



DECISION ON REQUEST FOR REVIEW

Case no. CH/00/6134

Vojislav ŠTRBAC, Tomislav ŠTRBAC, Jela ŠTRBAC and Mara VEGO

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 November 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 Second Panel of the Chamber on the admissibility and merits of the aforementioned case;

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. The application concerns the rights of the applicants, who are siblings, all of Serb origin, to use and to construct upon certain socially-owned real property situated in the Municipality of Bosanska Krupa in the Federation of Bosnia and Herzegovina, upon which existed orchards and a few residential houses. Prior to its nationalisation, the real property in question was owned by the applicants' father, and in 1990, the applicants inherited the remaining post-nationalisation property rights in it. Due to the armed conflict, the applicants who were living in the vicinity were forced to depart from their real property and re-locate to the Republika Srpska. On 25 August 1997, the Municipal Council of the Municipality of Bosanska Krupa (the "Municipal Council") issued two procedural decisions, the first seizing a part of the applicants' real property and the second allocating that seized real property to five paraplegic war veterans of Bosniak origin for the construction of residential housing. The interests of the applicants were represented in these administrative proceedings by a "representative of the former possessors", who was appointed by the Municipality of Bosanska Krupa. The applicants knew nothing about these proceedings until April 2000. Immediately thereafter, the applicants submitted a proposal for renewed proceedings to the Municipal Council. They received no response to this proposal. In the meantime, however, the Municipality of Bosanska Krupa initiated proceedings before the Court of First Instance in Bosanska Krupa to determine the issue of compensation to the applicants for the seized real property. On 13 May 2002, the Court of First Instance in Bosanska Krupa issued a procedural decision (which became legally valid and effective on 2 July 2002) awarding the applicants compensation for the seized real property, but the applicants claim that this amount of compensation is insufficient.

2. On 26 May 1999, the High Representative issued a Decision suspending the power of domestic authorities to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities. That Decision was later revoked and superseded by the Decision of the High Representative of 27 April 2000, which provides that domestic authorities may not, *inter alia*, dispose of, allot, transfer, or give for use any "state-owned real property, including former socially-owned property". Both Decisions declare any such decision made after 6 April 1992 which affects the rights of refugees and displaced persons to be "null and void, unless a third party has undertaken lawful construction work". On 10 October 2000, the Chamber issued an order for provisional measures protecting the seized real property in question. None the less, in violation of that order, the third parties who had been allocated the real property have undertaken the construction of at least six houses on the seized real property of the applicants.

3. In the application, the applicants alleged that their rights protected by Article 6 (right to access to a court) and Article 8 (right to respect for home) of the European Convention on Human Rights (the "Convention"), and Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the Convention had been violated. The application also raised issues of alleged discrimination in connection with the human rights guaranteed by the Convention under Article II(2)(b) of the Agreement. The applicants asked the Chamber to return them into possession of their real property seized on 25 August 1997, so that they may once again live in the family home and maintain orchards on the property. In the alternative, the applicants asked the Chamber to provide them with just compensation for their seized real property, calculated according to the market price of property in the Municipality of Bosanska Krupa.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. On 6 September 2002, the Second Panel of the Chamber delivered its decision on admissibility and merits in this case pursuant to Rule 60 of the Chamber's Rules of Procedure. In that decision, the Second Panel declared the application admissible in whole. It found that the respondent Party had violated the human rights of the applicants protected by Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention. It further found that the respondent Party had unjustifiably discriminated against the applicants with respect to their property rights. It did not separately examine the application under Article 8 of the Convention. As a remedy for the established violations of the Convention, the Second Panel ordered the respondent Party to pay to the applicants 25,000 KM, by way of compensation for non-pecuniary damages, and to take all necessary

action to ensure that the compensation award determined by the Court of First Instance in Bosanska Krupa in its procedural decision of 13 May 2002 is paid to the applicants. Moreover, it ordered the respondent Party to take all necessary action to ensure, as soon as practicable, that the applicants are reinstated into full possession of all their remaining real property situated in the Municipality of Bosanska Krupa, excluding the seized real property for which they were awarded compensation by the domestic court; thereby allowing the applicants, to the fullest extent under the law, to return home to the Municipality of Bosanska Krupa, with no further interference with their human rights and no further discrimination against them.

5. On 7 October 2002, the respondent Party submitted a request for review of the decision on admissibility and merits.

6. Pursuant to Rule 64(1) of the Chamber's Rules of Procedure, the First Panel considered the request for review on 4 November 2002.

7. Pursuant to Rule 64(2) of the Chamber's Rules of Procedure, the plenary Chamber considered the request for review and the recommendation of the First Panel on 6 November 2002.

III. THE REQUEST FOR REVIEW

8. In its request for review, the respondent Party accepts as "irrefutable" the facts and applicable law set forth in the decision on admissibility and merits. However, it challenges the conclusion that the respondent Party, through the actions by the Municipality of Bosanska Krupa, discriminated against the applicants in the enjoyment of their rights protected by Article 1 of Protocol No. 1 to the Convention.

9. Firstly, the respondent Party argues that the Chamber wrongly assessed the facts when it found a pattern of discrimination against the applicants, who are of Serb origin. It notes that the real property in question was designated for residential construction in the urban plan of 1975, but none of the applicants submitted a claim to commence housing construction on their real property, and, according to the respondent Party, they had no intent to use the real property for construction.

10. Secondly, the respondent Party contends that the appointment of a temporary representative to represent the applicants' interests in the proceedings in August 1997, which resulted in the seizure and re-allocation of their real property, was not manifestly against the applicants' rights. Since the temporary representative was unable to assess whether the applicants were interested in possible construction on the real property in question, he acted in a *bona fide* manner and in accordance with the applicable law.

11. Thirdly, the respondent Party argues that the Chamber accepted the applicants' feeling that they have been treated differently from others of different ethnic or national origin who were in the same or a relevantly similar position. However, according to the respondent Party, no piece of evidence was submitted to render those statements of "personal feeling" credible. The respondent Party insists that the Municipality of Bosanska Krupa only applied the law. Moreover, the Municipality of Bosanska Krupa acted in accordance with its official governmental duties to solve the housing problems of the paraplegic population, who require special protection.

12. Fourthly, the respondent Party submits that the applicants failed to exhaust effective domestic remedies because, by initiating proceedings to establish the amount of compensation for their seized real property, they accepted the procedural decision on the seizure of the real property in question. Moreover, they failed to file a lawsuit initiating an administrative dispute for the annulment of the seizure of their real property.

13. Fifthly, the respondent Party argues that the Municipality of Bosanska Krupa acted lawfully and with good intention at all times. The Decision of the High Representative of 26 May 1999 (which was later superseded by the Decision 27 April 2000) provides that: "Any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, *unless a third party has undertaken lawful*

construction work.” According to the respondent Party, the third party war veterans to whom the applicants’ real property had been allocated had already undertaken construction. Moreover, on 16 October 2000, after the issuance of the Chamber’s order of provisional measures of 10 October 2000, the Mayor of the Municipality of Bosanska Krupa issued an order to halt all construction on the real property in question and to evict the persons to whom the land had been allocated. Despite these actions, the third party war veterans “decided to continue with development under their own responsibility”.

14. Sixthly, with respect to the length of proceedings to determine the amount of compensation for the seized real property, the respondent Party argues that its organs could not reach a “speedy resolution” of the issue of compensation “exclusively due to the applicants’ failure to accept the [proposed] compensation”. The respondent Party further notes that the decision of the Court of First Instance in Bosanska Krupa on compensation of 13 May 2002 became effective on 14 June 2002, when the applicants did not appeal against it, “meaning that they fully accepted the Court’s decision”. The established sum has not been paid to the applicants because they have failed to submit their bank account information. In addition, the applicants have failed to initiate proceedings for enforcement of payment of the compensation.

15. In conclusion, the respondent Party contends that its actions were wholly justified, proportional, and non-discriminatory, especially taking into account the constant lack of housing and the need to provide housing to war veterans. The respondent Party claims that before the armed conflict, the applicant Vojislav Štrbac lived in a different house, which he repossessed pursuant to a procedural decision of the Municipality of Bosanska Krupa of 5 August 2002; therefore, he did not bear a “large burden” for the interference with his real property. The respondent Party opines that the interference in question “falls under a wider margin of appreciation enjoyed by governments under Article 1 of Protocol No. 1 to the Convention”.

IV. OPINION OF THE FIRST PANEL

16. Rule 64(2) of the Chamber’s Rules of Procedure provides that the plenary 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”.

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

18. The First Panel observes that the respondent Party argues that the applicants failed to exhaust effective domestic remedies (see paragraph 12 above). However, in reviewing the decision on admissibility and merits with respect to admissibility, the First Panel finds that the Second Panel specifically considered whether the applicants had exhausted effective domestic remedies (see paragraphs 74 to 77 of the decision on admissibility and merits). The First Panel is of the opinion that this argument was already examined by the Second Panel and rejected on adequate grounds.

19. The First Panel further considers that several of the objections raised by the respondent Party in its request for review challenge, in essence, the Second Panel’s assessment of the facts and application of the relevant law (see paragraphs 9, 10, 13, 14, and 15 above). In support of these arguments, the respondent Party offers some additional facts and evidence. Although the First Panel understands that the respondent Party disagrees with the conclusions reached by the Second Panel, a mere disagreement is not sufficient to satisfy the standard set forth in Rule 64(2). Moreover, the new facts and arguments raised by the respondent Party could have been raised during the proceedings before the Second Panel. It appears to the First Panel that the Second Panel thoroughly considered the case and reached well-reasoned conclusions.

20. Lastly, the First Panel notes that the respondent Party argues that insufficient evidence supported the Second Panel’s conclusion of discrimination (see paragraph 11 above). However, in reviewing the decision on admissibility and merits with respect to the claim of discrimination (see paragraphs 105 to 113 of the decision on admissibility and merits), the First Panel finds that the

Second Panel specifically mentioned that during the proceedings, the respondent Party failed to contest the applicants' submissions in support of their claim of discrimination. The applicants included detailed explanations of the treatment they received by the Municipality of Bosanska Krupa, and they also specifically identified by name other similarly situated persons who did not suffer such treatment by the Municipality. In the view of the First Panel, this uncontested evidence is sufficient to support the conclusion reached by the Second Panel on the claim of discrimination.

21. Therefore, the First Panel does not consider that “the whole circumstances justify reviewing the decision”, as required by Rule 64(2)(b). That being so, it is not necessary for the Chamber to consider whether the request for review raises “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”, as required by Rule 64(2)(a).

22. As the request for review does not meet both conditions set out in Rule 64(2), the First Panel, unanimously, recommends that the request for review be rejected.

V. OPINION OF THE PLENARY CHAMBER

23. The plenary Chamber agrees with the First Panel that, for the reasons stated, the request for review does not meet the conditions required for the Chamber to accept such a request pursuant to Rule 63(2).

VI. CONCLUSION

24. 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