



DECISION ON THE CLAIM FOR COMPENSATION
DELIVERED ON 29 JULY 1998 BY NOTIFICATION IN WRITING

in

CASE No. CH/96/22

Milivoje BULATOVIĆ

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 Milivoje Bulatović 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/96/22, 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, Milivoje Bulatović, 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") and also alleged violations of various rights as a result of certain other related matters. 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 5 November 1996 in accordance with Article V(5) of the Agreement. The Chamber considered the case on 8 November 1996 and requested the Federation of Bosnia and Herzegovina not to evict the applicant from his apartment. On 11 December 1996 it decided to request both 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. On 12 December 1996, the Chamber received a letter dated 3 December 1996 from the Minister of Justice of the Federation, in which he made observations relating to the responsibility of the Federation for the matters complained of. No other observations were received from either respondent Party. The case was declared admissible by the Chamber on 10 April 1997.

3. After the Decision by the Chamber that the case was admissible, the respondent Parties were requested to submit observations on the merits of the case. The Federation, in a letter dated 5 May 1997, adhered to the observations it had submitted in its letter dated 3 December 1996. On 10 April 1997, the Chamber decided to hold a public hearing in the present case and in four other cases concerning property matters.

4. The hearing was held on 4 June 1997. The applicant appeared in person and represented himself. 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. The Chamber, as an exceptional measure, allowed all parties to do so. The Federation submitted further observations on 17 June 1997. The applicant also submitted further observations on 19 June 1997. The Chamber deliberated on the merits of the case on 6 and 7 August 1997 and also on 7, 9 and 10 October 1997.

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

"57. 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' contract for the purchase of his apartment involves violation 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 is thereby in breach of 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' contract involves violation 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 applicant involves violation 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 the threatened eviction of the applicant involves an additional violation by the Federation of his 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;
- 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' contract 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 applicant 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 not to evict the applicant from the apartment occupied by him;
- 8. **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;
- 9. **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 applicant to submit before 9 February 1998 any claim he wishes to put forward in that respect."

6. The applicant's claim for financial compensation was received at the Registry on 22 January 1998.

7. The Federation's observations were received by the Registry on 31 March 1998. The Chamber considered the claim for compensation on 15 July 1998.

III. THE APPLICANT'S CLAIM FOR COMPENSATION

8. The applicant based his claim on Article XI(1)(b) of the Agreement. He claimed 100,000 German Marks ("DEM") as compensation in respect of the following matters:

- the refusal of the Federation to recognise his right of ownership over the apartment in question;
- the failure by the Federation 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 21 October 1994;

- the declaration by authorities of the Federation that his apartment was abandoned while he was abroad for medical treatment and the failure to supply him with a copy of such decision and
- the attempts by the Federation to evict the applicant from his apartment. The applicant states that he was subjected to threats and harassment by the authorities of the Federation and that his health deteriorated as a result.

IV. THE RESPONDENT PARTY'S OBSERVATIONS

9. On 17 March 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 Federal Ministry of Defence, the Federal Ministry for Physical Planning and Environment, the Ministry of Justice and Administration of the Canton of Sarajevo and the Court of First Instance 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 April 1998.

10. On 31 March 1998, the Agent of the Federation submitted 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 21 October 1994 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 Federal Attorney's Office, 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. It referred to the appeal submitted to the Constitutional Court of Bosnia and Herzegovina (see paragraph 9 above).

13. The Federal Attorney stated that the applicant enjoyed undisturbed possession of his apartment, as the Federal Ministry of Defence no longer sought his eviction. This was as a result of the entry into force of the Law on Termination of the Application of the Law on Abandoned Apartments (SN FBiH 11/98). This law annulled all decisions declaring apartments permanently abandoned and terminating occupancy rights.

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 continuing adjournment of the proceedings initiated by him before the Court of First Instance I in Sarajevo on 21 October 1994, 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 as a result of the adjournment of these proceedings. Consequently, the Chamber does not consider it appropriate to award the applicant any sums in this respect.

18. In addition, the applicant claimed compensation in respect of the declaration by authorities of the Federation that his apartment was permanently abandoned and the termination of his occupancy right. The Chamber considers that its Decision on the Merits of the case (see paragraphs 1 and 5 above) constitutes just satisfaction in this regard.

19. He also claims compensation in respect of his threatened eviction from his apartment and the distress he allegedly suffered as a result.

20. The Chamber accepts the claims of the applicant regarding the harassment he suffered at the hands of authorities of the Federation, who were attempting to evict him from his apartment. The Federal Attorney's Office, in its observations on the applicant's claim for compensation, did not contradict or deny those claims. Accordingly, the Chamber considers it appropriate to award the applicant the sum of 1,500 Konvertibilnih Maraka ("KM") in respect of the suffering he underwent as a result of the attempts by authorities of the Federation to evict him from his apartment.

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

1. (a) **order** the Federation of Bosnia and Herzegovina to pay to the applicant, within three months, the sum of 1,500 (one thousand five hundred) Konvertibilnih Maraka ("KM"), by way of compensation for non-pecuniary injury;
 - (b) that simple interest at an annual rate of 4% (four per cent) 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 and
 - (c) to **reject** the remainder of the applicant's claim for compensation.
2. to **order** the Federation of Bosnia and Herzegovina to inform the Chamber, within three months, of the steps taken by it to comply with the above order.

(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 conclusion set out in para. 1(c) at the end of the Chamber's decision to reject the remainder of 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 beyond that referred to in conclusion 1(a), 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 applicant's contract." (See para. 57(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