



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/411

O.R.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 April 2000 with the following members present:

Mr. Giovanni GRASSO, Acting 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. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the applicant's request for a review of the decision of the First Panel of the Chamber on the admissibility and merits of the aforementioned case;

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. The applicant was the owner of a house in Sarajevo. In 1979 the City of Sarajevo expropriated the applicant's house and facilities attached to it in favour of the Institute for Development of the City of Sarajevo ("the Institute"). On 5 September 1985 the applicant and the beneficiary of the expropriation entered into a contract that obliged the Institute to buy two garages and to transfer ownership of them to the applicant. After the garages were handed over to the applicant, he found out that, according to the applicable legislation, he could not be registered as a private owner of the garages. In addition, the garages were situated underground and wet.

2. Between 1990 and 1997 the applicant initiated several proceedings relating to the implementation of the contract of 5 September 1985. In an effort to obtain an entry in the Land Register he initiated administrative dispute proceedings that lead to unfavourable court decisions on 19 April 1990 and 14 March 1991. On 9 July 1997 the Supreme Court of the Federation refused to order the registration of the garages in question as the applicant's property with reference to the Law on Registration of Communal Facilities (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 21/77, 6/88, 36/90, and the Republic of Bosnia and Herzegovina no. 4/93).

3. The applicant alleged that his rights had been violated due to the expropriation, the refusal to enter the new garages as his property in the Land Register and the allegedly illegal decision of the Supreme Court. He further requested compensation for the period during which he had no garages.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 5 March 1998 and registered on 10 April 1998.

5. On 13 March 1999 the First Panel adopted its decision on the admissibility of the case which was dispatched on 5 April 1999. The First Panel declared the case inadmissible. It found that the application was partly incompatible with the Agreement *ratione temporis*, insofar as it related to court decisions prior to the entry into force of the Agreement, and partly manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement, as no indication that the decision of the Supreme Court violated the applicant's rights under Article 1 of Protocol No. 1 and Article 6 of the Convention was found. Moreover, the Chamber noted that the contract of 5 September 1985 entitled the applicant, in the case of dispute, to bring an action before the Sarajevo (civil) court and that this remedy had not been used.

6. On 20 April 1999 the applicant submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the Second Panel, which on 4 April 2000 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 6 April 2000.

III. REQUEST FOR REVIEW

7. In his request the applicant asks the plenary Chamber to review the findings of the First Panel. He contests especially the Chamber's statement that proceedings before a civil court had been at his disposal. In support of this assertion, the applicant claims that civil courts were not competent to order non-pecuniary remedies. The applicant also alleges that his right under Article 1 of Protocol No. 1 of the Convention was indeed violated by virtue of the Supreme Court's decision of 9 July 1997.

IV. OPINION OF THE SECOND PANEL

8. The Second Panel notes at the outset that the request for review has been lodged within the time limit prescribed by Rule 63(2). The Second Panel has therefore examined whether (a) the case raises a serious question affecting the interpretation or application of the Agreement or a serious

issue of general importance and (b) if the whole circumstances justify reviewing the decision, as required in Rule 64 of the Chamber's Rules of Procedure.

9. The Second Panel notes that the contract of 5 September 1985 provides in its paragraph 4 that "in the case of dispute the court in Sarajevo shall be competent." The applicant has initiated administrative proceedings both before and after the entry into force of the Agreement. His last request aiming at the registration of his ownership of the disputed garages into the Land Registry was rejected by the Administration for Geodetic Issues, Cadaster and Property Law Affairs of the Municipality of Sarajevo Centre on 4 April 1997. The Supreme Court of the Federation found in its judgment of 9 July 1997 that the administrative body was incompetent to deal with this question and therefore confirmed the decision of 4 April 1997. The Court also stated that the applicant could initiate civil proceedings to pursue his aim.

10. The applicant argues that, according to the Law on Expropriation, only administrative organs were competent to implement non-pecuniary contractual obligations, which the applicant asserts to include the registration of ownership. In contrast, the Supreme Court has stated in its judgment of 9 July 1997 that the only possibility to achieve registration in the Land Register was to initiate civil court proceedings. The Second Panel, on its part, sees no reason to differ from the opinion of the First Panel finding no indication that the Court judged in an arbitrary way or otherwise violated either the applicant's property rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights or his procedural rights under Article 6 (1) of the Convention. Moreover, the Second Panel considers that the mere determination of the competent body to remedy the alleged violation of the applicant's right to property, as it appears from the mentioned judgment, cannot amount to a violation of the applicant's right under Article 1 of Protocol No. 1.

11. To sum up, the Second Panel does not consider that any of the objections moved by the applicant to the First Panel's decision on the admissibility "justify reviewing the decision" as stipulated in Rule 64(2)(b). Therefore, the Second Panel unanimously recommends that the request for review be rejected.

V. OPINION OF THE PLENARY CHAMBER

12. The plenary Chamber recalls that under Article X(2) of the Agreement and Rule 64(2) it shall consider the request for review as well as the recommendation of the Second Panel, and decide whether to accept the request.

13. The plenary Chamber agrees with the Second Panel, for the reasons stated above, that the request for review does not meet the condition required for the Chamber to accept such a request pursuant to Rule 64(2)(b).

VI. CONCLUSION

14. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
Acting President of the Chamber