



DECISION ON REVIEW
(Delivered on 7 December 2001)

Case no. CH/00/3546

Dževdet TUZLIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3
December 2001 with the following members present:

Mr. Giovanni GRASSO, Acting President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Jakob MÖLLER
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request for review of the decision of the Second Panel of the Chamber on the admissibility and merits of the aforementioned case;

Having regard to its decision of 7 September 2001 accepting in part the respondent Party's request for review;

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 Rule 65 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. In the decision on admissibility and merits delivered on 8 February 2001, the Second Panel found that the Federation of Bosnia and Herzegovina violated the applicant's right of respect for his home as guaranteed by Article 8 of the Convention, the right to the peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, and his right to a fair hearing within a reasonable time as guaranteed by Article 6 of the Convention.

2. As remedies for the violations, the Second Panel ordered the Federation of Bosnia and Herzegovina to take the following actions: a) to take all necessary steps to enable the applicant to return swiftly to his apartment; b) to pay to the applicant the sum of 8,000 KM in compensation for pecuniary damage; and c) to pay to the applicant the sum of 2,000 KM in compensation for non-pecuniary damage.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. On 8 February 2001 the Second Panel's decision on admissibility and merits was delivered pursuant to Rule 60 of the Chamber's Rules of Procedure.

4. On 9 March 2001, the Federation of Bosnia and Herzegovina submitted a request for review of the decision.

5. In accordance with Rule 64(1), the First Panel considered the request for review. On 3 September 2001, the First Panel unanimously recommended that the plenary Chamber accept the respondent Party's request for review in part insofar as it was directed against the award of compensation for pecuniary and non-pecuniary damages in the decision.

6. On 7 September 2001, the plenary Chamber issued a decision accepting the request for review.

7. On 19 September 2001 the respondent Party's request for review was transmitted to the applicant. The applicant submitted supplemental written observations in the review proceedings on 27 September 2001. The compensation claim was transmitted to the respondent Party on 7 November 2001, and its further observations were received, and transmitted to the applicant, on 14 November 2001. The applicant submitted supplemental written observations on 26 November 2001.

8. The plenary Chamber deliberated on the case in review proceedings on 6 November and 3 December 2001, and adopted the present decision on review on the latter date.

III. THE REQUEST FOR REVIEW

9. The Federation of Bosnia and Herzegovina requested review of the decision on admissibility and merits on the basis that the applicant was reinstated to his apartment shortly after adoption of the decision of the Second Panel and with respect to the issue of compensation for pecuniary and non-pecuniary damages.

10. The Federation of Bosnia and Herzegovina challenges the Chamber's award of compensation on the ground that the applicant's compensation claim was not forwarded to the respondent Party prior to the Second Panel's delivery of its decision on 8 February 2001. As for the substance of its objection to the compensation claim, the Federation of Bosnia and Herzegovina contends that: 1) the compensation for pecuniary damages is "overestimated and not consistent with all decisions issued by the Chamber", and that there is no proof the applicant sustained such damage; and 2) the compensation for non-pecuniary damages is too high and not consistent with the Chamber's previous awards of such damages.

IV. THE DECISION ON REQUEST FOR REVIEW

11. On 7 September 2001 the Chamber accepted the request for review. The Chamber found that the objection raised by the respondent Party concerning the award of pecuniary and non-pecuniary damages, that such damages claims had not been forwarded to the respondent Party, raised a “serious issue affecting the application of the Agreement,” in particular Article X(1) thereof, and that “the whole of the circumstances justif[ied] reviewing the decision”, thereby satisfying the conditions of Rule 64(2) of the Chamber’s Rules of Procedure. The Chamber accepted the request for review only in this respect.

V. THE SUBMISSIONS OF THE PARTIES

12. The respondent Party contests the compensation claim of the applicant, stating that the applicant has failed to provide adequate proof of expenses incurred in renting alternative living accommodations, challenging both that the applicant was required to pay any rent for certain periods of time, and the amount of rent paid when he was required to do so. The respondent Party further objects to the claim for 5,000 KM compensation on account of “mental sufferings”, stating that the decision finding a violation is a sufficient remedy, and that, even were that not so, the amount requested is too high.

13. The applicant maintains his claims.

VI. THE CHAMBER’S DECISION ON REVIEW

1. Scope of the case on review

14. In light of its decision on request for review of 7 September 2001, the plenary Chamber will confine its review of the Second Panel’s decision on the admissibility and merits of the case, delivered on 8 February 2000, to conclusions nos. 6 and 9.

15. The request for review had been accepted in this limited part based upon the fact that the respondent Party had not been given the opportunity to comment upon the applicant’s compensation claim. In that the respondent Party’s observations in this regard have now been received and considered, the Chamber has again considered the applicant’s compensation claim.

2. Review of conclusion no. 6 regarding pecuniary damage

16. The Second Panel decided conclusion no. 6 as follows:

“unanimously to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber’s Rules of Procedure, the sum of 8,000 KM in compensation for pecuniary damage resulting from the violation of his rights under Article 8 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;”

17. The respondent Party argues that the amount awarded is too high and not in accordance with the jurisprudence of the Chamber, and that the applicant did not substantiate the expense he claims to have incurred by way of rent paid for alternative accommodations. The Chamber considers that the intention of such an award is to compensate the applicant on an equitable basis for the loss of use of his apartment, including expenses resulting therefrom. Therefore, the Chamber is of the opinion that the award of pecuniary compensation is in accordance with the Chamber’s case-law, is based on adequate grounds and is appropriate as compensation for the applicant (see case no. CH/00/6143,

Turundžić, decision on admissibility and merits of 8 February 2001 and case no. CH/00/6144, *Leko*, decision on admissibility and merits of 9 March 2001).

18. Accordingly, the plenary Chamber affirms conclusion no. 6 of the decision on admissibility and merits.

4. Review of conclusion no. 9 regarding non-pecuniary damage

19. The Second Panel decided conclusion no. 9 as follows:

“unanimously to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber’s Rules of Procedure, the sum of 2000 KM in compensation for non-pecuniary damage resulting from the violation of his rights under Article 8 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;”

20. The Chamber is of the opinion that the Second Panel’s award of compensation for non-pecuniary damage is in accordance with the Chamber’s case-law and is based on adequate grounds (case no. CH/00/6143, *Turundžić*, decision on admissibility and merits of 8 February 2001 and case no. CH/00/6144, *Leko*, decision on admissibility and merits of 9 March 2001). The respondent Party’s citations to the Chamber’s decisions on admissibility and merits in case no. CH/97/34, *Šljivo*, delivered 10 September 1998 and case no. CH/98/756, *D.M*, delivered 14 May 1999, are not relevant in that the facts of those cases are dissimilar to the facts in the present case.

21. Accordingly, a change in this conclusion is not warranted and the plenary Chamber affirms conclusion no. 9 of the decision on admissibility and merits.

22. The Chamber notes that this decision on review becomes final and binding within the meaning of Rule 66 of the Chamber’s Rules of Procedure upon its delivery on 7 December 2001, and accordingly, the orders contained in conclusions numbered 6 and 9 of the decision on admissibility and merits delivered on 8 February 2001 must be complied with no later than 7 January 2002.

VII. CONCLUSIONS

23. For these reasons, the Chamber decides,

1. unanimously, to affirm conclusion no. 6 in the decision on admissibility and merits delivered on 8 February 2001; and
2. unanimously, to affirm conclusion no. 9 in the decision on admissibility and merits delivered on 8 February 2001.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mr. Giovanni GRASSO
Acting President of the Chamber