



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/704

Jovanka KOVAČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 12 April 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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. The applicant owned a house and business premises (hereinafter “the house”) built on socially owned land in the Municipality of Sanski Most. In October 1995 the applicant left Sanski Most due to the hostilities. On 19 December 1995 the house burnt down completely in a fire. The remaining ruins were removed. In 1997 the Municipality classified the plots on which the applicant’s house had stood before the fire to be undeveloped building land. In 1998 the Municipality allocated the plots to S. K. and allowed S. K. to build on the plots in question, thereby ignoring the applicant’s priority right to reconstruct the house on the land. The applicant applied to the Municipality to stop the ongoing construction works on the plots. However, no such order was passed and S. K. meanwhile has built a house on the plots in question. The applicant died on 28 November 1998. Her daughter pursues the case. The applicant claims a violation of her rights under Articles 1 of Protocol No. 1 (peaceful enjoyment of possessions) to the European Convention of Human Rights (“the Convention”). The applicant complained further about a violation of Article 6 of the Convention (“fair trial” “within a reasonable time”), on the ground that the respondent Party did not order a stop of the construction works on the plots for which the applicant claims a priority building right.

2. On 8 January 2002 the Second Panel issued a decision finding that the fact that the respondent Party took over the applicant’s priority right to build on the plots without compensation and the subsequent failure of the respondent Party’s authorities to act upon the request of the applicant and to stop the construction works constitute an unjustified deprivation of the applicant’s right. This results in a violation of the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. The Second Panel considered it unnecessary to rule on the applicants’ complaints under Article 6 of the Convention. The Second Panel ordered the respondent Party to allocate to the applicant’s daughter, within three months from the date on which the decision becomes final and binding a plot of city building land in the Municipality of Sanski Most of equivalent value and quality as the plots over which the applicant had a priority right to use.

3. On 11 January 2002 the Second Panel’s decision was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber’s Rules of Procedure.

4. On 12 February 2002 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

5. In its request for review, the applicant challenges the Second Panel’s decision on the following grounds:

- (a) The Chamber has failed to consider the respondent Party’s responsibility for the destruction of the house. Although a direct responsibility of the respondent Party for the fire that destroyed the house could not be established, it was within the respondent Party’s responsibility to prevent unauthorised trespassing into the house and to prevent the destruction of the house by the fire. The Chamber has further failed to properly establish the factual background in this regard by basing its decision on the conclusion of the police investigation that the destruction of the house was an act of higher force.
- (b) There was no order for compensation in regard to the destroyed house.
- (c) There was no order for compensation of non-pecuniary damage although the case is similar to the decision of the Chamber in the case no. CH/98/1062 *Islamic Community*, in which such a compensation was ordered.

III. OPINION OF THE FIRST PANEL

6. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(a) as it was submitted within one month starting from 12 January 2002, the day after the public delivery of the decision. 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.

7. The applicant has failed to give any grounds as to why the issues referred to in the request for review would raise “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”.

8. As the request for review fails to meet the first of the two requirements set forth in Rule 64(2), the First Panel unanimously recommends that the request be rejected.

IV. 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 first of the two conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

V. 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