



DECISION ON REQUEST FOR REVIEW

Case no. CH/01/6930

KOMPAS MEĐUGORJE

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 April 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. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 to 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the mobilisation, use, and rental to UN forces of the tourist facility “Kamp Međugorje” by Čitluk Municipality following the armed conflict in Bosnia and Herzegovina. Kamp Međugorje is owned by the company “Kompas Međugorje”, of which Zoran Buntić is 76.74% owner, director, and authorised representative.
2. The applicant alleges that the Municipality of Čitluk, SFOR, and the FBiH Ministry of Defence did not comply with government decisions ending the state of war. The property was not returned to the applicant. SFOR and the Čitluk Municipality continued to use the Kamp Međugorje facilities, Čitluk Municipality continued to receive rent and other income from that use, and neither the Federation Ministry of Defence nor the Federation Government issued a procedural decision demobilising the facilities.
3. The case raises issues under Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. In its decision on admissibility and merits adopted on 8 January 2003, the Second Panel concluded that the Federation of Bosnia and Herzegovina had violated the applicant’s right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention and the right to a fair trial within a reasonable time under Article 6 of the Convention. The Second Panel ordered, inter alia, that the respondent Party secure the immediate return of the Kamp Međugorje property, that the domestic courts fairly and expeditiously establish the level of compensation for the violations, that the respondent Party pay 10,000 KM as moral damages for the delay in the domestic court proceedings, and that the respondent Party pay 2500 KM for the applicant’s legal costs and expenses.
5. On 10 January 2003, the Second Panel’s decision was delivered pursuant to Rule 60 of the Chamber’s Rules of Procedure. On 10 February 2003, the respondent Party 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 4, 5, and 31 March 2003. In accordance with Rule 64(2), on 3 April 2003 the plenary Chamber considered the request for review and recommendation of the First Panel.

III. THE REQUEST FOR REVIEW

7. In the request for review, the respondent Party complains that the Chamber, by designating Kompas Međugorje as the applicant, improperly deceived the respondent Party because the application was lodged in the name of Zoran Buntić and all the respondent Party’s observations were directed toward Zoran Buntić as the applicant.
8. The Federation further argues that the Chamber acted improperly in awarding moral damages to a legal person (i.e. the corporation Kompas Međugorje) and that such damages may only be awarded to physical persons.
9. The Federation also disputes the award of legal costs and expenses, arguing that the Chamber’s Rules of Procedure do not provide for awards of compensation for expenses incurred in domestic court proceedings.
10. The Federation further argues that the ownership structure of Kompas Međugorje is unclear and that the Chamber should not have accepted the ownership structure presented by the applicant. The Federation alleges that in 1991 the previous owner of the property, “Kompas International d.d. Ljubljana” failed to comply with a 1987 joint venture agreement that gave use rights for the property to Čitluk Municipality. The Federation also relies on a 4 March 1999 decision of the Čitluk Municipal

Council that transferred use rights for the property to Čitluk Municipality. The Federation states that this conclusion and subsequent decisions of the domestic courts demonstrate that the ownership structure of Kompas Međugorje is unknown.

11. The respondent Party states that Zoran Buntić purchased his shares for 1,100,000 KM through a 31 December 1998 contract with Kompas International d.d. Ljubljana, and that this contract was registered before a competent court. Čitluk Municipality challenged the validity of this contract in court on 25 March 1999 and 9 February 2001 and therefore, according to the respondent Party, proceedings that will invalidate Mr. Buntić's ownership interest remain pending.

12. The respondent Party admits that its position would be without legal basis if the ownership transfer from Kompas International d.d. Ljubljana to Zoran Buntić had been carried out. The respondent Party again argues, however, that because an audit report for Kompas Međugorje was formally incomplete, the ownership structure of the company could not be confirmed. On this basis, the Federation argues that Čitluk Municipality was justified in keeping the facilities after mobilisation in order to protect the public interest.

13. The Federation argues that the circumstances justifying review under Rule 64(2) exist.

IV. OPINION OF THE FIRST PANEL

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

15. 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".

16. The First Panel is of the opinion that the action of the Second Panel in designating Kompas Međugorje as the applicant, when all the respondent Party's observations were directed toward Zoran Buntić as the applicant, raises a serious issue of general importance and constitutes a circumstance justifying review of the decision. The application was filed by Zoran Buntić in his personal capacity, and Mr. Buntić clarified during the course of proceedings before the Chamber that he submitted the application on his own behalf and not on behalf of the corporation Kompas Međugorje. Having decided that this issue raised by the respondent Party justifies review of the decision in its entirety, the First Panel finds that it is not necessary to consider the respondent Party's additional arguments at this time.

17. Being of the opinion that the request for review meets the conditions set forth in Rule 64(2), the First Panel, by 5 votes to 2, recommends that the request be accepted.

V. OPINION OF THE PLENARY CHAMBER

18. The plenary Chamber agrees with the First Panel that the request for review meets the conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

VI. CONCLUSION

19. For these reasons, the Chamber, by 10 votes to 4,

DECIDES TO ACCEPT THE REQUEST FOR REVIEW.

(Signed)
Ulrich GARMS
Registrar of the Chamber

(Signed)
Michèle PICARD
President of the Chamber