



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case nos. CH/98/1160, CH/98/1177 and CH/98/1264

Miloš PAJAGIĆ, Dragoljub KURUZOVIĆ and M.P.

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2)(a), VIII(2)(c) and VIII(3)(c) of the Agreement and Rules 34 and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The cases concern the applicants' attempts to repossess their pre-war apartments located at three different addresses in Bihać in the Federation of Bosnia and Herzegovina. The applicants further complain because the Federation of Bosnia and Herzegovina does not recognise them as the owners over the apartments in question on the basis of the steps taken by them in 1992, aimed at purchasing the apartments from the former Yugoslav National Army ("JNA"). Those steps included paying the purchase price, but they did not include concluding a purchase contract.
2. The cases raise issues under Articles 6 and 13 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced and registered between 14 September 1998 and 27 October 1998.
4. Between 20 January 1999 and 23 April 1999, the Chamber transmitted the cases to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina for their observations on the admissibility and merits under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.
5. Between 16 January 2003 and 20 February 2003, the applicants informed the Chamber that they had repossessed their respective apartments and privatised them. All three applicants concluded contracts on purchase with the Federation Ministry of Defence and paid the purchase price established by the Federation Ministry of Defence after subtracting the sums paid by the applicants in 1992. The applicants complain that they have been obliged to go through the procedure of privatisation of their apartments twice. At least one applicant also maintains his claim for compensation.
6. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

III. RELEVANT DOMESTIC LEGISLATION

7. Article 172 of the Law on Civil Procedure (Official Gazette of the Federation of Bosnia and Herzegovina – "OG FBiH" - nos. 42/98 and 3/99) reads as follows:

"A plaintiff may initiate a lawsuit and request that the court establish the existence or non-existence of some right or legal relationship, and authenticity or non-authenticity of some document, respectively.

"Such a lawsuit may be initiated when a special regulation provides so, when the plaintiff has a legal interest that the court establish the existence or non-existence of some right or legal relationship and authenticity or non-authenticity of some document before the maturity date of the claim for enforcement from the same relationship or when the plaintiff has some other legal interest to initiate such a lawsuit.

"If the decision in the dispute depends on whether some legal interest, which during the lawsuit became disputable, exists or not, the plaintiff may file, in addition to the existing claim, a complaint requesting that the court establish the existence or non-existence of such relationship, if the court before which the lawsuit is pending is competent for such a complaint.

"Filing the complaint under the provision in paragraph 3 of this Article shall not be deemed modification of the lawsuit."

IV. OPINION OF THE CHAMBER

A. As against Bosnia and Herzegovina

8. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

9. In the previous cases decided by the Chamber in the matter of JNA apartments, the Chamber held Bosnia and Herzegovina responsible for passing the legislation that retroactively annulled the contracts on purchase of JNA apartments (see, e.g., case nos. CH/96/3, CH/96/8 and CH/96/9, *Medan, Bastijanović and Marković*, decision on merits of 3 November 1997, Decisions on Admissibility and Merits March 1996 – December 1997; case no. CH/96/22, *Bulatović*, decision on merits of 3 November 1997, Decisions on Admissibility and Merits March 1996 – December 1997; case nos. CH/96/2 *et al.*, *Podvorac and others*, decision on admissibility and merits of 14 May 1998, Decisions and Reports 1998; case nos. CH/97/82 *et al.*, *Ostojić and others*, decision on admissibility and merits of 13 January 1999, Decisions January – July 1999; case nos. CH/97/60 *et al.*, *Miholić and others*, decision on admissibility and merits of 9 November 2001, Decisions July – December 2001).

10. In the present cases, the Chamber notes that the applicants did not submit written purchase contracts. Moreover, the applicants admit that they never concluded such contracts with the former JNA. Furthermore, it has not been established in any proceedings in the domestic courts that an informal contract of a legally binding nature existed. It is not shown, therefore, that the retroactive annulment of purchase contracts with the former JNA affected the applicants. The Chamber further notes that the conduct of the bodies responsible for the proceedings complained of by the applicants, such as the Federation Ministry of Defence, engages the responsibility of the Federation of Bosnia and Herzegovina, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the applications are incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

11. The Chamber therefore decides to declare the applications inadmissible as against Bosnia and Herzegovina.

B. As against the Federation of Bosnia and Herzegovina

12. The Chamber notes that the applications contain two complaints. Firstly, the applicants complain that the Federation of Bosnia and Herzegovina failed to reinstate them into possession of their pre-war apartments. Secondly, the applicants complain because the Federation of Bosnia and Herzegovina has not recognised them as the owners on the basis of steps they took in 1992, aimed at purchasing the apartments from the former JNA. Those steps included paying the purchase price, but they did not include concluding purchase contracts.

1. As to repossession of the apartments

13. In accordance with Article VIII(3) of the Agreement, “the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that... (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such a result is consistent with the objective of respect for human rights.”

14. The Chamber notes that the applicants lodged their applications with a view to regaining possession of their pre-war apartments, and while the cases were still pending before the Chamber, they regained such possession. The Chamber further notes that although the applicants have been reinstated, they understandably ask the Chamber to find a violation of their rights protected by the

Agreement due to the time that elapsed between their requests for reinstatement into possession of their pre-war apartments and the actual repossession. They also ask the Chamber to order the respondent Parties to pay compensation to them in recognition of the damage, both pecuniary and non-pecuniary, suffered by them during the course of that time.

15. The Chamber recalls that under Article VIII(2)(e) of the Agreement, “the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds”. As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

16. Taking into account that the applicants have been reinstated into possession of their apartments, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and this main issue of the applications has been resolved. The Chamber recognises that valid reasons may underlie the applicants’ requests to nonetheless maintain their claims for compensation. However, in the light of the considerations discussed above, the Chamber finds that “it is no longer justified to continue the examination of the application[s]” within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is “consistent with the objective of respect for human rights”, as this “objective” must be understood to embrace not only the individual applicant’s human rights, but also the Chamber’s more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

17. Pursuant to Article VIII(3)(c) of the Agreement, the Chamber, therefore, decides to strike out the part of the applications concerning repossession of the apartments at issue.

2. As to recognition of ownership over the apartments

18. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept... In so doing, the Chamber shall take into account the following criteria (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...”

19. The Chamber notes that the applicants did not seek to establish their ownership over the apartments before the domestic authorities. In fact, the applicants, after they had repossessed their pre-war apartments, proceeded to privatise them as the occupancy right holders over the apartments in question. The applicants could have initiated a lawsuit and requested the court to establish their ownership on the basis of the payments made in 1992 as envisaged, for instance, in Article 172 of the Law on Civil Procedure (see paragraph 7 above). The applicants have not shown that this remedy is ineffective and it does not appear so to the Chamber. Accordingly, insofar as the applicants argue that they should have been recognised as the owners over their pre-war apartments on the basis of the payments made in 1992, the applicants have not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement.

20. The Chamber, therefore, decides to declare inadmissible the complaints concerning recognition of their ownership on the basis of the payments made in 1992.

V. CONCLUSION

21. For these reasons, the Chamber, unanimously,

JOINS THE APPLICATIONS and

**DECLARES THE APPLICATIONS INADMISSIBLE IN PART AND STRIKES OUT THE
REMAINDER OF THE APPLICATIONS.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel