CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31446/02
by Slavisa GAJIC
against Germany

The European Court of Human Rights (Fifth Section), sitting on 28 August 2007 as a Chamber composed of:

Mr P. LORENZEN, *President,*
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges,*

and Mrs C. WESTERDIEK, *Section Registrar,*

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the Serbian Government as a third party,

Having regard to the comments submitted by Praxis, a non-governmental organisation, accepted as third-party submissions under Rule 44 (2) of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Slavisa Gajic, was born in 1969 and lives in Prokuplje (Serbia). He is a citizen of the Republic of Serbia and is represented before the Court by Mr I. Olujić, a lawyer practising in Belgrade.

The respondent Government are represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

A. The circumstances of the case

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

1. Background to the case

The conflict between Serbian and Kosovar Albanian forces during 1998 and 1999 is well documented. On 30 January 1999, and following a decision of the North Atlantic Council ("NAC") of the North Atlantic Treaty Organisation ("NATO"), NATO announced air strikes on the territory of the then Federal Republic of Yugoslavia ("FRY") should the FRY not comply with the demands of the international community. Negotiations took place between the parties to the conflict in February and March 1999. The resulting proposed peace agreement was signed by the Kosovar Albanian delegation but not by the Serbian delegation. The NAC decided on, and on 23 March 1999 the Secretary General of NATO announced, the beginning of air strikes against the FRY. The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY troops agreed to withdraw from Kosovo. On 9 June 1999 the NATO-led Kosovo Force ("KFOR"), the FRY and the Republic of Serbia signed a "Military Technical Agreement" ("MTA") by which they agreed on FRY withdrawal and the presence of an international security force following an appropriate UN Security Council Resolution ("UNSC Resolution").

UNSC Resolution 1244 of 10 June 1999 provided for the establishment of a security presence (KFOR) by "Member States and relevant international institutions", "under UN auspices", with "substantial NATO participation" but under "unified command and control".

By 20 June 1999 FRY withdrawal was complete. KFOR contingents were grouped into four multinational brigades ("MNBs") each of which was responsible for a specific sector of operations with a lead country. They included MNB Northeast (Mitrovica) and MNB Southeast (Prizren), led by France and Germany, respectively.

UNSC Resolution 1244 also decided on the deployment, under UN auspices, of an interim administration for Kosovo (UNMIK).

2. Facts of the present case

Since January 1999 the applicant lived in an apartment in Prizren, which is situated in one of two apartment buildings which were formerly used by the Army of the FRY.

On 10 June 1999 the applicant and his family fled Kosovo.

From 11 June 1999 to July 2004 the apartment was used by the German contingents of KFOR.

On an unknown date the applicant informed the German KFOR contingent that he was the owner of the apartment he had previously occupied and demanded the payment of rent. The German KFOR contingent, however, refused to pay rent arguing that the apartment buildings were owned by the Army of the FRY which had consented to their use. On 9 June 2003 the German KFOR units informed the applicant that they were not in a position to pay rent until the applicant's ownership would have been established.

When the KFOR units left Prizren in July 2004, third persons moved into the apartment and demolished it.

On 20 January 2005 the UNMIK Housing and Property Claims Commission ordered that the applicant be given possession of the claimed property.

On 25 September 2005 the applicant applied to the Federal Administrative Office of the German armed forces (*Bundesamt für Wehrverwaltung* - hereinafter called Federal Office) for compensation, stating that he had acquired the apartment from the Yugoslav Federal Ministry of Defence. As proof he submitted a copy of the decision rendered by the Housing and Property Claims Commission, a copy of the act of sale and a confirmation of his payment of the purchase price.

On 4 April 2007 the Federal Office rejected the applicant's request finding that he had been unable to prove his ownership.

The Federal Office elaborated that the decision of the Housing and Property Rights Commission did not confirm his ownership, but solely his right to use the apartment (*Nutzungsrecht*). It went on to say that it had received several other requests from individuals for compensation for apartments in the same buildings which had also been acquired from the Yugoslav Federal Ministry of Defence. Those claimants had also presented acts of sale and confirmations of receipt of their payments. The Federal Ministry noted that, according to those documents, the Yugoslav Federal Ministry of Defence had been represented by Colonel K., who in turn had been represented by Ms C. in all cases. However, when comparing the signatures of the applicant's and the other acts of sale, it had turned out that the signatures were quite different, although they were all supposed to be signed by the same person, namely Ms C. The same was true for the confirmations of receipt of the purchase price which were supposed to be signed by Colonel K.; those signatures as well were quite distinct.

The Federal Office therefore held the opinion that different persons had acted on behalf of the Yugoslav Federal Ministry of Defence, which raised serious doubts as to their power of representation. Thus, the Federal Office was not convinced that the applicant had actually acquired the property. Therefore, KFOR had been entitled to use it free of charge pursuant to the MTA of 9 June 1999 and Resolution 1244 of the UN Security Council.

The Federal Office advised the applicant that he had the right to lodge an objection.

The applicant apparently lodged an objection and the proceedings seem to be still pending.

B. Relevant law and practice

According to the MTA of 9 June 1999 and the UNSC Resolution 1244 of 10 June 1999 KFOR was authorised to use property of the Army of the Federal Republic of Yugoslavia free of charge.

COMPLAINTS

The applicant complained that he has been deprived of the use of his property as well as an according rent. He invoked Article 8 of the Convention and relied on Article 1 of Protocol No. 1 in substance.

THE LAW

1. The applicant submitted that he has been deprived of the use of his property without receiving rent. He alleged a violation of his right to private and family life within the meaning of Article 8 § 1 of the Convention and of his right of property under Article 1 of Protocol No. 1. These provisions read as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

At the outset the Government argued that the applicant's complaints were incompatible *ratione personae* and *loci* with the provisions of the Convention and the Protocols thereto. Regardless of those considerations the Government held the opinion that the applicant had, in any event, not exhausted domestic remedies, because the administrative proceedings were still pending. In this respect the Government pointed out that the applicant could avail himself of proceedings before the administrative courts should his objection be unsuccessful.

From the applicant's point of view the actions or inactions of the German KFOR contingent fell within the jurisdiction of Germany under Article 1 of the Convention, since the German contingent exercised effective control in their sector. Furthermore, the applicant believed the requisition of the apartment to be outside the scope of the KFOR mandate. He therefore found that the requisition and unauthorised use of his apartment for five years constituted a violation of Article 8 § 1 of the Convention and Article 1 of Protocol No. 1. Lastly, the applicant argued that he did not have an effective remedy at his disposal for demanding redress in breach of Article 13 of the Convention.

The Serbian Government agreed with the applicant that the facts of the present case fell within the jurisdiction of Germany within the meaning of Article 1 of the Convention and concurred that he did not have an effective remedy at his disposal within the meaning of Article 35 § 1 of the Convention. Therefore, the Government held the opinion that the applicant's rights under Article 8 and 13 of the Convention and Article 1 of Protocol No. 1 had been infringed.

Praxis shared the view of the applicant and the Serbian Government, finding that the facts of the present case came within the jurisdiction of Germany under Article 1 of the Convention.

The Court recalls that, when the responsibility of contributing States for actions or inactions of KFOR is at issue, the question raised is less whether the respondent state exercised extra-territorial jurisdiction in Kosovo, but rather whether this Court is competent to examine under the Convention that State's contribution to the civil and security presences which exercised the relevant control of Kosovo (see *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (dec.), nos. 7412/01 and 78166/01, § 71, ECHR 2007-...).

The Court further reiterates that the actions or inactions of KFOR are, in principle, attributable to the UN and that the Court is incompetent *ratione personae* to review the acts of the respondent State carried out on behalf of the UN (see *Behrami and Behrami* and *Saramati*, cited above, §§ 144-152).

However, even assuming that the requisition of the apartment in question might engage the responsibility of the respondent State, the Court notes that the applicant lodged a request for compensation with the domestic administrative authorities and may, should that be unsuccessful, avail himself of the administrative courts. Thus, the applicant's complaint is in any event premature and should therefore be declared inadmissible according to Article 35 §§ 1 and 4 of the Convention.

2. In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President