



DECISION ON COMPENSATION

Case no. CH/96/2

Vlado PODVORAC

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 claim for compensation submitted in the aforementioned case;

Adopts the following decision under Article XI(1)(b) 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 applicant contracted to buy from the then Yugoslav National Army (“JNA”) the apartment in Sarajevo which he occupied on the basis of 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 in December 1995. The applicant complained that the annulment of his contract violated his rights as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights. The Chamber delivered its decision on admissibility and merits in cases nos. CH/96/2 *et al.* on 12 June 1998. 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 and Reports 1998). 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 12 September 1998.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina on 3 July 1996 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 case before 9 January 1998. No observations were received.

4. The Chamber deliberated on the admissibility and merits of the case on 5 April 1998 and decided to join it with the 15 other cases.

5. On 14 May 1998 the Chamber adopted its decision in this and the 15 other cases. The conclusions read, in so far as relevant, as follows:

“74. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible in so far as they concern Article 6 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention;

2. by 13 votes to 1, that the passing of legislation providing for the retroactive nullification of the applicants’ contracts for the purchase of their apartments involved violations of 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;

3. by 13 votes to 1, 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 European Convention for the Protection of Human Rights and Fundamental Freedoms and that the Federation is thereby in breach with its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

4. unanimously, that the continuing adjournment since 14 December 1995 of the civil proceedings instituted by the applicants Mr. Podvorac ... (Application Nos. CH/96/2 ...) involves violations by the Federation of Bosnia and Herzegovina of the applicants’ rights to access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the European Convention on Human Rights and that the Federation is thereby in breach of its obligations under Article I of the Agreement;

5. ...

6. unanimously, that it is unnecessary to examine the applicants' complaints based on Article 13 of the Convention;
7. unanimously, 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;
8. unanimously, to order the Federation 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;
9. unanimously, to order the Federation to report to it by 12 September 1998 on the steps taken by it to give effect to this Decision;
10. unanimously, 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 12 September 1998 any claim they wish to put forward in this respect."

III. THE APPLICANT'S CLAIM FOR COMPENSATION

6. The applicant requested in his claim for compensation of 3 July 1998 that he should be paid 1,000 German Marks (DEM) for each month since February 1992 until he is allowed to have his ownership over the purchased apartment entered into the Land Register. He had attempted on two occasions to have his ownership registered by a judge, but he was refused with the explanation that the Government had imposed a prohibition thereon.
7. On 21 August 1998 the Chamber transmitted the claim for compensation to the respondent Parties. No observations were received from the respondent Parties. On 15 May 1999 the Chamber considered the claim for compensation and adopted the present decision.

IV. THE RESPONDENT PARTIES' OBSERVATIONS

8. No observations were received from the respondent Parties.

V. OPINION OF THE CHAMBER

9. The applicant has claimed compensation in respect of the failure of the Federation to allow him to be registered as the owner of the apartment in question. The Chamber notes that the present applicant has not alleged that he was threatened with eviction from his apartment. In addition, it does not appear from his submissions that he sought to deal with his property right in the apartment in any way, for example by selling it or by using it as security for a loan or in any other respect. As a result, the applicant cannot be said to have suffered any proven damage to date as a result of his inability to be registered as owner. Therefore, the Chamber does not consider it appropriate to award the applicant any compensation at this stage in respect of this matter.

VI. CONCLUSION

10. For these reasons, the Chamber, by 12 votes to 1,
REJECTS THE CLAIM FOR COMPENSATION.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber