



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/1010

Nevenka HACIBASIOGLU

against

**BOSNIA AND HERZEGOVINA
and
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 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 63-66 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The application concerned three different complaints by the applicant. Firstly, the applicant complained about her attempts to repossess her pre-war apartment, located at Hadži – Idriz no. 3/III, Sarajevo. Secondly, the applicant complained that she did not receive a pension from 1 June to 30 December 1997. Thirdly, she complained that as a frozen foreign currency savings account holder with the Ljubljanska banka in Sarajevo, she had been unable to dispose of her bank account because it was frozen.
2. The Chamber was informed by the Commission for Real Property Claims of Displaced Persons and Refugees (the “CRPC”) that the applicant had been reinstated into possession of her pre-war apartment. On 15 May 2002, the Chamber sent a letter to the applicant’s pre-war address asking her to confirm her reinstatement. On 21 May 2002, the applicant confirmed that she had succeeded to enter into possession of her pre-war apartment and that she had resolved her housing problem.
3. On 2 July 2002 and 31 July 2002, the Chamber sent letters by registered mail to the applicant asking her if she intended to pursue her application in respect of her pension and savings account, and if so, to submit all relevant documentation. These letters specifically warned the applicant that if she did not respond to them, the Chamber might decide to strike out her application. The Chamber received two signed delivery receipts confirming that the letters were received at the applicant’s pre-war address. However, the applicant did not respond to them.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted on 14 October 1998.
5. On 11 October 2002, the Second Panel of the Chamber adopted a decision to strike out the application on the grounds that the matter had been resolved concerning the request for repossession and that the applicant did not intend to pursue the remainder of her application.
6. On 12 November 2002, the Second Panel’s decision was communicated to the parties in pursuance of Rule 52 of the Chamber’s Rules of Procedure.
7. On 19 November 2002, the applicant submitted a request for review of the decision.
8. In accordance with Rule 64(1), the request for review was considered by the First Panel on 7 January and 3 March 2003. In accordance with Rule 64(2), on 7 March 2003, the plenary Chamber considered the request for review and the recommendation of the First Panel.

III. THE REQUEST FOR REVIEW

9. In the request for review, the applicant pointed out that she never received the Chamber’s letters of 2 July 2002 and 31 July 2002. She expressed her desire to pursue the proceedings before the Chamber with regard to her request for pension payments and her request for return of her old foreign currency savings deposits. She enclosed various relevant documents related to these two claims.

IV. OPINION OF THE FIRST PANEL

10. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b).
11. 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”.

12. The First Panel notes that in her request for review the applicant complains that she never received the Chamber's two letters of 2 July 2002 and 31 July 2002 asking her to confirm whether she intended to pursue her application. These letters were sent to the applicant's pre-war address, the same address to which the first letter of 15 May 2002 was sent, which the applicant responded to, and the same address to which the decision of the Second Panel was sent, which the applicant also obviously received. The Chamber received two signed return receipts confirming delivery of the letters of 2 July 2002 and 31 July 2002; however, the applicant never responded to them.

13. The First Panel does not consider that "the whole circumstances justify reviewing the decision", as required by Rule 64(2)(b). That being so, it is not necessary for the Chamber to consider whether the request for review raises "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).

14. 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

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

VI. CONCLUSION

16. 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

Annex Dissenting Opinion of Mr. Manfred Nowak

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Manfred Nowak.

DISSENTING OPINION OF MR. MANFRED NOWAK

Under Article VIII(3)(a) of the Agreement, the Chamber may decide to strike out an application on the ground that the applicant does not intend to pursue his/her application. In fact, there are thousands of applications pending before the Chamber where the applicants have simply lost interest in pursuing their applications because they have in the meantime been reinstated into possession of their pre-war apartments or solved their concerns in another manner. Often, the applicants have changed addresses without informing the Chamber of their new addresses, and the Chamber was simply unable to further communicate with the applicants. For these reasons, the Chamber adopted the practice to send letters by registered mail to the applicants urging them to respond and warning them that, unless they respond within a reasonable time, their applications might be struck out. To some extent, these decisions are based on the legal presumption that the applicant did in fact receive the Chamber's letters and, by not responding, proved that he/she was no longer interested in pursuing the application. This legal presumption is based on the reasonable assumption that the applicants have an obligation to inform the Chamber of any change of address, as stated in Rule 46(6) of the Chamber's Rules of Procedure.

In my opinion, this procedure is correct as long as the applicant has a possibility to have the decision of a Panel reviewed in case it turns out that the legal presumption indicated above was not correct. This is exactly what happened in the present case. On 15 May 2002, the Chamber sent a letter to the applicant asking her to confirm her reinstatement into possession of her pre-war apartment, and, less than one week later, she confirmed and provided the Chamber with her new address. On 2 and 31 July 2002, the Chamber sent further letters asking her whether she intended to pursue her application in respect of two additional claims (a frozen bank account claim and a pension claim), which have nothing to do with her reinstatement into her pre-war apartment. Since she did not respond to these two letters, the Second Panel on 11 October 2002 decided to strike out the application on the ground that she did not intend to pursue her application. On 12 November 2002, this decision to strike out was communicated to the applicant. One week later she submitted a request for review, claiming that she in fact had not received the two letters and that she always wished to further pursue her application. Although the Chamber is under the impression that the applicant had herself signed the registered delivery receipts for the two letters, there is no reason for me to doubt her claim "that I have not received them personally or signed anything by writing my identification number, which you may check on the return receipt for the letter you sent".

It is, therefore, obvious that the reasoning of the Second Panel, which was nothing but a legal presumption, is not correct as the applicant has provided convincing reasons that she is in fact interested in pursuing her application before the Chamber in relation to those claims that are not related to her reinstatement. The only way the Chamber could have remedied her concerns was to accept her request for review and to deal with her pension and frozen bank account claims, as in all other cases pending before the Chamber where the applicants were not reinstated into their pre-war apartments and, therefore, were not asked by the Registry whether they wished to pursue their applications. The request for review concerns an important question of interpretation, namely the interpretation of Article VIII(3) of the Agreement. I cannot share the reasoning of the majority to reject the request for review, which has the legal consequence that a decision to strike out, which is obviously based on an incorrect legal presumption, becomes legally valid and binding.

For these reasons I respectfully dissent.

(signed)
Manfred Nowak