



DECISION ON REQUESTS FOR REVIEW

Cases nos. CH/00/5134, CH/00/5136, CH/00/5138 and CH/01/7668

Muhamed ŠKRGIĆ, Raska ĆERIMOVIĆ, Fikret MURTIĆ and THE ASSOCIATION FOR THE PROTECTION OF UNEMPLOYED SHAREHOLDERS OF AGROKOMERC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 May 2002 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 applicants' and respondent Party's requests 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

1. In their applications, submitted on 20 June 2000 by the applicants Muhamed Škrgić, Raska Ćerimović and Fikret Murtić and on 3 July 2001 by the Association for the Protection of Unemployed Shareholders of Agrokomerc (hereinafter the “Shareholders Association”), the applicants requested the Chamber to order the respondent Party to recognise their private shares in the company Agrokomerc which they acquired during the period of 1991 through 1994 under the so-called “Marković scheme” for privatisation. The applicants complained that they have been denied their rights to take part in the decision-making process of Agrokomerc and to exercise shareholder rights since 1994.

II. SUMMARY OF THE SECOND PANEL'S DECISION

2. On 8 March 2002, the Second Panel delivered its decision on admissibility and merits in these cases. In paragraphs 229-232 of the decision, the Second Panel declared the complaints of a violation of the right to work inadmissible as not within the Chamber's competence *ratione temporis* for all acts that occurred before 14 December 1995 and for non-exhaustion of domestic remedies after that date.

3. The Second Panel found on the merits “that the applicants acquired protected possessions in internal shares of Agrokomerc for which payment was made on the basis of: a) permanent deposits; b) allocations of parts of salaries, either on a monthly basis during the period of 1991 to 1994, or on an annual basis for 1992; and c) distribution of profits for 1992 in proportion to the amount of paid internal shares.” The Second Panel did not recognise “any protected possessions of the applicants for internal shares resulting from the conversion of employee claims for reduced salaries from 1987 to 1991 or the conversion of the value of inventory goods” (see paragraphs 271 and 308 of the decision).

4. The Second Panel ordered the respondent Party, *inter alia*,

- a) to recognise the applicants as holders of internal shares in relation to the amount of their paid internal shares in Agrokomerc and to enable the applicants to exercise the rights connected to these shares;
- b) to employ internationally recognised auditors to undertake a forensic audit to determine the complete present ownership structure of Agrokomerc;
- c) as an interim measure, until the forensic audit ordered is complete, to recognise the capital structure of Agrokomerc registered by the Court of Bihać on 31 October 1991, that is, 53% share capital and 47% state capital;
- d) to appoint three members to an interim supervisory board of Agrokomerc, and to allow the applicants, through the Shareholders Association, to appoint four members to the interim supervisory board, which shall be composed of seven members in total, each of whom shall perform his or her duties in full compliance with the decision.

5. As to the competence of the interim supervisory board, the Second Panel held that “in the event that the interim supervisory board decides upon any issue within the general competence of the assembly of shareholders, then such a decision must be taken on the basis of a two-thirds majority vote of all members of the interim supervisory board (*i.e.*, five members in agreement)”. The Second Panel also provided in paragraph 315 that “if the interim supervisory board decides to change any or all of the members of the management board of Agrokomerc during the interim period, then this vote must also be taken on the basis of a two-thirds majority vote of all members of the interim supervisory board (*i.e.*, five members in agreement).”

6. On 5 and 8 April 2002, respectively, the applicants and the respondent Party submitted requests for review of the decision. On 19 April 2002 the applicants submitted an addition to their request for review. In accordance with Rule 64(1) the First Panel considered the requests for review on 6 and 7 May 2002.

III. APPLICANTS' REQUEST FOR REVIEW

7. The applicants request the Chamber to recognise the Shareholders Association as representing all shareholders of Agrokomerc, including those who are not members, and to explicitly refer in its findings to all shareholders.

8. Secondly, the applicants challenge the decision with respect to the decision's conclusion to declare the complaint concerning the applicants' right to work inadmissible. They argue that they were unlawfully and in a discriminatory manner dismissed from their positions. They claim that the decisions on their labour termination were issued between 1996 and 1998 and that several shareholders initiated court proceedings.

9. In their request for review the applicants seek recognition of the conversion of employee claims for reduced salaries paid from 1987 to 1991. The Chamber found that claims for compensation for reduced salaries could not have been converted into payment for shares (see in particular paras. 262-265 of the decision). The applicants contend that the difficulties of Agrokomerc and the reduction of the salaries were caused solely by organs of the respondent Party. They conclude that they had a claim in the amount of more than 120 million Deutsche Mark ("DEM") against the Federation which was lawfully converted into payment for internal shares.

10. The applicants also seek recognition of the conversion of the value of inventory goods as payment for internal shares. As to the factual background regarding the conversion of the value of inventory goods, the applicants state that after the return of Fikret Abdić at the end of 1989, he "engaged wealthy people from all over Europe and the world and business partners and friends, he provided raw material, restarted the production, re-employed the workers and returned to the domestic and world market". They state that "the work [of Agrokomerc] started with zero (0) and the value of the inventory goods of Agrokomerc as of 31 March 1992 was 243,000,000 DEM". The applicants further seek to derive rights from their claim that Agrokomerc funded state institutions during the armed conflict in the region.

11. The applicants state that the work of the interim supervisory board would lead to a blockade by the members appointed by the respondent Party if the interim supervisory board must apply the Chamber's order that decisions which concern the principal competencies of the assembly of shareholders could only be rendered by a two-third majority of votes. The applicants request the Chamber to empower the interim supervisory board to decide by a simple majority of votes of the members on the appointment of the management and all issues which according to the Law on Business Companies (OG FBiH nos. 23/99, 45/00, 2/02) fall under the competencies of the shareholders' assembly. The applicants also request the Chamber either to remove the existing management of Agrokomerc and to refer all competencies to the interim supervisory board or to order that the management shall be composed of four directors appointed by the Shareholders Association and three directors appointed by the respondent Party.

IV. RESPONDENT PARTY'S REQUEST FOR REVIEW

12. The respondent Party, on the one hand, states that it recognises the applicants as holders of paid internal shares. On the other hand, it challenges the validity of the Workers' Council decision of 27 August 1991 on the issuance of internal shares as outside the statutory time limit and therefore void.

13. The respondent Party furthermore does not consider it reasonable that the Chamber gave "majority rights in governing the company during the 'so-called' interim period" to the representatives of the Shareholders Association in the interim supervisory board. The Federation asserts that by temporarily recognising the capital structure on the basis of the registered, rather than paid, capital in the amount of 53% share capital and 47% state capital, the Chamber acted on the basis of a mere hypothesis and prejudged the audit result. The respondent Party states that it does not object that the Chamber chose one possibility among several others, but it objects that on the basis of the one option chosen, the Shareholders Association is given the majority governing rights during the interim period. This, the Federation contends, might have far-reaching consequences for Agrokomerc.

14. Finally, the Federation objects to the unequal position of the shareholders who are not applicants nor members of the Shareholders Association. The respondent Party states that the Chamber divided the shareholders of Agrokomerc into those who are given governing rights during the interim period and the others who are deprived of this right.

V. OPINION OF THE FIRST PANEL

15. The First Panel notes that the requests for review have been lodged within the time limit prescribed by Rule 63(3)(a). In the additional submission the applicants clarified and substantiated their request for review. As the last submission does not raise a new challenge to the Second Panel's decision, the First Panel is not barred from taking it into consideration. The First Panel will consider each item of the parties' objections to establish whether the circumstances justify reviewing the Chamber's decision (see Rule 64(2)(b) of the Chamber's Rules of Procedures).

A. As to the request for review submitted by the applicants

16. Insofar as the Shareholders Association seeks recognition of its attempt to represent all shareholders and not only its members, the First Panel notes that the Association failed to forward any evidence that other potential shareholders of Agrokomerc authorised it to represent them before the Chamber.

17. Insofar as the applicants request review of the Second Panel's finding about an alleged violation of the right to work, the First Panel notes that the applicants, in the course of the proceedings before the Second Panel, failed to produce any evidence that the complaints fall within the Chamber's competence *ratione temporis* and that they exhausted any remedies. The new submissions still do not provide satisfactory evidence that available remedies were exhausted, nor that such remedies offered no prospect of success.

18. As to the claims for compensation for reduced salaries from 1987-1991, the First Panel recalls that the Second Panel found no legal ground which would allow an employee to convert such an equitable claim against a company into payment for internal shares. The applicants again fail to present new factual or legal grounds which could provide a justifiable reason for the conversion of employee claims for reduced salaries into paid internal shares.

19. As to the value of inventory goods, the First Panel notes that no legal basis has been found that in the case of the applicants the value of goods produced or acquired could be converted into paid internal shares of the employees at the expense of state capital. The applicants further allege to have claims because Agrokomerc funded state institutions during the armed conflict in the region. These allegations also do not support claims of the applicants against the respondent Party.

20. The applicants object to the limited power of the interim supervisory board regarding issues which fall under the competencies of the shareholders' assembly and as to the appointment of the company's management. The First Panel considers the orders of the Second Panel in relation to the supervisory board to be reasonable.

B. As to the request for review submitted by the respondent Party

21. The respondent Party objects to the reasoning given in paragraph 245 of the decision as to Agrokomerc's failure to meet the time limit for the issuance of the decision on issuance of internal shares. The Second Panel found that the registration of the company effectively cured the technical irregularity of the nine-day delay. It also noted that the delay was not contested before the courts performing the registration and that such an objection could only be raised within a reasonable period of time after the registration. The Federation, however, also states in its request for review that it does not deny that the applicants are holders of paid internal shares. The First Panel, therefore, sees no need to deliberate on this issue since the respondent Party, in effect, does not challenge the validity of the decision on issuance of internal shares.

22. As to the respondent Party's request for review against the Second Panel's orders regarding the composition and competence of the interim supervisory board, the First Panel considers that the interim arrangements appear to be reasonable. It concludes that no issues of general importance are raised by this part of the request for review as required by Rule 64(2) of the Chamber's Rules of Procedure.

23. The Federation also objects that only the Shareholders Association has the right to appoint members of the interim supervisory board and that thereby other shareholders, who are not members of the Association, do not have an equal position. The First Panel notes that it is because of the respondent Party's human rights violations that the shareholders had no means to exercise their rights. For the interim period, considering that the decisions of the interim supervisory board on important issues require a qualified majority, the orders chosen by the Second Panel may still be regarded to provide a pragmatic way for the protection of the interests of the applicants and all other shareholders of Agrokomerc.

C. Conclusion on the opinion of the First Panel

24. The First Panel has already concluded that part of the respondent Party's request for review does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required by Rule 64(2)(a) (see paragraph 22 above). It concludes furthermore that the whole circumstances do not justify reviewing the decision as set forth in the second requirement of Rule 64(2). Accordingly, the First Panel unanimously recommends that the requests for review be rejected.

VI. OPINION OF THE PLENARY CHAMBER

25. The plenary Chamber agrees with the First Panel that, for the reasons stated, the requests for review do not meet the conditions required for the Chamber to accept such requests pursuant to Rule 64(2).

VII. CONCLUSION

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

REJECTS THE REQUESTS FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber