



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/2233

Nada ČIVIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 July 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 Federation of Bosnia and Herzegovina's request for a review of the decision of the First Panel of the Chamber on 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, a medical doctor, is a citizen of Bosnia and Herzegovina of Serb origin. On 27 December 1991 she purchased from the Yugoslav National Army (“JNA”) an apartment in Sarajevo over which she had an occupancy right. She paid the full purchase price on 10 January 1992. However, she was never registered as the owner of the apartment despite her various requests in that respect. Some time after the applicant left Sarajevo in March 1995, three persons from Montenegro moved into the apartment. The applicant and her family returned to Sarajevo in October 1997. On 14 May 1998 the applicant requested the Administration for Housing Affairs of Canton Sarajevo to be reinstated into possession of her apartment. Several hearings have taken place before that organ. However, the applicant has neither been able to register as the owner of the apartment nor to regain possession of it until the present day.

2. In her application, the applicant alleged violations of her rights to peaceful enjoyment of her possessions and to respect for her private and family life. The application thus raises issues under Article 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 28 May 1999 and registered on the same day. The applicant is represented by Mr. Esad Čivić, her husband.

4. On 8 May 2000 the Chamber, sitting as the First Panel, adopted its decision on admissibility and merits of the case which was delivered on 12 May 2000. It found that the Federation of Bosnia and Herzegovina had violated the applicant’s rights under Article 1 of Protocol No. 1 to the Convention by applying legislation providing for the retroactive nullification of the applicant’s purchase contract and in that the applicant was prevented from returning to her apartment due to the failure of the respondent Party’s authorities to decide finally and in time on the substance of the claim for repossession. The Chamber also found a violation by the Federation of the applicant’s rights under Articles 6 and 8 of the Convention. The Federation was ordered to take immediate steps to reinstate the applicant into her apartment and to secure that the applicant is registered as the owner of the apartment. In addition, the Federation was to pay to the applicant the sum of 2,500 Convertible Marks (*Konvertibilnih Maraka*) as compensation for the loss of use of her apartment and moral damages.

5. On 13 June 2000 the Chamber received a request for review submitted by the Federation of Bosnia and Herzegovina. In pursuance of Rule 64(1) of the Chamber’s Rules of Procedure the request was considered by the Second Panel, which on 3 July 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 5 July 2000.

III. REQUEST FOR REVIEW

6. In its request, the Federation asks the plenary Chamber to review the conclusions of the First Panel. It argues that the Chamber’s decision anticipates the outcome of the proceedings before the domestic institutions both concerning the applicant’s registration as the owner of the apartment and regarding her reinstatement claim. Referring to the Instructions on Application of the Law on Cessation of Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99 and 27/99), the Federation requests the plenary Chamber to modify the conclusions of the decision of the First Panel in that the order to reinstate the applicant into her apartment and to secure that the applicant is registered as the owner shall be subject to the application of these Instructions, i.e. a decision of the domestic organs in that respect.

IV. OPINION OF THE SECOND PANEL

7. 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, if so, (b) the whole circumstances justify reviewing the decision, as required in Rule 64.

8. The Federation has argued that the orders given by the decision of the First Panel anticipate the outcome of both the proceedings for registration as the owner and reinstatement into possession of the apartment that were initiated by the applicant before different authorities of the respondent Party. The Second Panel notes that, according to Article XI paragraph 1(b) of the Agreement, the Chamber in its decisions shall address what steps shall be taken by the Party to remedy a breach of its obligations under the Agreement. In the instant case, the Second Panel cannot find that the orders given to the Federation by the decision of the First Panel are not in accordance with its mandate under the Agreement. In particular, the orders given to the respondent Party by the Chamber to remedy a violation of the applicant's rights found are not depending on further decisions of any domestic institution.

9. Therefore, the Second Panel does not consider that the objection moved by the Federation to the First Panel's decision on admissibility and merits, including the decision on the compensation claim, raises "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as stipulated in Rule 64(2)(a). Therefore, the Second Panel unanimously recommends that the request for review be rejected.

V. OPINION OF THE PLENARY CHAMBER

10. The plenary Chamber recalls that it shall consider the request for review as well as the recommendation of the Panel, and decide whether to accept the request.

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

VI. CONCLUSION

12. 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