



DECISION ON REQUEST FOR REVIEW

Case no. CH/02/7950

Edita MUJKIĆ

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 applicant's request for a 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. FACTS AND COMPLAINTS

1. The applicant lived in an apartment located in Sarajevo until May 1992, when she left Bosnia and Herzegovina because of the armed conflict. The applicant's husband and her parents continued to live in the apartment. The applicant alleges that, after her husband left in 1997, her parents were evicted from the apartment in question and sent to their apartment located in Grbavica. The applicant claims that she did not receive any information as to why her parents were forced out of her apartment. She states that she was not informed that she should request repossession of her apartment, and she only learned this after all the time limits had expired for the submission of such a request. The applicant states that news broadcasts from Bosnia and Herzegovina have not been organised in Australia; therefore, she could not find out that she had to submit a request for repossession of her apartment. The applicant also points out that she does not understand on what grounds her occupancy right was revoked, or the time limits for submission of requests, since she has never received any document on the seizure of her apartment. The applicant alleges that her right guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights has been violated.

II. PROCEEDINGS BEFORE THE CHAMBER

2. On 6 December 2002 the Second Panel adopted a decision declaring the application inadmissible because the applicant did not exhaust effective domestic remedies.

3. On 13 February 2003 the Second Panel's decision on admissibility was sent to the applicant who is currently living in Australia.

4. On 21 March 2003 the applicant submitted a request for review of the decision. In accordance with Rule 64(1) the request for review was considered by the First Panel on 31 March 2003.

III. THE REQUEST FOR REVIEW

5. In her request for review, the applicant states that the rules and deadlines for submitting claims should be considered in a different light for people who have lived overseas. According to the applicant she has legal rights over that apartment and there is no legal obstacle for the claim to repossess the apartment. The applicant is of the opinion that by preventing her to repossess the apartment the Chamber is confirming the ethnic cleansing.

IV. 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 First Panel notes that the applicant has never submitted a request for repossession of her apartment. The Law on Cessation of Application of the Law on Abandoned Apartments entered into force on 4 April 1998. The deadline for submitting such a request was extended on several times, finally expiring on 4 October 1999, i.e. one and half years later. The fact that the applicant has been living in Australia is not sufficient justification for not requesting repossession within the time limit. The First Panel is of the opinion that time period of one and half year is enough to be informed about possibility to request the repossession of the apartment. Particularly so, considering the fact that the applicant is the occupancy right holder over the apartment. An occupancy right presumes an

occupancy right holder's duty to use the apartment and live in it continuously. This right shall be terminated if the apartment has been abandoned or not used for over 6 months. For these reasons, the First Panel is of the opinion that period of one year and six months is sufficient time limit for submission of the request.

8. Therefore, the First Panel is of opinion that the applicant's challenge to the Second Panel's decision that she failed to exhaust available domestic remedies fails to "raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance". 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.

V. 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 two conditions required for the Chamber to accept such requests pursuant to Rule 64(2).

VI. CONCLUSION

10. For these reasons, the Chamber, unanimously,

REJECTS THE REQUESTS FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber