DECISION ON THE CLAIM FOR COMPENSATION

DELIVERED IN WRITING ON 24 AUGUST 1999

CASE No. CH/97/46

Ivica KEVEŠEVIĆ

against

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 by the applicant on 1 December 1998;

Adopts the following decision under Article XI(1)(b) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rule 59 of its Rules of Procedures:

I. PROCEEDINGS BEFORE THE CHAMBER

1. This case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina on 31 July 1997 and was registered on 4 August 1997.

2. On 11 March 1998 a public hearing was held in this case. The applicant's representative and the Agent of the respondent Party were present.

3. On 10 September 1998 the Chamber delivered its decision on the merits. The Chamber established that a decision of 22 November 1996 declaring the applicant's apartment abandoned and his subsequent eviction on 28 November 1996 constituted a violation of both Article 8 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention, and that the respondent Party had thereby breached its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina. The Chamber's decision also ordered the respondent Party to take all necessary steps to annul the decision of 22 November 1996 declaring the applicant's apartment abandoned, to reinstate the applicant in his apartment and to report to the Chamber before 10 November 1998 on the steps taken to comply with these orders. The Chamber reserved for the applicant the right to claim, before 10 December 1998, any additional remedy.

4. On 1 December 1998 the Chamber received a claim for compensation from the applicant's representative. On 17 December 1998 the applicant's representative informed the Chamber that the applicant had regained possession of his apartment on 16 December 1998 and that a record thereof had been made by the applicant and the municipal authorities. This record stated amongst other information that the apartment was in correct condition, namely that electronic installations, water utilities and sanitary facilities were in proper condition.

5. On 29 December 1998 the Chamber received a letter from the Agent of the Government of the respondent Party, reporting that it had fulfilled its obligations arising from the Chamber's decision by having delivered the keys to the apartment in dispute to the applicant on 15 December 1998 after an eviction of the temporary occupant had been carried out.

6. On 4 January 1999 the applicant's representative confirmed that the applicant wanted to pursue his compensation claim of 1 December 1998 and substantiated it by stating that the apartment the applicant had been reinstated into was devastated.

7. On 1 February 1999 the Agent of the respondent Party commented on the applicant's claim for compensation.

8. On 5 February 1999 the Chamber received a letter from the applicant's representative specifying several items of the previously submitted claim for compensation.

9. On 4 March 1999 the Agent of the respondent Party submitted additional observations on the specified claim for compensation.

10. On 14 April 1999 the Chamber received a letter by the applicant's representative stating that the applicant had to sign the record of 16 December 1998 on his reinstatement although the information given therein concerning the condition of the apartment was not correct. He further pointed out that the record did not contain any information regarding the furniture.

11. Upon the invitation of the Chamber to comment on the above-mentioned letter by the applicant, the respondent Party submitted observations on 30 April 1999 rejecting the arguments of the applicant and its responsibility for the damage. It is further pointed out that following the record of the applicant's eviction of 28 and 29 November 1996 the applicant was able to remove many of his movable possessions and could have removed all of them, thereby preventing their alleged devastation.

II. CLAIM FOR COMPENSATION

12. The applicant claims compensation in the total amount of 6,500 Konvertibilnih Maraka (henceforth KM) for the following items:

1. Devastation of the apartment; and
2. of movable possessions in the apartment in the amount of 2,720 KM for both items taken together (compensation for the renovation of the apartment and purchase of furniture);
3. the applicant's mental suffering and necessary medical treatment;
4. rent which the applicant had to pay for residing elsewhere for a period of 25 months, namely 100 KM per month, amounting to a total of 2,500 KM;
5. costs for legal advice for the proceedings before the Chamber of 650 KM and costs for posting documents and travel to Sarajevo on three occasions related to the case amounting to 250 KM;
6. costs of the reconnection of his telephone line into the apartment in the amount of 380 KM.

13. With respect to item 3, the applicant's representative points out that the applicant and his family continue to suffer from great psychological pain, fear and threats which he could not estimate. He further reports that they had not received the amount of 800 DEM compensation as recommended to the respondent Party by the Human Rights Ombudsperson for Bosnia and Herzegovina.

14. The respondent Party submits that the claim should be refused in whole as ill-founded, as the applicant failed to present an itemised bill and evidence in support thereof. As the moment when the alleged pecuniary damage was caused has not been specified, the respondent Party also objects on the grounds of *ratione temporis,* given that the applicant and his family left the apartment already in November 1993 and the damage could have been caused before the entry into force of the General Framework Agreement for Peace in Bosnia and Herzegovina on 14 December 1995. Even assuming that the pecuniary damage was caused after that date, the applicant has not shown that an organ or official of the respondent Party could be held responsible therefor. In these circumstances the applicant should claim compensation from the person who occupied his apartment during the relevant period. The respondent Party suggests further that the applicant has not presented relevant evidence as to the amount of the damages objectively suffered, but has presented only the necessary costs for reparation which the respondent Party considers overestimated. Also, as the applicant was not represented by a lawyer in the proceedings before the Chamber, he could not have any claim in this respect.

III. OPINION OF THE CHAMBER

15. As regards items 1 and 2 of the compensation claim, the Chamber understands them to relate to the alleged pecuniary damage caused during the period following his eviction from the apartment in November 1996 up to his reinstatement therein in December 1998. As this entire period falls within the Chamber's competence *ratione temporis*, the respondent Party's objection on this point must be rejected. The Chamber notes, however, that on the occasion of his reinstatement into the apartment on 16 December 1998 the applicant had signed minutes drafted by the "Commission for the reinstatement into the possession of apartments" of the Department for Urban Planning and Reconstruction of the Municipality of Vareš. These minutes stated that the apartment, including its electric installations, water and sanitary facilities, was in a correct state. It is true that the applicant has later contested the contents of the minutes. He has provided another document stating that the central heating and the water-heaters in the kitchen and bathroom were out of order, that the wash-basin and the toilet bowl were broken, blinds were missing and so forth. The Chamber considers the applicant's later submission as contradictory as he could have refused to sign the minutes of 16 December 1998 or at least could have indicated his disagreement with the statements made therein. Therefore, the Chamber rejects this part of the compensation claim, as the applicant has failed to substantiate it. The same applies to the compensation sought for the devastation of furniture of the apartment.

16. Regarding item 3 of the claim, the Chamber notes that the applicant was deprived of the possibility of living with his family in his apartment during a period exceeding two years, which must have caused him certain distress. A causal link exists between the decision of 22 November 1996 to declare his apartment abandoned, the applicant's and his family's eviction on 28 November 1996 and the impossibility for them to return to this dwelling until 16 December 1998. On an equitable basis, the Chamber therefore finds it appropriate to award the applicant 1,500 KM in compensation

for non-pecuniary damage (cf. *M.J. v. The Republika Srpska,* Case No. CH/96/28, decision of 14 October 1998, Decisions and Reports 1998, paragraph 18).

17. As for item 4 of the claim, the Chamber notes that the applicant and his family were not in a position to live in their apartment from 28 November 1996 to 16 December 1998, thus for a period exceeding 2 years. The Chamber finds no reason to doubt that the applicant and his family have had to pay rent for living elsewhere during the period in issue. On an equitable basis, the Chamber assesses the total amount of rent paid during the relevant period of 25 months to be approximately 100 KM per month, amounting to a total of 2,500 KM and awards this sum by way of compensation for pecuniary damage.

18. As for item 5 of the compensation claim, the Chamber does not find it appropriate to award legal costs as the applicant is not represented by a practising lawyer. However, the Chamber sees no reasons to doubt that the applicant incurred costs for travel to Sarajevo and for posting documents to the Chamber in relation to the case, and awards 250 KM by way of compensation for such expenses.

19. As for item 6 of the compensation claim, the Chamber does not find the costs allegedly incurred for the reconnection of the telephone line to have been substantiated by proof of payments and therefore rejects the claim in this respect.

IV. CONCLUSION

20. For the above reasons, the Chamber

1. (a) Orders, unanimously, the respondent Party to pay to the applicant, within three months, the sum of 1,500 KM in compensation for non-pecuniary damage resulting from the violation of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

(b) Orders, unanimously, the respondent Party to pay to the applicant, within three months, the sum of 2,500 KM in compensation for pecuniary damage resulting from the violation of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

(c) Orders, unanimously, the respondent Party to pay to the applicant, within three months, the sum of 250 KM in compensation for expenses incurred in the proceedings before the Chamber; and

(d) Orders, unanimously, 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; and

2. (a) Rejects, by 11 votes to 2, the compensation claim in the amount of 2,720 KM for pecuniary damage;

(b) Rejects, by 12 votes to 1, the compensation claim for legal costs;

(c) Rejects, unanimously, the remainder of the applicant's claim for compensation.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michele PICARD
President of the Chamber

Annex: Partly Dissenting Opinion of Mr. Nowak

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Nowak.

PARTLY DISSENTING OPINION OF MR. MANFRED NOWAK

I already added a dissenting opinion to the decision on the merits of 10 September 1998 because I consider the case of Mr. Kevešević to be a typical example which shows the systematic practice of discrimination against members of the respective ethnic and/or religious minorities in this country. Only because of his Croat origin, Mr. Kevešević was evicted from his apartment in Vareš, and his apartment was allocated to a Bosniak family. He only regained his apartment in December 1998, i.e. three months after the Human Rights Chamber had found human rights violations and had ordered the Federation to take all necessary steps to re-instate the applicant into his apartment.

Article XI (1) of Annex 6 to the General Framework Agreement states that the Chamber shall, in its decision on the merits, issue orders to the respondent Parties concerning appropriate remedies, including monetary relief. Despite this clear wording, the Chamber has started the unfortunate practice of reserving for further consideration the question of monetary compensation, inviting the applicants to put forward detailed claims for compensation and to issue separate "Decisions on the Claim for Compensation". This practice follows the Strasbourg model and, thereby, totally overlooks that Article 41 (50) of the European Convention cannot be compared with Article XI of Annex 6. While Article 41 (50) of the Convention contains a fairly weak competence to decide on compensation claims only, Article XI (1) of Annex 6 contains the legal basis for developing jurisprudence on the right of victims of human rights violations to reparation in a broad sense (see my dissenting opinion in *Ostojić and 31 other JNA cases*., Cases Nos. CH/97/82 et.al., decision on the admissibility and merits of 15 January 1999, to be published).

I, therefore, consider the whole procedure of the Chamber of inviting detailed claims for compensation from the applicant which are submitted to the respondent Parties for observations and which form the only basis for a separate decision on this compensation claim to be contrary to Annex 6 or at least not explicitly authorized by Annex 6. Applicants are, of course, not prevented from stating in their original application, or at any later stage until the decision on the merits, which remedies they deem appropriate to be ordered to the respondent Party. And the Chamber might, of course, take these statements as well as relevant observations of the respondent Party into account when deciding on the remedies. But the Chamber, unlike a domestic civil court, is in no way bound by the respective "claim" of the applicant, and also has no means to establish whether a specific "claim" for pecuniary damages is justified or not.

The Chamber should rather assess the seriousness of the respective human rights violations and the amount of suffering caused by such violations. On the basis of such assessment, the Chamber should decide the appropriate remedy (if possible, full restitution) and grant a fair amount of compensation in the form of a lump sum.

After having been for more than two years deprived of his apartment for purely discriminatory reasons, Mr. Kevešević requested the comparatively moderate sum of 6,500 KM as compensation for pecuniary damages and an unspecified sum for his mental suffering. Rather than wasting time with a long "fact-finding exercise" on how much damage the Bosniak family had actually been caused, during these two years, to his apartment, and whether 650 KM as costs for legal advice are justified or not, the Chamber should have granted Mr. Kevešević a lump sum of at least 6,500 KM as compensation for his pecuniary damages and mental suffering.

(signed)
Manfred NOWAK