DECISION ON REQUEST FOR REVIEW

Matija IVKOVIĆ (CH/98/129), Ismeta KRIVOŠIJA (CH/98/135), Slavko CIGANOVIĆ (CH/98/153), Đurdica MRŠIĆ (CH/98/173), Raza HODŽIĆ (CH/98/191), Behadil MEMIŠEVIĆ (CH/98/241) and "ČO" (CH/98/255)

against

BOSNIA AND HERZEGOVINA
AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 July 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. Mato TADIĆ

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the request of the Federation of Bosnia and Herzegovina for a review of the decision of the First Panel of the Chamber on the admissibility and merits of the aforementioned cases;

Having considered the Second Panel's recommendation;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina as well as Rules 63-66 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. In 1991 and 1992 the seven applicants contracted to buy apartments from the Yugoslav National Army ("the JNA") under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 84/90). This Law came into force on 6 January 1991. In the following years a number of Decrees with force of law were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, and the Presidency of the Republic of Bosnia and Herzegovina (confirmed as laws by the Parliament of the Republic of Bosnia and Herzegovina) with the aim of regulating social property issues in general and social property over which the JNA had jurisdiction in particular. These legal instruments included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property, issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina , No. 4/92). A Decree with force of law issued on 3 February 1995 ordered courts to adjourn proceedings seeking to have the purchasers' ownership of such apartments registered. A Decree of 22 December 1995 declared purchase contracts in respect of JNA apartments retroactively invalid. This Decree was adopted as a law on 18 January 1996 and also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a law to be adopted in the future. On 6 December 1997 the Law on the Sale of Apartments with an Occupancy Right came into force (Official Gazette *Službene Novine* of the Federation of Bosnia and Herzegovina, No. 27/97). This law was amended by a law of 23 March 1998 (*S.N.,* No. 11/98). Neither law affected the annulment of the applicants' purchase contracts in question in the present cases.

2. The applicants essentially complained that the retroactive annulment of their purchase contracts and the compulsory adjournment of any court proceedings with a view to registering the ownership of the acquired apartments involved violations of Article 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and of Article 1 of Protocol No. 1 to the Convention.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced in January 1998 and registered between January and April 1998. Between April and July 1998 the First Panel decided pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the applications to the respondent Parties for observations on their admissibility and merits.

4. The Federation of Bosnia and Herzegovina submitted observations between June and September 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied between July and October 1998.

5. The First Panel deliberated on the admissibility and the merits of the cases on 8 February 1999. Under Rule 34 of its Rules of Procedure, it further decided to join the applications. In its decision on the admissibility and merits of the cases which was delivered on 10 March 1999 pursuant to Rule 60, the First Panel found, *inter alia*, that the Federation had violated the applicants' rights under Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention, and that the Federation was thereby in breach of Article I of the Agreement. The Federation was furthermore ordered to pay certain compensation to some of the applicants and to report to the Chamber by 10 June 1999 on the steps taken to give effect to the decision. More particularly, the First Panel decided, *inter alia,* as follows:

> "…
> 3. …, that the recognition and application of the legislation providing for the retroactive nullification of the applicants' purchase contracts (had) violated their rights under Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;
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> 4. …, that the continuing adjournment since 14 December 1995 of court proceedings aiming at formal recognition of the applicants' property rights (whether or not actually initiated by them) (had) violated their right of access to a court and to a hearing within a reasonable time as guaranteed by

Article 6 of the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

...

6. ..., to order the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

7. ..., to order the Federation to take all necessary steps to lift the compulsory adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property right and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time; ..."

6. On 9 April 1999 the Federation submitted a request for a review of the First Panel's decision. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 7 July 1999, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the Second Panel's recommendation on 9 July 1999.

III. REQUEST FOR REVIEW

7. In its request for review the Federation submits that the First Panel's decision on the admissibility and merits of the cases in issue raises serious questions of a general interest with respect to the interpretation and implementation of the Agreement.

8. The Federation argues, first, that the First Panel lacked *quorum* to adjudicate the cases in question, as it did not sit with all seven members. Reference is made to Article X(2) of the Agreement which stipulates that the Chamber shall "normally" sit in Panels of seven. It is the Federation's view that the word "normally" implies that the Panels are under an unconditional obligation to respect this *quorum* of seven. Whilst it is true that Article XII of the Agreement authorises the Chamber to promulgate the rules and regulations necessary for its functions, provided those provisions are consistent with the Agreement, this authorisation does not, in the Federation's opinion, cover the composition of the Panels and the number of members thereon. This number is in the Federation's view mandatory under Article X(2) of the Agreement and cannot be tampered with in the Chamber's Rules of Procedure.

9. Second, the Federation appears to argue that the Chamber lacked competence to examine the applications, either because the impugned acts occurred prior to the entry into force of the Agreement on 14 December 1995 or because the applications were lodged out of time. Only in Case No. CH/98/191 was the applicant's purchase contract actually annulled by the Decree of 22 December 1995, given that it had been concluded prior to the entry into force of the Decree of 15 February 1992 which prohibited such contracts. All other applicants had concluded their contracts only after the entry into force of the last-mentioned Decree which was never declared unconstitutional. As those contracts were therefore invalid *ab initio* as of February 1992 the First Panel lacked competence *ratione temporis* to examine them.

10. As for Case No. CH/98/191, the annulment of the purchase contract constituted an instantaneous act based on the Decree issued on 22 December 1995 and adopted as law on 18 January 1996, that is to say more than six months before Case No. CH/98/191 introduced. This Decree did not create any situation continuing past 22 December but constituted the "final decision" within the meaning of Article VIII(2)(a) of the Agreement. As this case had not been lodged by 22 June or 18 July 1996, it should have been declared inadmissible as being out of time.

11. Third, the Federation argues that the First Panel failed to consider the Federation's argument that it was obliged under the International Convention on the Elimination of All Forms of Racial Discrimination to afford equal treatment to all occupants of socially-owned apartments.

12. Fourth, the Federation challenges the First Panel's decision in so far as it orders the Federation to take all necessary steps to render ineffective the adjournment imposed by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property rights, and to take all necessary steps to secure, in this matter, their right of access to court and to a hearing within a reasonable time. The Federation points out that only the applicants in Cases Nos.

CH/98/173, CH/98/191 and CH/98/255 attempted any domestic remedies in this respect. Contrary to the situation in the cases of *Medan and Others* (Cases Nos. CH/96/3, 8 and 9, decision on the merits of 7 November 1997, Decisions 1996-97) these remedies could not be considered ineffective, given the amendments to the housing legislation enacted towards the end of 1997 which made it possible for the courts to resume the proceedings in question. Under domestic procedural law it is, however, for the applicants to re-initiate the proceedings, which they have failed to do. The Federation questions how it may lift the adjournment of court proceedings, when such proceedings have either never been initiated by the applicants or have not been re-initiated.

IV. OPINION OF THE SECOND PANEL

13. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2).

14. The Federation has first submitted that under the Agreement the First Panel lacked *quorum* to adjudicate the cases in question, as it did not sit with all seven members. The Second Panel refers to the Chamber's decision on the Federation's requests for review in Cases Nos. CH/97/81 et al., *Grbavac and 26 Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, where an identical argument was rejected (decision of 15 May 1999, paragraphs 15-16 and 30, to be published). Accordingly, the Second Panel sees no reason for departing from the Chamber's prior jurisprudence in this respect.

15. The Federation further appears to argue that the First Panel lacked competence *ratione temporis* to examine the cases in question, given that the impugned acts occurred prior to 14 December 1995 and did not constitute a situation continuing past that date. The Federation has further argued that Case No. CH/98/191 was introduced out of time. The Second Panel recalls that these arguments of the Federation were in essence already rejected in the Chamber's aforementioned decision on the Federation's request for review in *Grbavac and 26 Others* (see paragraphs 17-19 and 30; see also the Chamber's decision on the Federation's request for review in Cases Nos. CH/97/82 et al., *Ostojić and 31 Others*; decision of 15 May 1999, paragraphs 14-16 and 26, to be published). The Second Panel again sees no reason for departing from the Chamber's prior jurisprudence in this respect.

16. The Federation further argues that the First Panel failed to consider the argument that the impugned acts resulted from the Federation's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination to ensure equal treatment of all occupants of socially-owned apartments. The Second Panel again refers to the Chamber's aforementioned decisions of 15 May 1999 on the Federation's requests for review, where an identical argument was rejected (see *Grbavac and 26 others*, loc.cit., paragraphs 21-22 and 30, as well as *Ostojić and 31 others*, loc.cit., paragraphs 18-19 and 26). Accordingly, the Second Panel sees no reason for departing from the Chamber's prior jurisprudence in this respect.

17. The Federation finally challenges the First Panel's decision with reference to the court proceedings whose adjournment the Federation was ordered to lift, regardless of whether proceedings were ever initiated or re-initiated by the applicants. In the Second Panel's opinion the Federation has not, however, referred to any official act which formally lifted the adjournment of the proceedings or revoked the Decree of 3 February 1995 ordering the adjournment. This was also the Chamber's opinion in its aforementioned decision on the Federation's request for review in *Grbavac and 26 Others*, where an identical argument was rejected (see paragraphs 26 and 30). The Second Panel further notes that the Federation's observations on the admissibility and merits of the present cases were submitted between June and September 1998. It follows that in all of these cases the present grounds of the request for review could at any rate have been invoked during the ordinary proceedings before the First Panel. In these circumstances the Second Panel finds, in this respect of the present request for review, that neither of the conditions which Rule 64(2) stipulates for the review of a Panel decision has been met.

18. As the request for review does not in any respect meet the two conditions set out in Rule 64(2), the Second Panel, unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

19. The Chamber first recalls that under Article X(2) of the Agreement it shall normally sit in panels of seven members. When an application is decided by a Panel, the plenary Chamber may decide, upon motion of a party to the case or the Human Rights Ombudsperson, to review the decision. Article XI(3) of the Agreement stipulates that subject to the aforementioned review the decisions of the Chamber shall be final and binding. Under Rule 63(2) of the Rules of Procedure any request for review shall be made within one month of the date on which the Panel's decision is communicated to the parties under Rule 52 or delivered under Rule 60. The request shall specify the grounds invoked in support of a review. Under Rule 64(1) the request shall be referred to the Panel which did not take the challenged decision, and that Panel shall make a recommendation to the plenary Chamber as to whether the decision should be reviewed. The plenary Chamber shall consider the request for review as well as the recommendation of the aforementioned Panel, and shall decide whether to accept the request. It shall not accept the request unless it considers (a) that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) that the whole circumstances justify reviewing the decision (see *Rizvanović and Herak v. The Federation of Bosnia and Herzegovina*, Cases Nos. CH/97/59 and CH/97/69, decisions on requests for review of 13 November 1998, Decisions and Reports 1998, pp. 261 and 291, respectively).

20. In the present cases the plenary Chamber agrees with the Second Panel, for the reasons stated above, that the request for review does not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

VI. CONCLUSION

21. For these reasons, the Chamber, by 13 votes to 1,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber