DECISION ON THE CLAIM FOR COMPENSATION

DELIVERED IN WRITING ON 22 JULY 1998

in

CASE NO. CH/96/17

Mehmed BLENTIĆ

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 MOLLER
Mehmed DEKOVIĆ
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 Mehmed Blentić against the Republika Srpska following the Decision of the Human Rights Chamber of 3 December 1997 on the admissibility and merits of the Case No. CH/96/17, 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 (the "Agreement" set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

I. INTRODUCTION

1. On 19 September 1995 the applicant and his wife were forcibly evicted from their privately owned house in Banja Luka by Mr. D.V.. The applicant instituted proceedings before the Court of First Instance in Banja Luka which ordered the eviction of Mr. D.V.. Several attempts were made to execute the Court's decision. It appears that on each occasion a crowd assembled to obstruct the eviction and the police took no action.

2. The Chamber found in its Decision on the admissibility and the merits of the case of 3 December 1997 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, involved a breach of Article 8 of the European Convention of Human Rights (henceforth "the Convention"), of Article 1 of Protocol No. 1 to 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 (the "Ombudsperson") dated 23 October 1996. On 3 September 1997 the case was considered by the Chamber together with the cases of Bejdić and "M.J." v. Republika Srpska (Case Nos. CH/96/27 and 28) which concerned similar issues. On 8 October 1997 the Chamber held a public hearing in these cases.

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** unanimously:
>
> ...
>
> 4. To **order** the respondent Party to take effective measures to restore to the applicant possession of the house referred to in the relevant orders of the Court of First Instance in Banja Luka;
>
> 5. To **order** the respondent Party to report to it before 3 February 1998 on the steps taken by it to comply with the above order;
>
> 6. To **reserve** to the applicant the right to apply to it before 3 March 1998 for any monetary relief or other redress he wishes to claim."

5. On 2 January 1998 the Agent of the Republika Srpska informed the Chamber that the Court of First Instance in Banja Luka has scheduled an eviction of Mr. D.V. on 23 January 1998. On 9 February 1998 the Agent submitted a letter of the President of the Court of First Instance of Banja Luka of 5 February 1998 by which the President of the Court informs the Agent that the executive proceedings, initiated by Mr. Blentić have been terminated and that Mr. Blentić and his wife entered their house on 23 January 1998.

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. As the claim was out of time it was placed before the Plenary Chamber on 9 June 1998 for consideration of the further procedure. The Chamber decided to transmit it to the respondent Party for their observations. The respondent Party did not submit any observations within the time limit set by the Chamber.

III. THE APPLICANT'S CLAIM FOR COMPENSATION

7. The applicant's claim consists of two different items:

(a) The applicant alleges that the person occupying his house between 19 September 1995 and 23 January 1998 removed a number of the applicant's possessions. The applicant claims a sum of 50.000 DEM for compensation under this head.

(b) The applicant also claims pecuniary damage in relation to "rent" paid by him for the period between 19 September 1995 and 23 January 1998. He claims 150 DEM per month amounting to a total sum of 4.200 DEM.

IV. OPINION OF THE CHAMBER

8. Under Article II paragraph 1 of the Agreement the Human Rights Ombudsperson for Bosnia and Herzegovina and the Human Rights Chamber together constitute the Commission on Human Rights. The Chamber therefore considers, having regard to the fact that the applicant submitted his initial application to the Ombudsperson, that the applicant's claim for compensation was received on 18 March 1998. The claim is therefore 15 days late.

9. The applicant states in the letter received on 18 March 1998 that he already sent a list of missing furniture to the Chamber by a letter of 12 February 1998. That means that the applicant showed interest in compensation already at that time. The respondent Party neither reacted to the request for observations nor contested the claim. For these reasons the Chamber decides to take the claim into consideration.

10. Regarding the applicant's first claim (paragraph 7. (a) above) the Chamber notes that the alleged loss of movable property would not have occurred if the eviction of the illegal occupant of the house had been effected at an earlier stage. However, the Chamber finds that the alleged loss of moveable property has 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 cannot therefore be held responsible for it.

11. As regards the applicant's claim (paragraph 7 (b) above) relating to the compensation for rent, 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 2 November 1995 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 need for the applicant to rent another apartment exists and the respondent Party has to be held responsible for the damage suffered by the applicant in this respect.

12. The applicant claims the amount of 150 DEM per month for the period from 19 September 1995 to 23 January 1998. It is not contested by the respondent Party that the applicant paid the amounts claimed. On the information available the amount of 150 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 18 December 1995, when the first eviction of the illegal occupant was scheduled but failed, and ended on 23 January 1998, when the applicant regained possession over the apartment. This adds up to twenty-five months. The Chamber therefore finds a sum of 3.750 DEM appropriate to compensate the applicant in this respect.

IV. CONCLUSION

13. For these reasons the Chamber **decides**:

1. By 12 votes to 2 to **order** the respondent Party to pay to the applicant, within three months, the sum of 3.750 KM (three thousand seven hundred and fifty Konvertibilne Marke) in respect of pecuniary injuries;

2. By 12 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;

3. 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 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 with the 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.

In addition, the applicant's request was submitted 15 days after the time limit expired. The applicant's request should, therefore, have been rejected as not submitted within the time limit.

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 Republika 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.

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 and not submitted within the time limit.

(signed) Miodrag Pajić

(signed) Vitomir Popović