EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

# FOURTH SECTION

# DECISION

*This decision was rectified on 10 March 2015,*
*under Rule 81 of the Rules of Court.*

Application no. 38233/05
Tihomir ALEKSIĆ
against Bosnia and Herzegovina

The European Court of Human Rights (Fourth Section), sitting on 3 February 2015 as a Chamber composed of:

Guido Raimondi, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 11 October 2005,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Tihomir Aleksić, is a citizen of Bosnia and Herzegovina, who in born in 1946 and lives in Belgrade.

2. The Government of Bosnia and Herzegovina were represented by their Agent, Ms M. Mijić.

3. The Serbian Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), indicated that they did not wish to exercise that right.

## A. Relevant background

4. The applicant was an officer of the JNA, the armed forces of the former Socialist Federal Republic of Yugoslavia ("the SFRY"). The present case concerns his attempt to repossess his pre-war flat in Sarajevo.

5. The detailed background concerning socially owned flats, military flats and the involvement of foreign armed forces in the 1992-95 war in Bosnia in Herzegovina is provided in *Đokić v. Bosnia and Herzegovina*, no. 6518/04, §§ 5-17, 27 May 2010 and *Mago and Others v. Bosnia and Herzegovina*, nos. 12959/05, 19724/05, 47860/06, 8367/08, 9872/09 and 11706/09, §§ 5-8, 3 May 2012.

## B. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

6. In 1984 the applicant was allocated an occupancy right to a military flat in Sarajevo.

7. On 31 March 1992 he bought that flat under the terms of the Military Flats Act 1990 and paid the full purchase price in the amount of 710,117 Yugoslav dinars (approximately 8,354 German marks (DEM) at the time).

8. When the JNA formally withdrew from Bosnia and Herzegovina on 19 May 1992, the applicant continued his military career in the VJ[1] forces and left Sarajevo. His military service was terminated in 1998.

9. On 2 February 1997 the Ministry of Defence of the Federation of Bosnia and Herzegovina allocated the flat to H.G., a member of the Army of the Republic of Bosnia and Herzegovina.

10. On 15 September 1998 the applicant applied for the restitution of his flat in Sarajevo. On 2 March 2000 his application was rejected pursuant to section 3a of the Restitution of Flats Act 1998. On 8 December 2000 the competent Ministry of the Sarajevo Canton upheld that decision.

11. On 28 May 2002 the restitution commission, set up by Annex 7 to the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina ("the Dayton Peace Agreement"), before which the applicant pursued parallel proceedings, held that he was neither a refugee nor a displaced person within the meaning of Annex 7 and declined jurisdiction. On 2 September 2003 the restitution commission rejected the applicant's request for reconsideration of his claim.

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[1] The VJ forces, the armed forces of the Federal Republic of Yugoslavia, were established on 20 May 1992. In 2006 the Federal Republic of Yugoslavia was succeeded by Serbia.

12. On 31 July 2000 the applicant complained to the Human Rights Chamber (a domestic human-rights body set up under Annex 6 to the Dayton Peace Agreement) about the inability to repossess his pre-war flat.

13. On 6 June 2005 the Human Rights Commission (the legal successor of the Human Rights Chamber) rejected the applicant's complaint as regards the proceedings before the competent administrative bodies on non-exhaustion grounds (the applicant had failed to inform the Commission about the decisions of 2 March 2000 and 8 December 2000; see paragraph 10 above). The complaint concerning the decisions of the restitution commission was rejected as incompatible *ratione personae*. The Commission held that, in accordance with Annex 7, the Federation of Bosnia and Herzegovina (against which the applicant had addressed his appeal) could not be held responsible for the decisions of the restitution commission because it had not had jurisdiction to examine them.

14. On 21 November 2005 the applicant initiated proceedings before the Sarajevo Municipal Court ("the Municipal Court") seeking to establish the validity of a purchase contract of 31 March 1992 and to register his title to the flat in the land register. On 2 April 2008 the Municipal Court concluded that the action had been withdrawn because the applicant had failed to attend a scheduled hearing without justification.

15. On 25 March 2011 the Ministry of Foreign Affairs of the Republic of Serbia informed the Government of Bosnia and Herzegovina that the applicant had not yet been allocated a military flat in Serbia, but that his right to such allocation had been established by the competent body of the Serbian Ministry of Defence.

## C. Relevant domestic law and practice

16. On 22 December 1995 all purchase contracts concluded under the Military Flats Act 1990 were declared void (*Zakon o preuzimanju sredstava bivše Socijalističke Federative Republike Jugoslavije u svojinu Republike Bosne i Hercegovine*, Official Gazette of the Republic of Bosnia and Herzegovina nos. 6/92, 13/94, 50/95 and 2/96). Thereafter, the legislation regulating this matter, the Privatisation of Flats Act 1997 (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01, 15/02, 54/04, 36/06, 51/07, 72/08 and 23/09) and the Restitution of Flats Act 1998 (*Zakon o prestanku primjene Zakona o napuštenim stanovima*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01, 15/02, 24/03, 29/03 and 81/09), underwent numerous changes and all such contracts were declared legally valid.

17. Nevertheless, two categories of buyers are not entitled to repossess their flats and to register their title to them (see section 39e of the

Privatisation of Flats Act 1997 and section 3a of the Restitution of Flats Act 1998). The first category concerns those who served in foreign armed forces after the 1992-95 war. The second concerns those who acquired occupancy or equivalent rights to a military flat in a successor State of the SFRY. However, they are now entitled to compensation under section 39e of the Privatisation of Flats Act 1997. Although the compensation was initially envisaged as the refund of the amount paid for the flats in 1991/92 plus interest at the rate applicable to overnight deposits, on 30 March 2012 the Constitutional Court (decision no. U 15/11) declared that method of determining the amount of compensation unconstitutional and ordered the Parliament of the Federation of Bosnia and Herzegovina to amend it in line with *Đokić* (cited above, §§ 63 and 72).

18. For a more detailed analysis of the relevant domestic law and practice and of the relevant international documents, see *Đokić* (cited above, §§ 35-45) and *Mago and Others* (cited above, §§ 53-69).

### D. Relevant Serbian legislation

19. It has no longer been possible to acquire occupancy rights in Serbia since 1992 (see section 30(1) of the Housing Act 1992, *Zakon o stanovanju*, Official Gazette of Serbia nos. 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98, 26/01, 101/05 and 99/11). Instead, current and retired members of the armed forces and current and retired staff of the Ministry of Defence are now entitled to equivalent tenancy rights of unlimited duration on military flats or, in case of a lack of suitable flats, mortgage loans co-financed by the State on condition that they or their spouses or children do not have occupancy or equivalent rights to a flat in any of the former Republics of the SFRY (the Military Housing Ordinance 1994, *Pravilnik o načinu i kriterijumima za rešavanje stambenih pitanja zaposlenih u Saveznom ministarstvu za odbranu i Vojsci Jugoslavije*, Official Gazette of the Federal Republic of Yugoslavia nos. 30/94, 39/94 and 6/96; the Military Housing Ordinance 1995, *Pravilnik o načinu i kriterijumima za davanje stanova u zakup i dodeljivanje stambenih zajmova za rešavanje stambenih pitanja zaposlenih u Vojsci Jugoslavije*, Official Gazette of the Federal Republic of Yugoslavia nos. 5/95, 18/96, 56/96, 58/96, 42/97 and 9/00; the Military Housing Ordinance 2002, *Pravilnik o načinu, kriterijumima i merilima za davanje stanova u zakup i dodeljivanje stambenih zajmova za rešavanje stambenih pitanja zaposlenih u Ministarstvu odbrane i Vojsci Srbije i Crne Gore*, published in an internal gazette of the Ministry of Defence nos. 20/02, 36/03, 34/04 and 29/05; the Military Housing Ordinance 2005, *Pravilnik o rešavanju stambenih pitanja u Ministarstvu odbrane*, published in an internal gazette of the Ministry of Defence nos. 38/05, 16/08, 26/08 and 39/08; and the Military Pensioners Ordinances 1994 and 2010, *Pravilnik o rešavanju stambenih potreba*

*korisnika vojnih penzija*, published in an internal gazette of the Ministry of Defence nos. 31/94, 19/95, 26/96, 1/97 and 45/08 and *Pravilnik o rešavanju stambenih potreba korisnika vojnih penzija*, published in an internal gazette of the Ministry of Defence no. 34/10). Therefore, those who occupied military flats in Bosnia and Herzegovina before the war have as a rule been required to give up their rights to those flats in order to qualify for a military flat or a loan in Serbia or Montenegro (see sections 6-7 and 87 of the Military Housing Ordinance 1994; sections 7-8 and 74 of the Military Pensioners Ordinance 1994; and sections 6-7 and 85 of the Military Housing Ordinance 1995).

20. Section 39(2) of the Housing Act 1992 provides that the holder of a tenancy right of unlimited duration in respect of a flat may purchase that flat under the same conditions as an occupancy right holder.

## COMPLAINT

21. The applicant complained about his inability to have his pre-war flat in Sarajevo restored to him. He relied on Article 1 of Protocol No. 1 to the Convention.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

22. The respondent Government submitted that the applicant had fulfilled the statutory requirements for the allocation of tenancy right to a military flat in Serbia and that he was entitled to compensation for the loss of his military flat in Bosnia and Herzegovina. Contrary to what the Serbian Government had claimed in *Đokić*, the allocation of tenancy rights of unlimited duration to members of the Serbian armed forces had never stopped (see *Đokić*, § 54).

The Government further submitted that the applicant had not exhausted all available domestic remedies: he had failed to seek judicial review of the administrative decision of 8 December 2000, had failed to inform the Human Rights Commission about the decisions relevant to his appeal and, lastly, had failed to pursue his action concerning the validity of a purchase contract before the Municipal Court (see paragraphs 10, 13 and 14 above).[1]

23. The applicant did not submit any observations in reply.

[1] Rectified on 10 March 2015: the text was: "(see paragraphs 10, 13 and 13 above)".

24. The Court considers that it is not necessary to examine all the Government's objections, since the application is in any event manifestly ill-founded for the following reasons.

25. The same situation like in the present case was examined in *Đokić* when the Serbian Government ascertained that members of their armed forces could no longer acquire either an occupancy right or a tenancy right of unlimited duration, but solely a tenancy right of limited duration which should not be confused with the erstwhile occupancy right (see *Đokić*, cited above, § 54). However, it was later clarified in *Mago and Others* (cited above) that the current and retired members of the armed forces in Serbia were indeed entitled to a tenancy right of unlimited duration on military flats or, in case of a lack of suitable flats, a mortgage loans co-financed by the State.

26. The present applicant's right to a military flat in Serbia was established by the competent military authorities in Serbia (see paragraph 15 above). In order to qualify for such right, he had to renounce the equivalent right to his pre-war flat in Sarajevo (see paragraph 19 above). Bearing that in mind, the fact that the applicant had not yet been allocated a flat in Serbia is of no relevance. In any event, he is entitled to compensation under the Privatisation of Flats Act 1997 (see paragraph 17 above).

27. In view of the above, it follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible, pursuant to Article 35 § 4.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The Court examined the applicant's remaining complaints under Articles 6, 8, 13 and 14 of the Convention. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that these complaints must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 26 February 2015.

Françoise Elens-Passos
Registrar

Guido Raimondi
President