



DECISION ON REQUEST FOR REVIEW

Case no. CH/00/4455

Vaso ŠOLAJA

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 to strike out the aforementioned application;

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 case concerns the applicant's attempts to regain possession of his apartment, located at Zmaja od Bosne No. 32/V, Sarajevo, Federation of Bosnia and Herzegovina.
2. On 19 January 1996 the applicant entered into a contract authorising the allocation right holder to use the apartment while he was abroad. On 4 June 1997 the applicant requested in writing that the keys be returned to him, in accordance with items 4 and 5 of the contract. The allocation right holder informed the applicant that he would need to initiate court proceedings to enforce the contract. On 25 September 1998 the Sarajevo Cantonal Housing Department rejected the applicant's claim, as the apartment had not been declared abandoned. On 5 August 1999 the Ministry for Housing Affairs issued a decision quashing the decision of 25 September 1998 and sending the case back to the first instance body.
3. On 27 November 2000, the applicant entered into possession of his pre-war apartment.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. On 11 October 2002, the First Panel issued a decision to strike out the application. The First Panel considered that since the applicant was reinstated, the main issue raised in the application had been resolved.
5. On 18 December 2002 the First Panel's decision was mailed to the applicant in pursuance of Rule 60 of the Chamber's Rules of Procedure. On 2 January 2003, the applicant received the decision.
6. On 27 January 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. On 7 June 2003, the plenary Chamber deliberated on the request for review and adopted the present decision.

III. THE REQUEST FOR REVIEW

8. In his request for review, the applicant challenges the First Panel's conclusion that he has not drawn the Chamber's attention to any special circumstances regarding the respect for human rights which would require the examination of the application to be continued after the main issue raised in the application has been resolved. The applicant considers that the First Panel did not fully consider his case, as otherwise this type of conclusion could not be made. The applicant alleges that the First Panel did not take into account all of the facts of his case, and did not call him for a hearing, and on the basis of this, issued an unjust and unacceptable decision.
9. The applicant reiterated the facts that were submitted in his original application as evidence that his human rights as protected by the Agreement were violated. Specifically, the applicant points out that he and his wife remained in the apartment throughout the war, and his wife was a conscript in the Civil Defence. After the war, he and his wife traveled to the Czech Republic for medical treatment, and prior to their departure, made a legally binding contract with the owner of the apartment, the public housing company, permitting the company to temporarily allocate the apartment to another user. However, upon their return in 1997, they were not permitted to return to their apartment, even though the contract provided for such. According to the applicant, in November 2000, he managed to re-enter their apartment and sold it, at which time he and his wife returned to the Czech Republic. On 18 March 2002, he received the procedural decision from the Canton Sarajevo Administration for Housing Affairs authorising him to return to the apartment. On 6 November 2002, the applicant and his wife renounced their BiH citizenship and became citizens of the Czech Republic.

10. The applicant also repeated his compensation claim as submitted in his original application, that is the sum of 60,000 US dollars as compensation for pecuniary damage suffered during the 40 months from 1 August 1997 until 27 November 2002, during which time he had to live abroad as he could not return to his apartment, and 1,000,000 US dollars by way of compensation for non-pecuniary damages.

IV. OPINION OF THE SECOND PANEL

11. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b). The Second Panel recalls that, under Rule 64(2), the Chamber “shall not accept the request for review 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 Second Panel is of the opinion that the reasons upon which the applicant’s request for review is based were in essence already considered and rejected on adequate grounds by the First Panel when it examined the case. Accordingly, the Second Panel considers that the request for review therefore does not “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 fulfill the condition set forth in Rule 64(2)(a), the Second Panel need not consider it further. Therefore, 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 conditions required by the Chamber pursuant to Rule 64(2) of the Chamber’s Rules of Procedure.

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