



DECISION ON REQUEST FOR REVIEW

Cases nos.

**CH/00/4566, CH/00/4674, CH/00/5180, CH/00/5213,
CH/00/5216 and CH/00/5593**

**Bajazid JUSIĆ, Adem ŠEHOVIĆ, Mustafa ŠUKILOVIĆ, Mehmed VELAGIĆ,
Mehmedalija REDŽIĆ and Salih AJDAREVIĆ**

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 September 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
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 a review of the decision of the First Panel of the Chamber on the admissibility and merits 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 AND SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. In their applications, the applicants complained of the failure of the competent authorities of the Municipality Bijeljina in Republika Srpska to execute decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), confirming their occupancy rights over apartments or ownership of houses. The applicants claimed that the failure of the competent administrative organ to decide upon their requests to be reinstated into their apartments is a violation of Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

2. On 10 May 2002 the First Panel issued a decision finding that the non-enforcement of the decisions of the CRPC constituted a violation of the applicants' right to respect for their homes, within the meaning of Article 8 of the Convention, and the applicants' right to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1 of the Convention. The First Panel ordered the Republika Srpska to enable the applicants to regain possession of their apartments without further delay and at the latest one month after the date on which the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. The Republika Srpska was further ordered to pay the applicants compensation for non-pecuniary damage in the amount of 1200 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the applicants' particular suffering as a result of their inability to regain possession of their apartments. Moreover the Republika Srpska was ordered to pay compensation for loss of use of their homes in different amounts at a rate of 200 KM per month, starting 30 days after the filing of a request for enforcement of the CRPC decision with the competent authority. Furthermore, the Republika Srpska was also ordered to pay to each of the applicants 200 KM for each further month that they remain excluded from their apartments as from June 2002 until the end of the month in which they are reinstated. Finally, the Republika Srpska was ordered to pay simple interest at the rate of 10 (ten) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement in full.

3. On 7 June 2002 the First Panel's decision was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber's Rules of Procedure.

4. On 4 July 2002 the respondent Party 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 2 and 4 September 2002.

II. THE REQUEST FOR REVIEW

5. In its request for review, the respondent Party challenges the First Panel's decision on the following grounds

- (a) that the applications are inadmissible for non-exhaustion of domestic remedies;
- (b) that the Chamber failed to consider the "chronological order" principle of repossession in the applicants' cases;
- (c) that the respondent Party is not responsible for the loss of the possession of their apartments or ownership of houses and the damage caused to the applicants;
- (d) that the amount of compensation for non-pecuniary damages, 1200 KM, was not in accordance with the previous decisions of the Chamber;
- (e) that the orders to compensate the applicants for loss of use of their homes were excessive; and
- (f) the level of interest applied in the present cases is inconsistent with the economic reality of Bosnia and Herzegovina.

III. OPINION OF THE SECOND PANEL

6. 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.

a. Chronological order of repossessions

7. The Second Panel will first address the respondent Party's submission that the Chamber failed to establish whether the applicants were entitled to reinstatement into possession of their property in accordance with the "chronological order" principle. The Second Panel notes that the respondent Party most probably refers to the new Article 9 of the Law on Cessation of Application of the Law on Use of Abandoned Property, introduced by Article 7 of the Decision Enacting the Law on Amendments to the Law on Cessation of Application of the Law on Use of Abandoned Property, imposed by the High Representative on 4 December 2001 (Official Gazette of the Republika Srpska no. 65/01).

Article 9 of the Law on Cessation read as follows:

"The competent authority of the Ministry of Refugees and Displaced Persons shall be obliged to issue a decision to the claimant within 30 days from the date of receipt of the claim for repossession of real property."

Article 7 of the Law on Amendments adds a second sentence to this Article, reading:

"The claim shall be solved in the chronological order in which it was received, unless specified otherwise in law."

8. The Second Panel notes that, as a result of this amendment, the respondent Party is obliged under the Law on Cessation to respect the chronological order, i.e. to reinstate into possession of their apartment all the persons who have filed a claim for reinstatement with the Ministry prior to the applicants before it reinstates the applicants. Prioritising the applicants' repossession would be a violation of the Law on Cessation. The respondent Party can be seen as arguing that, as a consequence, if it had reinstated the applicants previously, without regard to the chronological order, it would have violated its own laws. Moreover, by complying with the Chamber's orders for remedies and allowing the applicants to repossess their property within the strict dead-line established in the Chamber's decision, the respondent Party would be forced to violate the chronological order.

9. The Second Panel acknowledges the legal obligation of chronological implementation of claims filed under the property laws of both Entities of Bosnia and Herzegovina as introduced by the High Representative on 4 December 2001. The explicit legal obligation of chronological implementation of claims aims at strengthening principles of accountability and non-discrimination and acknowledging the legal equality of all claimants. It further creates legal certainty and transparency for both claimants and temporary occupants by requiring that decisions be issued and enforced in accordance with law in chronological order. Finally, it protects housing officials from political pressure and corruption by eliminating their discretion over order of case processing.

10. The Second Panel is of the opinion that the relationship between, on the one hand the finding of a violation of the applicants' rights to respect for their homes and to peaceful enjoyment of their possessions based on the authorities' failure to respect the deadlines provided in the Law on Implementation of Decisions of the CRPC (OG Republika Srpska nos. 31/99, 39/00 and 65/01), and on the other hand the obligation on the same authorities to process claims for repossession in chronological order does raise "a serious issue of general importance". The Second Panel is further of the opinion that the relationship between the Chamber's order for reinstatement of the applicants within 30 days and the respondent Party's obligation to respect the chronological order in processing claims raises "a serious issue of general importance" as well. The Second Panel will therefore turn to considering whether the whole circumstances of the present cases justify reviewing the decision, as required by Rule 64(2)(b).

11. The Second Panel notes that the First Panel found a violation of the applicants' rights on the ground that:

“The applicants have still not received a decision on their requests to have the CRPC decisions enforced, despite the time-limit for this having expired between 23 and 30 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicants’ requests is not ‘in accordance with the law’” (paragraph 68).

The Second Panel further notes that the amendment to Article 9 of the Law on Cessation adds the obligation to solve claims in the chronological order to the pre-existing 30-day deadline for issuing a decision. The obligation to solve claims in the chronological order does not replace the deadline. Therefore, the failure to issue decisions enforcing the CRPC decisions within the legal deadlines remains a violation of the law. Any interference with the applicants’ right to their home and their possessions in violation of the law remains a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, particularly so if the deadline has expired more than two years ago without the authorities having taken any action upon the applicants’ claims. Accordingly, the fact that, in order to respect the chronological order, the Republika Srpska authorities may be under an obligation to reinstate other claimants before they reinstate the applicants in no way affects the finding of a violation of the applicants’ rights.

12. Moreover, the Second Panel recalls again that the time-limit for the applicants’ reinstatement had expired between 23 and 30 months before the First Panel’s decision on admissibility and merits. The Second Panel notes that if other claimants for repossession of their pre-war home precede the applicants in the chronological order, that can only mean that the authorities have failed to enforce their claims for repossession for more than 30 months. The Second Panel can only notice this serious violation of the rights of other returnees with great concern. However, this cannot justify the violation of the applicants’ rights protected by the Agreement.

13. Turning to the relationship between the Chamber’s order to reinstate the applicants within 30 days and the chronological order requirement, the Second Panel again is of the opinion that the obligation to respect the chronological order cannot be seen as exempting the respondent Party from complying with the Chamber’s orders for remedies. At the same time, the Chamber’s order for remedies cannot be understood as relieving the respondent Party from its obligation to comply with its own laws in the processing of the claims for repossession of other returnees. Therefore, the respondent Party will have to reinstate all the returnees that precede the applicants in the chronological order before it reinstates the applicants into possession of their apartments or houses. If the respondent Party is not capable or willing to do so, it will have to pay to the applicants the additional compensation provided for in paragraph no. 90(7) of the decision on admissibility and merits of the First Panel.

14. For these reasons, the Second Panel is of the opinion that the request for review, insofar as it concerns the obligation to respect chronological order, does neither affect the finding of a violation of the applicants’ rights, nor the appropriateness of the remedies ordered by the First Panel. Therefore, in this respect the whole circumstances do not justify reviewing the First Panel’s decision.

b. The remaining arguments in support of the request for review

15. As to the remaining arguments of the respondent Party in support of the request for review (listed under (a) and (c) to (f) in paragraph 5 above), the Second Panel is of the opinion that they fall short of “raising a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”.

16. The Second Panel notes that the reasoning, findings and orders of the First Panel with regard exhaustion of domestic remedies, compensation and interest reflect well-established jurisprudence of both the Plenary Chamber and both Panels (see particularly case nos. CH/00/6143 and CH/00/6150 *Turundžić and Frančić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 5 February 2001, paragraph 36, Decisions Jan-June 2001, and case no. CH/00/6142 *Petrović v. the Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 6 March 2001, paragraph 72, Decisions Jan-June 2001). The Second Panel reiterates that the award of monetary compensation by the Chamber is intended to compensate the victims of

human rights violations on an equitable basis. Unless expressly stated by the Chamber, such an order for compensation neither purports to reflect the categories of damage that can be compensated under the Law on Contractual Obligations or any other legislation, nor the amount of compensation that would be awarded by a domestic court deciding in a civil law suit brought by the applicant.

17. As to the argument that that the respondent Party is not responsible for the loss of the possession of their apartments or houses by the applicants, the Second Panel recalls that the First Panel did not find any responsibility in this respect (paragraph 65 of the decision on admissibility and merits). The First Panel established that “the result of the inaction of the respondent Party is that the applicants cannot return to their homes and that there is an ongoing interference with the applicants’ right to respect for their homes” (paragraph 66 of the decision on admissibility and merits). This finding remains undisputed.

c. Conclusion

18. As the request for review fails to meet the second requirement in Rule 64(2), that the whole circumstances justify reviewing the decision, with regard to the “chronological order argument”, and fails to meet the first of the two requirements set forth in Rule 64(2) in all other respects, the Second Panel unanimously recommends that the request be rejected.

IV. OPINION OF THE PLENARY CHAMBER

19. 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 a request pursuant to Rule 64(2).

V. CONCLUSION

20. 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