



DECISION ON REQUEST FOR REVIEW

**Cases nos. CH/00/4806, CH/00/5191,
CH/00/5196, CH/00/5203 and CH/00/5210**

**Asim KORAJČEVIĆ, Mehmed VELAGIĆ,
Jusuf BEĆIROVIĆ, Hajrudin JUNUZOVIĆ and Huso GRADAŠČEVIĆ**

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 May 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. 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 applicants' request for a review of the decision of the Second Panel of the Chamber to strike out the aforementioned applications;

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. In the applications to the Chamber, registered between 8 May and 23 June 2000, the applicants complained of their inability to repossess their pre-war properties. The applicants are all represented by Mr. Salkan Gradašević. The applicants claimed that their rights as protected under Articles 6, 8, 13 and 14 of the European Convention on Human Rights (the “Convention”) and Article 1 of Protocol No. 1 to the Convention were violated. Between 4 October and 27 November 2002, the applicants' representative submitted information to the Chamber that all five applicants had regained possession of their pre-war properties. However, he did not state that they wished to withdraw their applications.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 4 February 2003, the Second Panel issued a decision to strike out the applications pursuant to Article VIII(3)(b) of the Agreement. The Second Panel considered that, since the applicants had been reinstated, the main issue raised in the applications had been resolved. Furthermore, the Second Panel found that no specific circumstances were presented in the applications which would require the examination of the applications to be continued after the main issue had been resolved.

3. On 25 March 2003, the Second Panel's decision was delivered to the applicants' representative in accordance with Rule 60 of the Chamber's Rules of Procedure.

4. On 9 April 2003, the applicants' representative submitted a request for review of the decision on behalf of each applicant. In accordance with Rule 64(1), the request for review was considered by the First Panel on 6 May 2003.

5. On 8 May 2003, the plenary Chamber deliberated on the request for review and adopted the present decision.

III. THE REQUEST FOR REVIEW

6. In their request for review, the applicants challenge the Second Panel's decision for the reason that it failed take into consideration that the respondent Party enforced the decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC”) only after 24 months from the date on which the conclusions on enforcement were issued. Further, they stated that the Chamber in a very similar case, *Jusić and others* (case nos. CH/00/4566, CH/00/4674, CH/00/5180, CH/00/5216 and CH/00/5593, decision on admissibility and merits, delivered on 7 June 2002), found a violation of human rights and awarded compensation to the applicants. The applicants are of the opinion that in the present case the Chamber failed to award them compensation.

IV. OPINION OF THE FIRST PANEL

7. 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.

8. The First Panel notes that the applicants lodged their applications with a view to regaining possession of their properties and while the case was still pending before the Chamber, they regained such possession. The First Panel further notes that although the applicants have been reinstated, they understandably ask the Chamber to find a violation of their rights protected by the Agreement due to the time that elapsed between their requests for reinstatement into possession of

their pre-war properties and the actual repossession. They also ask the Chamber to order the respondent Party to pay compensation to them in recognition of the damage, both pecuniary and non-pecuniary, suffered by them during the course of that time.

9. The First Panel recalls that the Second Panel issued its decision to strike out in accordance with Article VIII(3)(b) of the Agreement, which provides, “the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that ... (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights.”

10. The First Panel further recalls that under Article VIII(2)(e) of the Agreement, “the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds”. As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

11. Taking into account that the applicants have been reinstated into possession of their properties, the First Panel considers that the ongoing alleged human rights violations have been brought to an end and the main issue of the applications has been resolved, as found by the Second Panel in its decision to strike out. The First Panel recognises that valid reasons may underlie the applicants’ requests to nonetheless maintain their claims for compensation. However, in the light of the considerations discussed above, the First Panel considers that there is no ongoing violation of the applicants’ rights protected by the Agreement. The First Panel moreover finds that this result is “consistent with the objective of respect for human rights”, as this “objective” must be understood to embrace not only the individual applicant’s human rights, but also the Chamber’s more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

12. Accordingly, the First Panel considers that the Second Panel’s decision is in accordance with the approach consistently taken by the Chamber in cases in which the applicants have been reinstated into their pre-war apartment or house. The request for review therefore does not “raise a serious question affecting the interpretation or applicant of the Agreement or a serious issue of general importance”. As the request for review fails to fulfil the condition set forth in Rule 64(2)(a), the First Panel need not consider it further. Therefore, 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 second of the two conditions required for the Chamber to accept such request pursuant to Rule 64(2).

VI. CONCLUSION

14. 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