



DECISION ON REQUEST FOR REVIEW

Case no. CH/02/12226

Ibrahim HAZIRAJ and Ašida HAZIRAJ-FEJZIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 July 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. Giovanni GRASSO
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 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 to 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants are a married couple, citizens of Bosnia and Herzegovina of Albanian and Bosniak origin. They are co-owners of their private house in the Municipality Pale, the Republika Srpska. The case concerns the applicants' attempts to regain possession of their house. The applicants have lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), which has issued decisions confirming their property rights. The applicants initiated procedures for enforcement of the CRPC decisions before the domestic administrative organs. The competent housing organ issued a decision entitling them to regain possession of their house and, on 23 October 2000, notified them that they could pick up the keys of the house. The occupants of the house, however, who are displaced persons of Serb origin, refused to vacate the house and threatened the applicants. The applicants reported this to the housing organ and the police, but were informed that the authorities had done their part by completing the administrative procedure and giving them the key. As a result, the applicants have not regained possession of their house.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. The application was filed with the Chamber on 10 September 2002.

3. In its decision on admissibility and merits adopted on 1 April 2003, the Second Panel concluded that the applicants had been discriminated against in the enjoyment of their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. Moreover, the non-enforcement of the CRPC decisions constituted a violation of the applicants' right to respect for their home within the meaning of Article 8 of the Convention and the applicants' right to the peaceful enjoyment of their possession within the meaning of Article 1 of Protocol No. 1 to the Convention. The Chamber ordered that the applicants be reinstated into possession of their house without further delay, and at the latest by 9 June 2003, regardless of whether either party had filed a motion to review the decision under Article X(2) of the Agreement. The Chamber further ordered that the applicants be paid both pecuniary and non-pecuniary damages.

4. On 9 May 2003, the Second Panel's decision was delivered pursuant to Rule 60 of the Chamber's Rules of Procedures. On 9 June 2003, the respondent Party submitted a request for review of the decision.

5. In accordance with Rule 64(1), the First Panel considered the request for review on 1 July 2003. In accordance with Rule 64(2), the plenary Chamber considered the request for review and the recommendation of the First Panel on 3 July 2003.

III. THE REQUEST FOR REVIEW

6. In the request for review, the respondent Party argues that the applicants introduced the application before the Chamber after the six month time limit, and thus the admissibility requirement under Article VIII(2)(a) of the Agreement has not been met. Namely, the respondent Party states that, on 23 October 2000, the applicant took over the keys of his house, by which the enforcement proceedings were completed. The applicant did not file any objection to the enforcement itself for two full years although the legal time limit for doing so was 15 days. The respondent Party concludes that the final decision for the purposes of Article VIII(2)(a) was issued on 23 October 2000 and the application was registered on 10 September 2002, that is two years after the final decision was issued, by which the requirement "six month rule" has not been met.

7. The respondent Party further argues that the Chamber has incompletely established the factual background because it was not familiar with certain decisive facts. In this respect, the respondent Party relies on the contract on exchange of 2 July 1992, which is mentioned in the Chamber's decision, as well as additional facts, such as a contract on sub-tenancy of 13 December 2000 and a statement of 23 October 2000 on transport of things from Pale to Sarajevo. The

respondent Party maintains that these facts show that the dispute between the applicants and the occupants of their house is of a purely private nature, such as not to require any action on the side of the authorities.

8. The respondent Party further argues that the amount of compensation awarded is excessive and proposes that the same be reduced in the light of the newly presented factual background.

9. The respondent Party submits that its objections raise serious questions affecting the interpretation or application of the Agreement or a serious issue of general importance, and that the whole circumstances justify reviewing the decision.

IV. OPINION OF THE FIRST PANEL

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

11. The respondent Party submits that the application ought to have been declared inadmissible on the ground of non-compliance with the six-month rule in Article VIII(2)(a) of the Agreement. The First Panel notes that the Second Panel has found on the facts that the applicants complain of a continuing situation. The six-month rule thus has no application and an objection of this nature should be rejected (see case no. CH/99/3196, *Avdo and Esma PALIĆ*, decision on admissibility of 9 December 2000, Decisions on Admissibility and Merits January - June 2001). The First Panel therefore does not consider that in this respect the case 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).

12. As to the arguments related to the “incompletely established factual background”, the respondent Party submits that the Second Panel “was not familiar with certain decisive facts”. The respondent Party does not, however, explain why it failed to bring these allegedly decisive facts to the attention of the Second Panel. The First Panel is therefore of the opinion that these facts could have submitted during the proceedings before the Second Panel. As a consequence, the First Panel does not consider that in this respect “the whole circumstances justify reviewing the decision” as required by Rule 64(2)(b).

13. The First Panel further notes that the respondent Party disagrees with the award of monetary relief made in favour of the applicants. However, the question of the amount of monetary relief raises neither a serious issue affecting the interpretation of the Agreement nor an issue of general importance, as required by Rule 64(2)(a).

14. Being of the opinion that the request for review does not meet the conditions set forth in Rule 64(2), the First Panel, unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

15. 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

16. 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