



DECISION ON REQUEST FOR REVIEW

Cases nos. CH/00/6436 and CH/00/6486

Dulba KRVAVAC and Danica PRIBIŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 September 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 respondent Party'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 applicants are pre-war residents of the Municipalities Mostar-Zapad and Mostar-Jugozapad of non-Croat origin. During the armed conflict they were displaced. After the end of the hostilities they obtained CRPC decisions and claimed repossession of their pre-war homes. Đulba Krvavac regained possession of her apartment on 6 February 2002 and Danica Pribišić on 19 March 2002. In their applications, the applicants complained that the competent authorities of the Municipalities Mostar-Zapad and Mostar-Jugozapad failed for a long time to execute decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), confirming their occupancy rights over apartments. The applicants claimed that the failure, for a long period, of the competent administrative organ to decide upon their requests to be reinstated into their apartments is a violation of Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 14, 17 and 26 of the International Covenant on Civil and Political Rights (ICCPR). They also complained that they had been discriminated against in the enjoyment of these rights on the grounds of their origin.

2. On 3 July 2002 the Second Panel decided not to strike out the applications as requested by the respondent Party. Instead, it found that the applicants had been discriminated against in the enjoyment of their rights under Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 17 and 26 of the ICCPR. The Second Panel also found that the non-enforcement, for a long period, of the decisions of the CRPC constituted a violation of the applicants' right to respect for their homes, within the meaning of Article 8 of the Convention, and the applicants' right to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1 of the Convention. Accordingly the Chamber found that the Federation of Bosnia and Herzegovina ("the Federation") was in breach of Article I of the Agreement and ordered it to pay the applicants compensation for non-pecuniary damage in the amount of 1200 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the applicants' suffering as a result of their inability to regain possession of their apartments and of the discrimination they had been subjected to. Moreover the Federation was ordered to pay compensation for loss of use of their homes in different amounts at a rate of 200 KM per month, starting 30 days after the filing of a request for enforcement of the CRPC decision with the competent authority and until the month in which they have been reinstated. Finally, the Federation was ordered to take all necessary measures to ensure the respect and implementation of Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments.

3. On 5 July 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 6 August 2002 the respondent Party 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 respondent Party challenges the Second Panel's decision on the following grounds

- (a) that the decision not to strike out the applications was not in accordance with the previous decisions of the Chamber, as the applicants were reinstated into possession of their apartments;
- (b) that it was not necessary to award compensation for non-pecuniary and pecuniary damage, as the finding of violations of the Convention would have been already an adequate remedy;
- (c) that the amounts of compensation were not in accordance with the previous decisions of the Chamber;
- (d) that the respondent Party is not responsible for the loss of the possession of their apartments and the damage caused to the applicants.

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). 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. Both conditions have to be met for the Chamber to grant the request for review.

7. The respondent Party 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”. With regard to the decision of the Second Panel not to strike out the applications, the First Panel notes that the Second Panel applied the criteria set forth by the plenary Chamber in the *S.P.* decision (case no. CH/99/2336, decision to strike out of 2 July 2001, Decisions July—December 2001). The First Panel further recalls that the Second Panel did not find any responsibility for the loss of the possession of the applicants’ apartments but for the impossibility of the applicants to repossess their apartments.

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