



DECISION ON REQUEST FOR REVIEW

Case no. CH/01/7398

A.M.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
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 a review of the decision of the Second Panel of the Chamber on the admissibility of and to strike out 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 to 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is the pre-war occupancy right holder over an apartment located at ulica Omladinski put b.b. in Hrasnica, the Federation of Bosnia and Herzegovina ("the pre-war apartment"). This apartment was located on the front line during the war in Bosnia and Herzegovina and was seriously damaged. The applicant was then allocated the apartment located at ulica Put Famosa no. 30, also in Hrasnica, ("the second apartment") on a temporary basis. A third person has a pre-war occupancy right over the second apartment. In mid-January 2002 the applicant agreed to vacate the second apartment.

2. The applicant claimed that his pre-war apartment has been further "systematically destroyed during peacetime, after the war, by the competent authorities, without his knowledge or consent." The applicant complained that his right to home and his right to purchase the pre-war apartment are violated.

II. PROCEEDINGS BEFORE THE CHAMBER

3. In its decision on admissibility adopted on 6 February 2002, the Second Panel concluded that the application in its entirety was inadmissible.

4. It found that in so far as the application was directed against Bosnia and Herzegovina it was inadmissible *ratione personae*.

5. The Second Panel further declared the application as directed against the Federation of Bosnia and Herzegovina inadmissible as manifestly ill-founded. It reasoned that the applicant failed to substantiate his complaint regarding the pre-war apartment, to explain the nature of the alleged actions undertaken by the authorities, to substantiate his claim why the authorities were required to obtain his consent prior to any such actions and to provide any evidence proving the destruction of his pre-war apartment after the war. Regarding the second apartment the Second Panel could not find that the applicant's rights as protected by the Agreement have been violated in light of the fact that the applicant voluntarily agreed to vacate it in January 2002.

6. On 29 March 2002 the Second Panel's decision was communicated to the parties in pursuance of Rule 52. On 23 April 2002 the applicant submitted a request for review of the decision.

7. In accordance with Rule 64(1) the request for review was considered by the First Panel on 3 March 2003. In accordance with Rule 64(2), on 7 March 2003 the Plenary Chamber considered the request for review and recommendation of the First Panel.

III. REQUEST FOR REVIEW

8. In the request for review, the applicant complains that the Federation of Bosnia and Herzegovina violated his right to home by pulling down the building in which his destroyed pre-war apartment was located without obtaining his prior consent. The applicant alleges to be the authorised representative of the pre-war residents of the residential area. He claims that he does not have the means to provide any documentation as to why the Federation of Bosnia and Herzegovina pulled down not only his apartment but also the entire residential area in which his pre-war apartment was located. He proposes to ask the Federation of Bosnia and Herzegovina for such documentation in order to demonstrate the lack of legal basis for the pulling down of the houses in the area.

IV. OPINION OF THE FIRST PANEL

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

10. 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".

11. The First Panel is of the opinion that the applicant's arguments regarding his inability to provide documentation about the pulling-down of the building in which his apartment was located could have been invoked during the proceedings before the Second Panel, which considered the admissibility of the case. Prior to the decision of 6 February 2002, the applicant failed to provide a minimum of substantiation of his allegations. In particular he did not inform the Chamber about the fact that the building in which his pre-war apartment was located had been pulled down and when and under what circumstances that had happened. The First Panel therefore does not consider that "the whole circumstances justify reviewing the decision" as required by Rule 64(2)(b).

12. Being of the opinion that the request for review does not meet the second of the two conditions set forth in Rule 64(2), the First Panel unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

13. 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

14. For these reasons, the Chamber, by 12 votes to 1,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber