



DECISION ON REQUEST FOR REVIEW

CASE No. CH/01/7040

M.L.

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 December 2001 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. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Having considered the First 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 AND SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. In his application filed on 17 January 2001, the applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary steps to prevent his eviction from the apartment he occupied. On 12 February 2001 the Chamber rejected the Request and the applicant was evicted on 14 February 2001. The applicant's appeals against the decision terminating his right to use the apartment are still pending before the national authorities.
2. On 3 July 2001 the Second Panel declared the application inadmissible as manifestly ill-founded, having found that the applicant "was ordered to vacate the apartment pursuant to a lawful decision terminating a right of temporary use". On 17 August 2001 the Second Panel's decision was communicated to the parties in pursuance of Rule 52.
3. On 12 September 2001 the applicant submitted a request for review of the decision. In accordance with Rule 64(1) the request for review was considered by the First Panel.

II. THE REQUEST FOR REVIEW

4. In his request for review, the applicant challenges the Second Panel's decision on the grounds (I) that the rejection by the Chamber of his request for provisional measures caused irreparable harm to him, and (II) that he has no effective remedy before the national administrative and judicial authorities against the decision terminating his right to use the apartment.

IV. OPINION OF THE FIRST PANEL

5. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). The First Panel recalls that under Rule 64(2) the Chamber 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.
6. The First Panel is of the opinion that, insofar as the applicant restates his complaints concerning the unlawfulness of his eviction, alleging a violation of his right to his home, the grounds upon which the applicant's request for review is based where in essence already examined and rejected on adequate grounds by the Second Panel when it considered the admissibility of the case.
7. Insofar as the applicant alleges a violation of his right to an effective remedy before a national authority against the violation of a right protected by the Convention under Article 13 of the Convention, the First Panel notes that the applicant failed to raise this complaint in the course of the proceedings before the Second Panel. Also in this respect, the First Panel therefore does not consider that "the whole circumstances justify reviewing the decision" as required by Rule 64(2)(b).
8. As the request for review fails to meet the second requirement set forth in Rule 64(2), it is not necessary to examine whether the case raises "a serious question affecting the interpretation or application off the Agreement or a serious issue of general importance" as required by Rule 64(2)(a). Accordingly, the first Panel unanimously, recommends that the request be rejected,

V. OPINION OF THE PLENARY CHAMBER

9. The plenary Chamber agrees with the First Panel that, for the reasons stated, 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

10. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber