



DECISION ON REQUEST FOR REVIEW

Case no. CH/02/9778

Tomislav JOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 11 January 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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

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 63-66 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS AND SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. In the application, the applicant complains that he has not been reinstated into his Zavidovići apartment, over which he had a pre-war occupancy right. On 4 February 2002, the applicant submitted a request for repossession of the apartment to the competent administrative organ. He had allegedly heard invitations on the television of the Republika Srpska in January and February 2002 which stated: “Those refugees and displaced persons who did not submit any request for repossession of apartments or did do so with delay should now submit requests for repossession.” The competent organ rejected his request for repossession as out of time on 15 February 2002.
2. On 11 October 2002 the Second Panel adopted a decision declaring the application inadmissible because the applicant did not exhaust effective domestic remedies.
3. On 11 November 2002 the applicant received the Second Panel’s decision on admissibility pursuant to Rule 52 of the Chamber’s Rules of Procedure.
4. On 10 December 2002 the applicant submitted a request for review of the decision. In accordance with Rule 64(1) the request for review was considered by the First Panel.

II. THE REQUEST FOR REVIEW

5. In his request for review, the applicant states that his right to return to his pre-war apartment guaranteed under Annex VII of the Dayton Peace Agreement has been violated. He is prevented from returning because the time limit for filing the request was changed, as well as the competence of the organs. The applicant states that he is entitled to repossess the pre-war apartment because he has already met the conditions for purchasing the apartment by working and paying various monetary contributions. The applicant states that he had applied for repossession from Belgrade, FR Yugoslavia, in 1996, and in 2001 he submitted a request to the Office of the High Representative. As an additional fact, the applicant submits the conclusion of the Administration of Economic Activities of the Municipality of Zavidovići, Federation of Bosnia and Herzegovina, dated on 28 November 2001 rejecting his request for repossession submitted on 13 November 2001 as out of time.

III. 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)(a). 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. Both conditions have to be met for the Chamber to grant the request for review.
7. The applicant has failed to provide any proof that he submitted the request for repossession within the time limit provided under the Law on Cessation of Application of the Law on Abandoned Apartments. The First Panel notes that the applicant submitted a request for repossession of his apartment on 13 November 2001. The deadline for submitting such a request expired on 4 October 1999, except for apartments which were destroyed or devastated. The applicant did not submit any proof that he submitted a request before the competent administrative organ before November 2001, or that his apartment falls within the category of destroyed or devastated apartments.
8. Therefore, the First Panel is of opinion that the applicant’s challenge to the Second Panel’s decision that he failed to exhaust available domestic remedies fails to “raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance“. As the request for review obviously fails to meet the first of the two requirements set forth in Rule 64(2), the First Panel, unanimously, recommends that the request be rejected.

IV. 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 requests pursuant to Rule 64(2).

V. CONCLUSION

10. For these reasons, the Chamber, unanimously,

REJECTS THE REQUESTS FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber