



DECISION ON REQUEST FOR REVIEW

Case no. CH/01/8408

Selim KEPEŠ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 11 January 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the applicant's request for review of the decision of the Second Panel of the Chamber on the admissibility 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. INTRODUCTION

1. In his application to the Chamber, the applicant claims to be the owner of 250m² of land located at ulica Orlovačka 140, Sarajevo. However, it appears that the applicant's prior ownership of this land was removed by a decision of the Municipality Novo Sarajevo in accordance with the Law on Building Land (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 34/86, 1/90 and 29/90) and that he was given a right to use the land in question. The Chamber further notes that the applicant submitted to the Chamber a certificate from the Land Registry, verified by the Municipal Court I in Sarajevo, that the land in question was socially-owned and that the applicant had a right of use over that land. The Chamber has no information as to when the Municipality's decision was issued, but it notes that this formed part of the government's urban plan expanding the boundaries of the city limits. Additionally, during 1987 a regulatory plan was passed for the area of Pofalići in Sarajevo, where the disputed land is situated, by which it was proposed that at some stage in the future, a road would be constructed that would cross the applicant's land.

2. At some stage the applicant applied for planning permission to construct a residential building on the land. On 26 June 1998 the Department for Physical Planning, Utility Affairs and Environmental Protection of the Municipality Novo Sarajevo issued a decision refusing the applicant's request for planning permission due to the 1987 regulatory plan for Pofalići. On 3 August 1998 the applicant submitted an appeal to the Ministry for Physical Planning and Utility Affairs of Canton Sarajevo (the "Ministry") against the procedural decision of 26 June 1998. On 6 January 1999 the Ministry rejected his appeal, stating that the first instance body correctly rejected his request as the proposed residential building would be located on land anticipated for "communications' infrastructure"¹ and that construction of a residential building would be contrary to the Law on Physical Planning (Official Gazette of Socialist Republic of Bosnia and Herzegovina no. 9/87).

3. The applicant initiated an administrative dispute, requesting that the procedural decision of 6 January 1999 be quashed and requesting an adequate alternative site for construction of the proposed residential building. He also submitted a claim for compensation for the expropriation of his land in light of the Ministry's refusal to grant planning permission. On 7 June 2000 the Cantonal Court in Sarajevo issued a judgment rejecting the applicant's requests on the basis that that court was not competent to consider allocation of alternative land or compensation as the issue would be decided by future expropriation proceedings. On 6 September 2001 the Supreme Court of the Federation of Bosnia and Herzegovina issued a judgment, confirming the previous judgment of the Cantonal Court.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. On 11 October 2002, the Second Panel of the Chamber adopted its decision on admissibility in this case. In that decision, the Second Panel declared the application inadmissible as manifestly ill-founded with respect to Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. On 14 November 2002, the Second Panel's decision on admissibility was transmitted to the parties in pursuance of Rule 60(4) of the Chamber's Rules of Procedure. On 27 November 2002 the applicant submitted a request for review of the decision.

6. In accordance with Rule 64(1), the request for review was considered by the First Panel on 7 January 2003. In accordance with Rule 64(2), on 11 January 2003 the Plenary Chamber considered the request for review and the recommendation of the First Panel.

¹ According to Article 29 of the Law on Urban Planning, the term "communications' infrastructure" refers to the construction of transport infrastructure such as roads, railways and airports.

III. THE REQUEST FOR REVIEW

7. In the request for review, the applicant challenges the Second Panel's decision on the following grounds:

- a. that the Second Panel failed to examine the submitted documentation concerning his ownership over the land at issue;
- b. that he was never offered compensation or alternative property in exchange;
- c. that the domestic administrative bodies failed to inform him of the regulatory plan or how it would affect his property until 1998 when he submitted his request to the Municipality; and
- d. that the failure to complete the regulatory plan within a reasonable time means that it has no force of law.

IV. OPINION OF THE FIRST PANEL

8. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b). 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".

a. Failure to examine submitted documentation

9. The First Panel notes firstly that the applicant claims to be the owner of the land in issue and that the Second Panel failed to examine the submitted documentation substantiating his ownership. However, the First Panel notes that in paragraph 1 of the decision on admissibility, the Second Panel referred to decision of the Municipality Novo Sarajevo issued in accordance with the Law on Building Land. Moreover, the Land Registry certificate, verified by the Municipal Court I in Sarajevo, confirmed that the land was socially-owned and the applicant merely possessed a right of use. Accordingly, the First Panel agrees with the Second Panel that the applicant is not the owner of the land in question; therefore, the request for review in this respect fails to raise a "serious issue of general importance" and should be rejected.

b. Failure to offer compensation or alternative property

10. The applicant further claims that the administrative bodies neither offered him compensation for the expropriation of the land at issue, nor offered him appropriate alternative land or an apartment in exchange. In his application to the Chamber the applicant stated:

"...also the compensation that the authorities from the Municipality offers is minimal and insufficient for myself and my family to build or buy an apartment."

11. The First Panel notes that the Second Panel's assessment of an offer of compensation was incorrect and the applicant has not specifically stated that he has received a formal offer for compensation, but instead, that he would reject any purported offer of compensation. It is clear in this respect that the applicant is not seeking compensation for expropriation, but allocation of alternative land or an apartment. However, the First Panel finds that despite this inaccuracy on the part of the Second Panel, the issue of compensation is a matter for the domestic organs in accordance with the Law on Expropriation once the Municipality issues a decision on expropriation. As to the issue of allocation of alternative property, the First Panel notes that no such right exists under the Convention, and again this is a matter for the domestic organs to assess in accordance with the applicable law. Accordingly, the First Panel takes the view that the request for review in this respect fails to raise a "serious issue of general importance" and should also be rejected.

c. Failure to inform the applicant of regulatory plan until 1998

12. The First Panel notes that the 1987 regulatory plan was adopted on 10 November 1987 and published thereafter (Official Gazette of the City of Sarajevo no. 24/87) and that the domestic authorities are under no obligation to personally inform each individual of such a plan. The First Panel finds that the domestic organs took sufficient steps to bring the regulatory plan to the attention of the applicant, and accordingly, the request for review in this respect fails to raise a “serious issue of general importance” and should be rejected.

d. Regulatory plan time limit

13. The First Panel notes that the applicant did not raise this complaint in his original application to the Chamber and therefore the applicant is barred from raising the issue now. The time limit for completing the regulatory plan under domestic law is 5 years. The First Panel takes the view that this is a matter for the domestic administrative bodies to resolve. However, it does not appear from the case file that the applicant raised this issue before the domestic organs, but instead, he renewed his request for compensation or allocation of alternative land or an apartment in exchange. In this respect, the First Panel notes that the Department for Physical Planning, Utility Affairs and Environmental Protection of the Municipality Novo Sarajevo rejected his complaint and that the Cantonal Court in Sarajevo and the Supreme Court of the Federation of Bosnia and Herzegovina refused to examine his complaint until such time as expropriation proceedings had been concluded. Accordingly, the request for review in this respect also fails to raise a “serious issue of general importance” and should be rejected.

e. Conclusion of the First Panel

14. The First Panel notes that the applicant’s complaints submitted in his request for review concern the domestic organs’ assessment of the facts pertaining to his case and application of the law. The Second Panel, in paragraph 9 of its decision on the admissibility of the case, rightly stated that the Chamber has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (*see, e.g., case no. CH/99/2565, Banović, decision on admissibility of 8 December 1999, paragraph 11, Decisions August–December 1999, and case no. CH/00/4128, DD “Trgosirovina” Sarajevo (DDT), decision on admissibility of 6 September 2000, paragraph 13, Decisions July–December 2000*). Accordingly, the request for review fails to raise a “serious issue of general importance” and fails to show that “the whole circumstances justify reviewing the decision”; therefore, it should be rejected in its entirety.

15. As the request for review does not meet both conditions set out in Rule 64(2), the First Panel unanimously, recommends that the request for review be rejected.

V. OPINION OF THE PLENARY CHAMBER

16. 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

17. 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