following decision on the said claims under Article XI of the Human Rights Agreement ("the Agreement") contained in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rule 59 of its Rules of Procedure:

I. INTRODUCTION

1. In 1992 the applicants contracted to buy from the then Yugoslav National Army (“JNA”) their respective apartments in Sarajevo which they occupied on the basis of an occupancy right. Their contracts were annulled by legislation, which was passed shortly after the entry into force of the General Framework Agreement for Peace in Bosnia and Herzegovina in December 1995. The applicants complained that the annulment of their contracts violated their rights as guaranteed by Articles 6 and 13 of European Convention on Human Rights (“the Convention”) and Article 1 of Protocol No. 1 to the Convention. The Chamber delivered its decision on the merits of the aforementioned cases on 7 November 1997. The Chamber found that the applicants’ rights as guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated and that the respondent Parties have thereby breached their obligations under Article I of the Agreement (see Decisions 1996-1997). The Chamber ordered the Federation to take certain action. The Chamber decided to reserve for further consideration the question whether any other remedies should be ordered against the respondent Parties and to allow the applicants to submit any claim they wished to make in that respect before 9 February 1998.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The cases were referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina on 3 July 1996 and 26 July 1996 respectively in accordance with Article V(5) of the Agreement.

3. The Chamber requested the respondent Parties to submit their written observations on the admissibility and merits of the cases before 30 September 1996. The Chamber declared the cases admissible on 4 February 1997.

4. On 10 April 1997 the Chamber decided to hold a public hearing in these cases and case no. CH/96/8 (see *Medan, Bastijanović and Marković*, decision on the merits delivered on 7 November 1997, Decisions on Admissibility and Merits 1996-1997). The hearing was held on 4 June 1997. The Federation submitted further observations on 17 June 1997.

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

“52. 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."

III. THE APPLICANTS' CLAIMS FOR COMPENSATION

6. On 9 February 1998 the Registry received a claim for compensation submitted by Mr. Vlado Podvorac on behalf of Mrs. Ilinka Medan, the wife of the late Branko Medan. Mr. Radosav Marković submitted his claim for compensation on 5 February 1998.
7. Mrs. Medan claims 50,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") as compensation, stating that the illness and death of her husband were partly caused by the failure of the respondent Parties to take any steps to accelerate the recognition of the property right over his apartment following the issuance of the Chamber's decision the merits.
8. Mr. Marković claims compensation amounting to KM 25,000 with respect to the following:
 - the failure of the Federation since 1992 to allow him to be registered in the Land Register as the owner of the apartment; and
 - the failure of the respondent Parties to comply with the decision of the Chamber which afforded the guarantee of peaceful enjoyment of his possessions.
9. On 6 March and 10 February 1998, respectively, the Chamber transmitted the claims for compensation to the Federation of Bosnia and Herzegovina.
10. The Chamber has not received any observations by the Federation regarding the claim on behalf of the late applicant Mr. Medan. On 24 March 1998 the Chamber received observations by the Federation regarding the compensation claim of Mr. Marković. The Chamber considered the claims for compensation on 15 May 1999 and adopted the present decision.

IV. THE RESPONDENT PARTIES' OBSERVATIONS

11. The Military Attorney of the Ministry of Defence of the Federation stated in the observations of 24 March 1998 regarding the claim for compensation of Mr. Marković that the claim was ill-founded because the applicant had been using the apartment as an occupancy right holder and as such his peaceful enjoyment of this right had never been interfered with.

V. OPINION OF THE CHAMBER

12. The applicants have claimed compensation in respect of the failure of the Federation to allow them to be registered as the owners of the apartment in question. Mrs. Medan has further stated that this delay and the non-compliance with the Chamber's decisions were the reasons for the illness and death of her husband. The Chamber notes that the present applicants have not alleged they were threatened with eviction from their respective apartments. In addition, it does not appear from their submissions that they sought, in any way, to deal with their respective property rights related to the apartment, for example by selling them or by using them as security for a loan or in any other respect. As a result, the applicants cannot be said to have suffered any proven damage to date as a result of their inability to be registered as owners. Therefore, the Chamber does not consider it appropriate to award the applicants any compensation in respect of this matter.

13. Finally, the applicants 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 applicants have suffered financial loss as a result of this non-compliance. Therefore, no compensation can presently be awarded.

VI. CONCLUSION

14. For these reasons, the Chamber, by 11 votes to 2,

REJECTS THE CLAIM FOR COMPENSATION.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber