DECISION ON REQUEST FOR REVIEW

Case no. CH/97/51

Marija STANIVUK

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 September 1999 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. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the request of the Federation of Bosnia and Herzegovina 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

1. On 6 June 1991 the applicant obtained permission from the Municipality of Novo Sarajevo to run a barber shop at Aleja lipa 51 in Sarajevo. On 12 July 1991 she concluded a rental contract with Sarajevostan (the municipal/cantonal institution responsible for the maintenance of state-owned property) for the use of the premises for an indefinite period.

2. During the subsequent war the applicant lived in Grbavica, which was under Bosnian Serb control. She could not enter her barber shop as it was located in an area controlled by the Army of the then Republic of Bosnia and Herzegovina ("RBiH").

3. A temporary lease for the barber shop was contracted between the Municipality Novo Sarajevo and R.M., a woman of Bosniak descent, and signed on 10 December 1994. The term of this lease was to run until one year after the cessation of the war.

4. After the war ended in December 1995 the applicant was prevented from repossessing her shop by R.M., who was then running (and continues to run) the barber shop. On 14 February 1996 the applicant's lease was formally cancelled by Sarajevostan, citing the failure of the applicant to use the premises or to pay rent as of 1 April 1992.

5. The applicant initiated administrative proceedings with the Municipality of Novo Sarajevo on 6 May 1996 and then with the Federal Ministry of Trade to request her reinstatement as possessor of the premises at issue. These proceedings did not yield any result.

6. On 7 November 1996 the applicant initiated proceedings before the Municipal Court II of Sarajevo to evict R.M. from the premises. A hearing was scheduled for 4 February 1997. However, R.M. did not appear at the hearing nor did she contest the application in writing. The Court consequently issued a decision by default in favour of the applicant.

7. On 13 March 1997 R.M. submitted a proposal to restore the proceedings, claiming that she had never received the summons to appear in court. She also alleged that she had never signed the summons and that an expert analysis by a graphologist would prove it.

8. From 3 April 1997 to 7 October 1997 six hearings were scheduled in the applicant's case. At all of them R.M. did not appear, nor did she contest the application in writing. Each time the court re-scheduled the hearing. On 7 October 1997 the court ordered the restoration of the proceedings and invalidated its earlier decision of 4 February 1997. On 10 October 1997 the applicant submitted an appeal to the Cantonal Court in Sarajevo, through the Municipal Court, against the decision of 7 October 1997.

9. In the restored proceedings the Municipal Court scheduled another hearing for 29 October 1997. However, the hearing was cancelled because the judge was ill. The hearing was re-scheduled for 28 November 1997. At this hearing, which was again not attended by R.M., the court rejected the applicant's appeal of 10 October 1997 against its decision of 7 October 1997, stating that the law did not provide for such an appeal.

10. On 26 January 1998 the applicant appealed to the Cantonal Court through the Municipal Court, against the lower court's decision of 28 November 1997.

11. On 23 February 1998 the applicant submitted a request to the Municipality of Novo Sarajevo (Sector for Housing Affairs and Business Premises) to have R.M. evicted. The Mayor of Novo Sarajevo responded by letter dated 3 March 1998, stating that R.M. was not using the premises illegally, since the Municipality had granted her a right of temporary use and also had entered into a rental contract with her. Moreover, the Municipality could not in any event take action due to the proceedings pending before the Municipal Court.

12. On 10 April 1998 the applicant initiated, before the Cantonal Court, an administrative dispute against the Municipality of Novo Sarajevo for refusing to evict R.M. from the premises at issue.

13. On 13 July 1998 the applicant received a decision from the Cantonal Court dated 18 May 1998 which confirmed the rejection of her appeal against the decision of the Municipal Court of 28 November 1997.

14. On 13 October 1998 the applicant initiated, before the Municipal Court II in Sarajevo, civil proceedings against the Municipality of Novo Sarajevo and R.M. The applicant requested the court to invalidate the rental contract between the Municipality of Novo Sarajevo and R.M., to order the Municipality to conclude a contract with the applicant, to order R.M. to vacate the business premises, and to order the Municipality and R.M. to pay compensation to the applicant.

15. Another hearing took place on 26 January 1999 before the Municipal Court II in Sarajevo. Again R.M. failed to appear. The applicant's lawyer requested a default judgement but this was refused by the judge. The applicant did not attend a further hearing, scheduled for 6 April 1999, because of illness. The results of this hearing have not been made known to the Chamber.

16. The applicant alleged violations of Article 6 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention. She also alleged "discrimination on the grounds of ethnicity" and a violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

17. The application was introduced on 14 July 1997 and registered on 18 August 1997. The applicant is represented by Ms. Senija Poropat, a lawyer in Vogošća.

18. The First Panel considered the case on 11 May 1998 and decided to transmit it to the respondent Party for observations pursuant to Rule 49(3)(b) of the Rules of Procedure. The Chamber received observations from the applicant between October 1997 and April 1999. The Chamber received observations from the respondent Party between June 1998 and May 1999.

19. On 29 June 1998 the Chamber received observations from the Federal Attorney's Office. On 2 July 1998 the Registrar informed the Agent of the Federation of Bosnia and Herzegovina, Ms. Seada Palavrić, that the Chamber had received the above observations and asked if the Agent wished the Chamber to consider them as official observations of the respondent Party. In a letter dated 4 July 1998 the Agent requested an extension of the time limit to allow her to submit observations in the case. In a letter dated 29 July 1998 the Registrar informed the Agent that the time limit had been extended until 21 August 1998. No further observations were received.

20. On 5 November 1998 the Registrar informed the Agent of the Federation that, unless the Chamber was informed otherwise by 18 November 1998, the Chamber might consider the observations of the Federal Attorney as official observations of the respondent Party. The Agent did not respond to this letter.

21. A public hearing was held on 17 March 1999. The applicant was present and represented by Ms. Senija Poropat. The respondent Party was represented by its Agent, Ms. Seada Palavrić and Mr. Esmud Muhadžić, Counsellor in the Federation's Office for Cooperation with and Representation before the Human Rights Commission.

22. The First Panel deliberated on the admissibility and the merits of the case on 14 January, 10 March, 14 April and 13 May 1999. On the last-mentioned date the First Panel voted on the admissibility and the merits of the case. On 7 June 1999 the First Panel considered and adopted some amendments to the decision.

23. In its decision on the admissibility and merits of the case which was delivered on 11 June 1999 pursuant to Rule 60, the First Panel found, *inter alia*, that the Federation had violated the applicant's rights under Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention, and that the Federation was thereby in breach of Article I of the Agreement. The First Panel also found that the applicant had provided no evidence of discrimination against her. The Federation was

furthermore ordered to pay certain compensation to the applicant and to report to the Chamber by 11 September 1999 on the steps taken to give effect to the decision. More particularly, the First Panel decided, *inter alia,* as follows:

> 1. unanimously, to declare the application admissible;
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> …
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> 3. by 6 votes to 1, to find a violation of Article 6(1) of the Convention in so far as the case relates to the length of the court proceedings, the respondent Party thereby being in violation of Article I of the Agreement;
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> 4. unanimously, to find a violation of Article 1 of Protocol No. 1 to the Convention, the respondent Party thereby being in violation of Article I of the Agreement;
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> …
>
> 6. unanimously, to order the respondent Party to take all necessary steps to reinstate the applicant into her business premises;
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> …
>
> 11. unanimously, to order the respondent Party to report to it by 11 September 1999 on the steps taken by it to comply with the above orders.

24. On 8 July 1999 the Federation submitted a request for a review of the First Panel's decision. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 8 September 1999, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the Second Panel's recommendation on 9 September 1999.

III. REQUEST FOR REVIEW

25. In its request for review the Federation submits that the First Panel's decision on the admissibility and merits of the case raises serious questions of a general interest with respect to the interpretation and implementation of the Agreement, and that the circumstances of the case justify a review of the First Panel's decision.

A. Arguments for reviewing the decision on admissibility

26. A first set of arguments put forward by the Federation concerns the court proceedings before Municipal Court II. The Federation submits that the proceedings initiated by the applicant against R.M. on 7 November 1996 were directed against the wrong party and therefore an inadequate remedy from the beginning. Only when the applicant started proceedings against the Municipality on 13 October 1998 she made use of the appropriate remedy. As a consequence, the Chamber should have declared the application inadmissible, because the appropriate domestic remedy had not proved ineffective yet.

B. Arguments for reviewing the finding of a violation of Article 6 paragraph 1 of the Convention

27. The same argument is used by the Federation to challenge the Chamber's finding of a violation of Article 6 paragraph 1 of the Convention. According to the Federation, if the application was deemed admissible, it could in any case not be said that the proceedings had been unreasonably lengthy, because the relevant date was 13 October 1998, when the applicant initiated proceedings against the right defendant. Moreover, the Federation submits that the case was very complex and that the applicant contributed to increasing the length of the proceedings.

28. For all these reasons, the Federation concludes that the Panel should not have found it to be in violation of Article 6 paragraph 1 of the Convention.

C. Arguments for reviewing the finding of a violation of Article 1 of Protocol No. 1 to the Convention

29. The second set of arguments put forward by the Federation concerns the applicant's rights under Article 1 of Protocol No. 1 to the Convention. The Federation argues that the lease contract between the applicant and "Sarajevostan" was invalid from the beginning, as it had been concluded in violation of certain procedural rules.

30. If found to be valid, however, the Federation further argues that the lease was validly terminated. It submits that the applicant left the business premises on her own will, and, by removing her inventory, showed her intention not to use the premises any more. When R.M. concluded a lease contract for the barber shop, the premises were totally devastated. The Federation quotes Article 598 of the Law on Contractual Obligations, which provides that if the object of a lease is partly destroyed or damaged, the lessee can terminate the contract.

31. Finally, the Federation reiterates its argument that the lease contract between R.M. and the Municipality Novo Sarajevo was valid.

32. In summary, the Federation argues that, as the lease contract concluded by the applicant was either void from the beginning or validly terminated subsequently, the applicant did not enjoy any rights in relation to the barber shop protected by Article 1 of Protocol No. 1 to the Convention.

IV. OPINION OF THE SECOND PANEL

33. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2).

34. The Second Panel observes that the Federation's request to review the finding concerning the admissibility of the application and the length of the court proceedings is based on the argument that the respondent Party cannot be held responsible for the duration of the proceedings before 13 October 1998, because before that date the applicant had directed her law-suit against the wrong party. The Second Panel notes that this argument was in essence already made by the Federation during the ordinary proceedings and rejected. The First Panel determined that by issuing a default judgement the Sarajevo Court of First Instance II had recognised itself competent to hear the case between the applicant and R.M. The Federation's argument therefore concerns only the evaluation of certain specific circumstances of the court proceedings in the applicant's case. As a consequence, the Second Panel is of the opinion that the argument does not raise serious questions affecting the interpretation and application of the Agreement or a serious issue of general importance as required by Rule 64(2)(a). It follows that this part of the request for review cannot be accepted.

35. The Federation further challenges the First Panel's finding of a violation of Article 6 paragraph 1 by reiterating its assertion that the applicant's case was complex and that the applicant significantly contributed to the unjustifiable length of the proceedings. As the Federation appears to agree with the criteria used by the First Panel to assess whether the length of the proceedings was reasonable, the argument again concerns only the evaluation of certain specific circumstances of the court proceedings in the applicant's case. The Second Panel is therefore again of the opinion that this argument does not raise serious questions affecting the interpretation and application of the Agreement or a serious issue of general importance as required by Rule 64(2)(a). It follows that this part of the request for review cannot be accepted.

36. Regarding the applicant's rights under Article 1 of Protocol No. 1 to the Convention, the Federation has submitted that the lease contract between the Municipality Novo Sarajevo/Sarajevostan and the applicant was invalid *ab initio*, as it had not been concluded in accordance with the relevant regulatory provisions. As above, the Second Panel notes that nothing prevented the Federation from raising the argument during the ordinary proceedings before the First Panel. Therefore, it cannot be said that "the whole circumstances justify reviewing the decision" on this point as required by Rule 64(2)(b).

37. The Federation further submits that should the lease agreement have been validly concluded, it was also validly terminated by Sarajevostan. This submission is supported by the argument that "the applicant left the premises on her own will, removing before that the inventory, by which she undoubtedly showed her intention not to use the premises any more". The Second Panel notes that the Federal Attorney's Office in its observations of 27 June 1998 (see paragraphs 19 to 21 above) had conceded that the applicant had left behind her trade inventory when she abandoned the business premises. The Agent of the respondent Party did not correct this statement of the Federal Attorney's Office in the course of the ordinary proceedings before the First Panel.

38. In further support of the submission that the lease was validly terminated the Federation argues that when R.M. concluded the lease contract the business premises were devastated and that, pursuant to Article 598(2) of the Law on Contractual Obligations (Official Gazette of the Republic of Bosnia and Herzegovina nos. 2/92 and 13/94), this constituted a ground for validly terminating the lease contract with the applicant. The Second Panel notes that in the course of the ordinary proceedings the Federation had submitted that the termination of the lease had been lawful under Articles 567 and 586 of the same law (concerning cancellation of contracts for an indefinite period without any special reason or because of non-fulfilment of contractual obligations). Again, the Second Panel is of the opinion that with regard to the validity of the termination of the lease contract the whole circumstances do not justify reviewing the decision as required by Rule 64(2)(b), either because during the ordinary proceedings the respondent Party stated the opposite of what it is arguing now, or because during the ordinary proceedings it failed to make arguments it puts forward now.

39. In addition, the Second Panel notes that, in its decision on the admissibility and merits (paragraphs 62 and 63), the First Panel based its finding that the lease was not terminated in accordance with the law on the undisputed fact that the lease was not terminated by a court decision as provided by the Law on Leasing of Business Premises, and not on the lack of grounds for termination. The additional grounds for terminating the lease submitted by the Federation are therefore immaterial to the decision.

40. Finally, the Federation argues that the lease contract between the Municipality and R.M. was valid. In this respect, the Second Panel notes that, in its decision on the admissibility and merits (paragraphs 61 and 62), the First Panel accepted that the temporary lease for the barber shop contracted with R.M. was a control of use of the property at issue justified by the circumstances of the war. However, as mentioned above, the First Panel established that the applicant's contract was not validly terminated (see paragraph 39 above). As a consequence, the argument made by the Federation does not challenge the First Panel's decision and therefore cannot constitute a ground for review.

41. It follows from the above (paragraphs 35 to 39) that also the request for review of the finding of a violation of Article 1 of Protocol No. 1 cannot be accepted.

42. As the request for review does not in any respect meet the two conditions set out in Rule 64(2), the Second Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

43. The Chamber first recalls that under Article X(2) of the Agreement it shall normally sit in panels of seven members. When an application is decided by a Panel, the plenary Chamber may decide, upon motion of a party to the case or the Human Rights Ombudsperson, to review the decision. Article XI(3) of the Agreement stipulates that subject to the aforementioned review the decisions of the Chamber shall be final and binding. Under Rule 63(2) of the Rules of Procedure any request for review shall be made within one month of the date on which the Panel's decision is communicated to the parties under Rule 52 or delivered under Rule 60. The request shall specify the grounds invoked in support of a review. Under Rule 64(1) the request shall be referred to the Panel which did not take the challenged decision, and that Panel shall make a recommendation to the plenary Chamber as to whether the decision should be reviewed. The plenary Chamber shall consider the request for review as well as the recommendation of the aforementioned Panel, and shall decide

whether to accept the request. It 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 (see cases nos. CH/97/59 and CH/97/69, *Rizvanović* and *Herak*, decisions on requests for review of 13 November 1998, Decisions and Reports 1998).

44. In the present case the plenary Chamber agrees with the Second Panel, for the reasons stated above, that 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

45. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed) Anders MÅNSSON Registrar of the Chamber	(signed) Michèle PICARD President of the Chamber