



DECISION ON THE CLAIM FOR COMPENSATION

CASE No. CH/96/28

“M.J.”

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 14 October 1998 with the following Members present:

Ms. Michèle PICARD, President,
Mr. Manfred NOWAK, Vice-President,
Mr. Dietrich RAUSCHNING,
Mr. Hasan BALIĆ,
Mr. Rona AYBAY,
Mr. Vlatko MARKOTIĆ,
Mr. Želimir JUKA,
Mr. Jakob MOLLER,
Mr. Mehmed DEKOVIĆ,
Mr. Giovanni GRASSO,
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 claim for compensation submitted by “M.J.” against the Republika Srpska following the Chamber’s Decision on the Admissibility and Merits of the above case, registered under Case No. CH/96/28;

Adopts the following Decision on the claim for compensation under Article XI (1) of the Human Rights Agreement (“Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rule 59 of its Rules of Procedure.

I. FACTS

1. On 19 September 1995 the applicant and his family were forcibly evicted from their apartment in Banja Luka by Mr. K.V. On 12 October 1995 the applicant instituted proceedings before the Court of First Instance in Banja Luka against Mr. K.V. for "disturbance of possession". On 19 December 1995 the court issued a decision ordering the eviction of Mr. K.V. Several attempts were made to execute the court decision but without results due to the failure of the police on each occasion to take any action to assist court officials.

2. The applicant initiated a second set of proceedings before the Court of First Instance in Banja Luka on or about 23 December 1996 against Mr. Marinko Rujević, who had arranged with Mr. K.V. to occupy the applicant's apartment. This civil action was still pending at the time of the Chamber's Decision on the Admissibility and Merits of 3 December 1997.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 20 November 1996 the Human Rights Ombudsperson for Bosnia and Herzegovina ("Ombudsperson") issued a decision referring the application to the Chamber. The application was registered by the Chamber on 2 December 1996.

4. On 21 March 1997 the Chamber considered the case and decided to request the respondent Party for observations on the admissibility and merits of the application. The respondent Party submitted observations by letter dated 29 April 1997. In reply the applicant's representative submitted observations on 25 June 1997 and the Ombudsperson submitted observations on 9 July 1997.

5. On 3 September 1997 the Chamber considered the case together with the cases of *Blenić v. Republika Srpska* (Case No. CH/96/17) and *Bejdić v. Republika Srpska* (Case No. CH/96/27), both of which raised similar issues, and decided to hold a public hearing in these cases. The hearing was held on 8 October 1997.

6. On 3 December 1997 the Chamber delivered its Decision on the Admissibility and Merits of the case. The Chamber found that the failure of the respondent Party to enforce the decision of the Court of First Instance in Banja Luka of 19 December 1995 and the failure of the court to deal with sufficient urgency with the second civil action initiated on 23 December 1996 involved violations of the applicant's rights under Article 6 and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention") and Article 1 of Protocol No. 1 to the Convention, and that the respondent Party was thereby in violation of Article I of the Agreement.

7. The Chamber's conclusions containing the steps to be taken by the respondent Party to remedy the violations of the applicant's rights provided as follows:

"40. For the above reasons the Chamber decides as follows:

(...)

4. By eleven votes against one to order the respondent Party to take effective measures to restore to the applicant possession of the apartment referred to in the relevant orders of the Court of First Instance in Banja Luka;

5. By eleven votes against one 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. By eleven votes against one 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".

8. The applicant's claim for compensation was received by the Chamber on 26 February 1998. On the same date the applicant informed the Chamber that he had not been restored into his apartment and that he had been told by the President of the Court of First Instance in Banja Luka that

the court had no intention to execute the Chamber's decision because "Serbs within the territory of the Federation were not able to enter their homes either". The Chamber transmitted the applicant's claim for compensation to the respondent Party for observations on 25 March 1998. The respondent Party did not submit any observations within the time-limit set by the Chamber.

9. By letter dated 6 May 1998 the respondent Party informed the Chamber that the Court of First Instance in Banja Luka had scheduled for 29 May 1998 the eviction of Mr. K.V. from the applicant's apartment.

10. On 1 June 1998 the Ombudsperson informed the Chamber that on 30 May 1998 the applicant had been reinstated in his apartment in the presence of the court bailiff after Mr. K.V. had vacated the apartment the previous day. Mr. K.V. had taken almost all of the applicant's movable property from the apartment.

11. On 10 June 1998 the Chamber considered the case and decided to ask the applicant whether he wished to submit a new claim for compensation, taking into consideration the recent developments in the case, most notably his reinstatement in the apartment on 30 May 1998.

12. On 2 July 1998 the Chamber received a letter from the applicant indicating his wish to proceed with his original claim for compensation dated 26 February 1998. The letter was transmitted to the respondent Party for observations on 6 July 1998. No observations were received from the respondent Party within the time-limit set by the Chamber.

13. The Chamber considered the applicant's claim on 9 September 1998.

III. CLAIM FOR COMPENSATION

14. The applicant's claim, totalling DEM 52,440, consists of four items:

1. Compensation for items which were in the apartment at the time of the forcible eviction of the applicant from his apartment, amounting to DEM 20,440;
2. Compensation for repairs to the apartment including painting and construction, amounting to DEM 1,000;
3. Compensation for suffering of the applicant and his family as stated in his letter, amounting to DEM 30,000; and
4. Compensation for legal costs and fees, amounting to DEM 1,000.

IV. OPINION OF THE CHAMBER

15. As regards the applicant's first claim (see para. 14 above), the Chamber notes, as in the cases of *Blentić* (Case No. CH/96/17, *Blentić v. Republika Srpska*, Decision on the Claim for Compensation of 14 July 1998, para. 10) and *Bejdić* (Case No. CH/96/27, *Bejdić v. Republika Srpska*, Decision on the Claim for Compensation of 14 July 1998, para. 11) 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 movable property was not directly caused by the respondent Party or by any person acting on its behalf but by the illegal occupant of the apartment. The respondent Party therefore cannot be held responsible for such loss.

16. The Chamber furthermore finds that the damage and wear to the apartment for which the applicant claims compensation was not directly caused by the respondent Party either. The respondent Party therefore cannot be held responsible for damage and wear nor for the cost of repairing such damage.

17. Regarding the applicant's claim for compensation for ill-treatment suffered by himself, it has not been established in the proceedings before the Chamber that he was subjected to any ill-treatment for which the authorities could be held responsible. In so far as the applicant's claim relates to his family, the Chamber follows its reasoning in *Bejdić* (Decision on the Claim for Compensation, para. 14) and *Galić* (Case No. CH/97/40, *Galić v. Federation of Bosnia and Herzegovina*, Decision on the Merits of 12 June 1998, para. 68) and finds that the alleged suffering on their part is not within the scope of the case before the Chamber.

18. The applicant was, however, deprived of the possibility to use his apartment during a period exceeding two years, which must have caused him certain distress. A causal link exists between the non-execution of the court decision of 19 December 1995 and this distress suffered by the applicant. On an equitable basis, the Chamber therefore finds it appropriate to award him KM 4,000 (four thousand Konvertible Marks) in compensation for non-pecuniary damage.

19. As regards the applicant's claim for compensation for legal expenses and fees the Chamber again follows the *Bejdić* case (Decision on the Claim for Compensation, para. 15) and awards the applicant the sum of KM 250 (two hundred and fifty Konvertible Marks) for expenses related to the proceedings before the Chamber.

V. CONCLUSION

20. For these reasons, the Chamber:

1. (a) Orders by 11 votes to 3, the respondent Party to pay to the applicant, within three months, the sum of KM 4,000 (four thousand Konvertible Marks) in compensation for non-pecuniary damage resulting from the violation of the applicant's rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

(b) Orders by 12 votes to 2, the respondent Party to pay to the applicant, within three months, the sum of KM 250 (two hundred and fifty Konvertible Marks) in compensation for expenses incurred in the proceedings before the Chamber;

(c) Orders by 12 votes to 2, that simple interest at an annual rate of 4% (four percent) will be payable over the above sums or any unpaid portion thereof from the day of expiry of the above mentioned three month period until the date of settlement;

2. Rejects by 11 votes to 3, the remainder of the applicant's claims for compensation.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michele PICARD
President of the Chamber