



DECISION ON MOTION FOR THE RENEWAL OF PROCEEDINGS

Case no. CH/01/6697

Dorđe MITROVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 July 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the respondent Party's motion to renew the proceedings in the aforementioned case;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina as well as Rule 33 paragraph 1 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is the former occupancy right holder over an apartment located at Behdžeta Mutevelića 416 (formerly Rave Janković) in Sarajevo, Municipality Novo Sarajevo. On 5 August 1999 the CRPC issued a decision finding that the applicant was, as of 1 April 1992, the occupancy right holder over the apartment. On 2 December 1999 the applicant filed a request for the enforcement of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo (“the Housing Administration”). The Housing Administration never issued a conclusion on the enforcement of the CRPC decision.

2. On 8 February 2002 the Chamber delivered its decision on admissibility and merits (adopted on 4 February) in cases no. CH/99/3071 et al., *Jokić & 10 Others v. the Federation of BiH*, which decided also case no. CH/01/6697, the application of Đorđe Mitrović. The Chamber ordered the Federation of BiH “to enable the applicants to regain possession of their apartments without further delay”. The Federation of BiH has enforced this decision with regard to all applicants except for the applicant in case no. CH/01/6697, Đorđe Mitrović. On 23 December 2002 the respondent Party informed the Chamber that CRPC had accepted a request for reconsideration and put out of force the CRPC decision in favour of the applicant. The Federation of BiH states that therefore it can no longer enforce the Chamber’s decision and asks the Chamber to reconsider it.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. The applicant lodged his application with the Chamber on 4 January 2001. On 8 February 2002 the Chamber delivered its decision on admissibility and merits (adopted on 4 February) in cases no. CH/99/3071 et al., *Jokić & 10 Others v. the Federation of BiH*, which decided also case no. CH/01/6697, the application of Đorđe Mitrović.

4. As to the individual facts of the applicant *Mitrović*, the Chamber found:

“9. Case no. CH/01/6697 Đorđe Mitrović

49. The applicant is the pre-war occupancy right holder over an apartment located at Behdžeta Mutevelića 416 (formerly Rave Janković) in Sarajevo, Municipality Novo Sarajevo. The applicant left the apartment during the 1992-95 war.

50. On 12 April 2000 (sic) the applicant requested the CRPC to issue a decision confirming his occupancy right.

51. On 5 August 1999 the CRPC issued a decision (Decision No. 514-1809-1/1) confirming the applicant’s occupancy right.

52. On 2 December 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

53. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.”

5. The Chamber declared all applications admissible, with the exception of the complaint of discrimination made by Mr. Mitrović and several other applicants. The Chamber found that the failure to enforce the CRPC decisions in the applicants’ favour constituted a violation of their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. As a remedy, the Chamber ordered the reinstatement of the applicants into their pre-war apartments and the payment of compensation. In the case of Mr. Mitrović, “KM 6200 (six thousand two hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 5000 by way of compensation for the loss of use his home” (para. 130 of the decision). The order for reinstatement reads:

“8.unanimously, to order the Federation to enable the applicants to regain possession of their apartments without further delay and at latest one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber’s Rules of Procedure;”.

6. On 8 March 2002 the respondent Party submitted a request for review of the decision. The request for review does not refer to any developments specific to the applicant’s case. On 12 April 2002 the Chamber rejected the request for review.

7. On 8 May 2002 the respondent Party informed the Chamber that CRPC had requested the housing authorities to suspend the enforcement of the CRPC decision in favour of Mr. Mitrović, because a request for reconsideration had been filed.

8. On 23 December 2002 the respondent Party informed the Chamber that, on 16 April 2002, CRPC had accepted the request for reconsideration and put out of force the CRPC decision in favour of the applicant. Moreover, on 3 September 2002, CRPC rejected a request for reconsideration lodged by the applicant against the decision of 16 April 2002. The Federation states that therefore it can no longer enforce the Chamber’s decision and asks the Chamber for its stance on the situation.

9. On 12 March 2003 the applicant informed the Chamber that the Federation has paid the compensation awarded in the Chamber’s decision. However, the applicant complains that he has not been reinstated yet. He does not mention the CRPC decisions.

10. On 8 May and 4 July 2003 the Chamber considered the motion by the Federation of Bosnia and Herzegovina and adopted the present decision.

III. OPINION OF THE CHAMBER

A. The procedural situation

11. The Chamber considers that the submission of the Federation of BiH of 23 December 2002 is, in its purpose if not in its form, a motion to the Chamber to reopen the proceedings in the case of the applicant Mitrović, on the ground that facts that have emerged since the decision has become final and binding require it to be reviewed.

12. Before considering the merits of the motion, the Chamber must decide whether to accept it, taking into account the relevant provisions of the Agreement and its Rules of Procedure.

13. The Chamber notes that the Agreement and the Chamber’s Rules of Procedure do not provide for a procedural mechanism by which cases concluded by a final and binding decision can be reopened. The only remedy against a decision of the Chamber provided for in the Agreement and the Chamber’s Rules of Procedure, limited to Panel decisions, is the request for review. Rule 66bis of the Rules of Procedure allows the Chamber to “rectify clerical errors, errors in calculation or obvious mistakes in its decisions”. In the present case, however, there is no mistake in the decision on admissibility and merits of 8 February 2002. Rather, the question is whether developments subsequent to the Chamber’s decision becoming *res judicata* require the decision to be changed.

14. The Chamber recognises that most legal systems provide for a mechanism by which cases concluded by a final and binding decision can be re-opened under certain exceptional circumstances, e.g. Rule 80 of the Rules of the European Court of Human Rights. The Chamber has also in a previous case recognised this possibility and considered a “motion for the renewal of proceedings” (see case no. CH/97/60 et al., *Miholić & Others*, decision on request for review and motion for the renewal of proceedings of 8 February 2002). The Chamber will therefore consider whether the Federation’s motion for the renewal of proceedings would justify such an extraordinary re-opening of the present case.

B. The merits of the motion

15. The Chamber notes that, in its decision on admissibility and merits of 8 February 2003, it found a violation of the applicant's right to respect for his home and to peaceful enjoyment of possessions on the ground that the competent authorities failed to reinstate the applicant into possession of the apartment at Behdžeta Mutevelića 416 (formerly Rave Janković) in Sarajevo. The Chamber found that the failure to enforce the CRPC decision of 5 August 1999 (Decision No. 514-1809-1/1), confirming the applicant's occupancy right, was not "in accordance with the law". The Chamber did not independently establish that the applicant was the pre-war occupancy right holder of the apartment. Therefore, its order to enable the applicant to regain possession of his apartments without further delay (conclusion no. 8) was entirely based on the CRPC decision, and was, in substance, an order to finally enforce that decision, as required by the laws of the Federation of BiH.

16. The Chamber observes that the decisions of CRPC are final and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina (Article XII(7) of Annex 7). Article 10 of the Law on Implementation of CRPC Decisions (Official Gazette of FBiH nos. 43/99, 51/00 and 56/01) states that "the right holder referred to in the Commission decision and/or any other person who held a legal interest in the property or apartment at issue on the date referred to in the dispositive of the Commission decision, is entitled to submit a request for reconsideration to the Commission, in accordance with Commission regulations. [...]. The regularity of the Commission decision may be reviewed only through the reconsideration procedures referred to in Article 11 of this Law".

17. The Chamber takes note of the CRPC decision of 16 April 2002 (no. R-514-1809-1/1-90-889), issued in reconsideration procedure. By this decision CRPC put out of force its decision of 5 August 1999 in favour of the applicant, establishing that the applicant's contract on use had been terminated in 1972 and that he had vacated the apartment in 1976. The CRPC explains:

"By the Decision of the Commission for Real Property Claims of Displaced Persons and Refugees number 514-1809-1/1 of 5 August 1999 it has been confirmed that on 1 April 1992 Mitrović (Petar) Đuro was a holder of occupancy right over the apartment in Sarajevo-Novo Sarajevo, st. Rave Janković 41b, surface of 27m², single-room by structure (new address: Behdžeta Mutevelića).

The Association of Citizens Suffering from Cerebral Children Paralysis of the Canton Sarajevo submitted a request for renewed consideration of that Decision. In the request it was stated that the Contract on Use of the apartment that Mitrović Đorđe concluded in 1971 was annulled in 1972 by the Supreme Court of Bosnia and Herzegovina, and that in 1972 Redžepović Senija concluded a contract on usage of the apartment concerned with Housing Enterprise Sarajevo based on the judgement of the Supreme Court of Bosnia and Herzegovina number 3643/71 of 4 February 1972, and that the mentioned person moved out from the apartment concerned in 1976, and that since the beginning of April 1992 the premises concerned were used by Antunović Ljupko and Ilić Luka as their artistic atelier. They further state that Mitrović Đorđe moved to Belgrade in 1972 where he has been living ever since. As an evidence to the request, an information is attached by the Police Administration Novo Sarajevo number 07/3-13-6-1021 of 19 February 2002, contract on usage of the apartment concluded in 1971 by Redžepović Senija and the procedural decision by the Bureau for City Development Sarajevo number □-2-2363-1/76 of 13 September 1976 on allocation for usage of the apartment in the Hrasno settlement to Redžepović Senija because the building in which the apartment concerned was located was scheduled for leveling.

The request by the Association of Citizens Suffering from Cerebral Children Paralysis of the Canton Sarajevo has been founded. After additional checking of data in the Cantonal Public Housing Company "Sarajevostan", Sarajevo, it has been established that the apartment concerned is not in the fund and that it has been removed from the record of KJSP "Sarajevostan" since 1 September 1976.

Having in mind the established factual status from which it comes out that the mentioned person was not the occupancy right holder over the apartment concerned on 1 April 1992, the Commission has put the Decision number 514-1809-1/1 of 5 August 1999 out of force and rejected the request of Mitrović Đorđe for confirmation of the occupancy right over the apartment described."

18. The Chamber finds that, since its order to reinstate the applicant was based entirely on a CRPC decision, which has in the meantime been put out of force, this order has become groundless. The information submitted to the Chamber on 23 December 2002 was not available to the

respondent Party either during the proceedings before the First Panel or at the time of the request for review. Therefore, the Chamber concludes that in the circumstances it is justified to reopen the case no. CH/01/6697.

19. The Chamber further concludes that, for the same reasons, it is justified to vacate conclusion no. 8 of the decision on admissibility and merits of 8 February 2002 insofar as it refers to the applicant in case no. CH/01/6697.

IV. CONCLUSIONS

20. For the above reasons the Chamber, unanimously, decides

TO ACCEPT THE MOTION FOR THE RENEWAL OF PROCEEDINGS; and

TO VACATE CONCLUSION NO. 8 OF THE DECISION ON ADMISSIBILITY AND MERITS OF 8 FEBRUARY 2002 INsofar AS IT RELATES TO THE APPLICANT IN CASE NO. CH/01/6697.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber