



DECISION ON REQUEST FOR REVIEW

Case no. CH/02/8849

Zvonimir PRGOMET

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 June 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. Miodrag PAJIĆ
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 First Panel of the Chamber on the admissibility of the aforementioned case;

Having considered the Second 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 was the temporary occupant of an apartment located in Zenica. Upon a request of the pre-war occupancy right holder, the Service for General Administration and Housing Affairs (the “Administration”) issued a procedural decision allowing the pre-war occupancy right holder to return into possession of the apartment and ordering the applicant to leave the apartment within 15 days, without the right to alternative accommodation. The Administration issued a conclusion allowing the eviction of the applicant from the apartment concerned. The eviction was scheduled for 12 April 2002.

2. The applicant states that before the armed conflict he lived in a small apartment in Zenica. The applicant requested the repossession of his pre-war apartment on 9 February 2000 and again on 28 February 2002. On 24 January 2002 the Administration issued a procedural decision rejecting the applicant's request as out of time. On 30 January 2002 the applicant appealed against this decision. The Chamber has no information as to whether the applicant received a decision upon his appeal.

3. The applicant complains that his rights protected under Articles 6 and 8 of the European Convention on Human Rights (“the Convention”) and Article 1 of Protocol No. 1 to the Convention have been violated. He claims to be unable to obtain possession of his pre-war apartment, because the Administration misapplied some new legal regulations pertaining to his case. The applicant alleges that he concluded a contract on exchange, stating that he exchanged a “small apartment for a bigger one”. He concludes that therefore the time for requesting repossession in his case was prolonged in accordance with the amendments to the Law on Cessation of the Law on Abandoned Apartments in December 2001.

II. PROCEEDINGS BEFORE THE CHAMBER

4. On 10 January 2003 the First Panel adopted a decision declaring the application inadmissible because the applicant did not exhaust effective domestic remedies.

5. On 22 March 2003 the First Panel's decision on admissibility was delivered to the applicant.

6. On 31 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 Second Panel on 3 June 2003.

7. In accordance with Rule 64(2), on 7 June 2003 the Plenary Chamber considered the request for review and the recommendation of the Second Panel.

III. THE REQUEST FOR REVIEW

8. In his request for review, the applicant states that he requested the repossession of the apartment before the administration organ the first time on 9 February 2000 and the second time on 28 February 2002, when he heard about the amendments. The applicant complains that it is wrongly stated in the Chamber's decision that he asked the repossession on 9 February 2002. He asks the Chamber to help him in finding solution for his housing problem and to issue a decision ordering repossession of his pre-war apartment.

IV. OPINION OF THE SECOND PANEL

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

10. The Second Panel notes that the applicant has submitted a request for repossession of his apartment on 9 February 2000. Due to a clerical error, in the national language version of the First Panel's decision this date was mistakenly stated as 9 February 2002. However, for the following reasons, this does not affect the outcome of the case.

11. The Law on Cessation of Application of the Law on Abandoned Apartments entered into force on 4 April 1998. The deadline for submitting a request for repossession was extended several times, finally expiring on 4 October 1999, i.e. one and half years later. The Amendments to the Law on Cessation of the Application of the Law on Abandoned Apartments of December 2001, prolonging the deadline for submitting such request, refer to cases where a contract on exchange has been concluded. The fact that the applicant concluded a new contract exchanging the smaller apartment for a bigger one in 1994 does not mean that he concluded a contract on exchange. Exchange of apartments, pursuant to law, involves the existence of two occupancy right holders who wish to exchange their apartments and make a written contract on it. The owners of the apartments in question have to give their consent to such a contract on exchange of apartments. The Second Panel notes that in the present case there was no exchange contract and the provisions invoked by the applicant are not applicable.

12. Therefore, the Second Panel is of opinion that the applicant's challenge to the First Panel's decision that he 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 Second Panel, unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

13. The plenary Chamber agrees with the Second 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

14. 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