



DECISION ON REQUEST FOR REVIEW

Case no. CH/02/11932

SUBNOR¹

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 February 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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 Second Panel of the Chamber on the admissibility 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 to 66 of the Chamber's Rules of Procedure:

¹ Union of the Associations of the Veterans of the National Liberation and Antifascist War of BiH

I. INTRODUCTION

1. The applicant seeks to block the entry into force of a contract for the sale of an apartment it owns. In this regard, the applicant challenges a valid judgement of the Cantonal Court in Sarajevo dated 18 April 2002 and claims violations of Articles 9 and 10 of the Law on Sale of Apartments with Occupancy Right. By its judgement, the Cantonal Court reversed the first instance judgement of the Municipal Court I in Sarajevo, dated 21 November 2001, which had prohibited the completion of the apartment purchase contract between the applicants and the prospective buyers, Leo and Zlatko Muhić. The applicant asked the Chamber to issue a decision ordering the Cantonal Court in Sarajevo to vacate the aforementioned judgement and uphold the first instance judgement of the Municipal Court I in Sarajevo of 21 November 2001.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 11 October 2002, the Second Panel declared the application inadmissible as incompatible *ratione materiae* with the provisions of the Agreement. The Second Panel reasoned “that the applicant alleges violations based purely on domestic law. These complaints do not implicate any of the rights and freedoms guaranteed under the Agreement, but concern a purely private dispute involving the interpretation and application of domestic law by domestic courts. Further, there are no allegations that the relevant court proceedings have been unfair.” (paragraph 4 of the decision on admissibility).

3. On 12 November 2002, the Second Panel’s decision was communicated to the parties in pursuance of Rule 52. On 13 December 2002, the applicant submitted a request for review of the decision.

4. In accordance with Rule 64(1), the First Panel considered the request for review on 5 February 2003. In accordance with Rule 64(2), the plenary Chamber considered the request for review and the recommendation of the First Panel on 7 February 2003. On the latter date, the Chamber adopted the present decision.

III. THE REQUEST FOR REVIEW

5. In the request for review, the applicant complains that the Chamber did not enter into the essence of the problem relating to interpretation and application of the relevant laws; “that proceedings before the Cantonal Court Sarajevo were conducted unfairly and substantive rights were wrongly applied and the Cantonal Court issued a wrong unfair judgement ..”, that the Chamber’s opinion is “untenable and opposite to Annex 6 of the Agreement Article I(1)(5)” (the right to a fair hearing in civil and criminal matters).

IV. OPINION OF THE FIRST PANEL

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

7. The First Panel recalls, however, that the Chamber has stated on many occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD “Trgosirovina” Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). Article 6 protects the right to a fair hearing. The applicant has not submitted any evidence that the court failed to act fairly as required by Article 6 of the Convention. Dissatisfaction of a party with the outcome of a court case is not evidence of a violation of the right to a fair hearing.

8. The First Panel therefore is of the opinion that the grounds upon which the applicant's request for review is based were in essence already examined and rejected on adequate grounds by the Second Panel when it considered the admissibility of the case. The First Panel therefore considers that the case does not raise "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). As the request for review does not meet the first of the conditions set out in Rule 64(2), the First Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

9. The plenary Chamber agrees with the First 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).

VI. CONCLUSION

10. For these reasons, the Chamber unanimously,

DECIDES TO REJECT THE REQUEST FOR REVIEW.

(Signed)
Ulrich GARMS
Registrar of the Chamber

(Signed)
Michèle PICARD
President of the Chamber