DECISION ON REQUEST FOR REVIEW

Cases nos. CH/97/63, CH/97/75, CH/97/99, and CH/98/183

Zijad ŠEĆERBEGOVIĆ, J.C., Radmila SAVIĆ, and Sarija MEMIŠEVIĆ

against

BOSNIA AND HERZEGOVINA
and
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. 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 cases;

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. In 1992 the four applicants contracted to buy apartments from the Yugoslav National Army ("the JNA") under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 84/90). This Law came into force on 6 January 1991. In the following years a number of Decrees with force of law were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, and the Presidency of the Republic of Bosnia and Herzegovina (confirmed as laws by the Parliament of the Republic of Bosnia and Herzegovina) with the aim of regulating social property issues in general and social property over which the JNA had jurisdiction in particular. These legal instruments included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property, issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina no. 4/92). A Decree with force of law issued on 3 February 1995 ordered courts to adjourn proceedings seeking to have the purchasers' ownership of such apartments registered. A Decree of 22 December 1995 declared purchase contracts in respect of JNA apartments retroactively invalid. This Decree was adopted as a law on 18 January 1996 and also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a law to be adopted in the future. On 6 December 1997 the Law on the Sale of Apartments with an Occupancy Right came into force (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – no. 27/97). This law was amended by a law of 23 March 1998 (OG FBiH no. 11/98). Neither law affected the annulment of the applicants' purchase contracts in question in the present cases.

2. The applicants essentially complained that the retroactive annulment of their purchase contracts and the compulsory adjournment of any court proceedings with a view to registering the ownership of the acquired apartments involved violations of Articles 6 and 13 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced between July 1997 and January 1998 and registered between October 1997 and January 1998. The applicant in case no. CH/97/75 is represented by a lawyer. Between April and November 1998 the First Panel decided pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the applications to the respondent Parties for observations on their admissibility and merits.

4. The Federation of Bosnia and Herzegovina submitted observations between June and December 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied between June 1998 and February 1999.

5. The First Panel deliberated on the admissibility and the merits of the cases on 15 April 1999. Under Rule 34 of its Rules of Procedure, it further decided to join the applications. In its decision on the admissibility and merits of the cases which was delivered on 11 June 1999 pursuant to Rule 60, the First Panel found, *inter alia*, that the Federation had violated the applicants' 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 Federation was furthermore ordered to pay certain compensation to some of the applicants and to report to the Chamber by 10 September 1999 on the steps taken to give effect to the decision. More particularly, the First Panel decided, *inter alia,* as follows:

> "...
> 3. ..., that the recognition and application of the legislation providing for the retroactive nullification of the applicants' purchase contracts (had) violated their rights under Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;
>
> 4. ..., that the continuing adjournment since 14 December 1995 of court proceedings aiming at formal recognition of the applicants' property rights (whether or not actually initiated by them) (had)

violated their right of access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

...

6. ..., to order the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

7. ..., to order the Federation to take all necessary steps to lift the compulsory adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property right and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time; ..."

6. On 9 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 9 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

7. In its request for review the Federation submits that the First Panel's decision on the admissibility and merits of the cases in issue raises serious questions of a general interest with respect to the interpretation and implementation of the Agreement.

8. The Federation appears to argue that the Chamber lacked competence to examine the applications, either because the impugned acts occurred prior to the entry into force of the Agreement on 14 December 1995 or because the applications were lodged out of time. Only in cases nos. CH/97/63 and CH/97/75 were the applicant's purchase contract actually annulled by the Decree of 22 December 1995, given that their contracts had been concluded prior to the entry into force of the Decree of 15 February 1992 which prohibited such contracts. The other two applicants had concluded their contracts only after the entry into force of the last-mentioned Decree which was never declared unconstitutional. As those contracts were therefore invalid *ab initio* as of February 1992 the First Panel lacked competence *ratione temporis* to examine them.

9. As for cases nos. CH/97/63 and CH/97/75, the annulment of the purchase contract constituted an instantaneous act based on the Decree issued on 22 December 1995 and adopted as law on 18 January 1996, that is to say more than six months before cases nos. CH/97/63 and CH/97/75 were introduced. This Decree did not create any situation continuing past 22 December but constituted the "final decision" within the meaning of Article VIII(2)(a) of the Agreement. As these two cases had not been lodged by 22 June or 18 July 1996, they should have been declared inadmissible as being out of time. The Federation further argues that the applicants were on notice of the six month time limit when the text of Annex 6 of the Agreement was published in the "*Dnevni Avaz*" on 28 November 1995 and the Official Gazette of the Federation on an unspecified date.

10. The Federation argues that the First Panel failed to consider the Federation's argument that it was obliged under the International Convention on the Elimination of All Forms of Racial Discrimination to afford equal treatment to all occupants of socially-owned apartments.

11. Finally, the Federation challenges the First Panel's decision in so far as it orders the Federation to take all necessary steps to render ineffective the adjournment imposed by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property rights, and to take all necessary steps to secure, in this matter, their right of access to court and to a hearing within a reasonable time. The Federation points out that only the applicant in case no. CH/97/75 attempted any domestic remedies in this respect. Contrary to the situation in the cases of *Medan, Bastijanović and Marković* (cases nos. CH/96/3, 8 and 9, decision on the merits delivered on 7 November 1997, Decisions on Admissibility and Merits 1996-1997) these remedies could not be considered ineffective, given the amendments to the housing legislation enacted towards the end of 1997 which made it possible for the courts to resume the proceedings in question. Under domestic procedural law it is, however, for the applicants to re-initiate the

proceedings, which they have failed to do. The Federation questions how it may lift the adjournment of court proceedings in the present case, when such proceedings have either never been initiated by the applicants or have not been re-initiated.

IV. OPINION OF THE SECOND PANEL

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

13. The Federation argues that the First Panel lacked competence *ratione temporis* to examine the cases in question, given that the impugned acts occurred prior to 14 December 1995 and did not constitute a situation continuing past that date. The Federation has further argued that case nos. CH/97/63 and CH/97/75 were introduced out of time. The Second Panel recalls that this argument of the Federation was already rejected several times, e.g. in the Chamber's decision on the Federation's request for review in cases nos. CH/97/81 *et al.*, *Grbavac and others,* decision of 15 May 1999, Decisions January-July 1999 (see paragraphs 17-19 and 30; see also the Chamber's decision on the Federation's request for review in cases nos. CH/97/82 *et al.*, *Ostojić and others,* decision of 15 May 1999, paragraphs 14-16 and 26, Decisions January-July 1999), cases nos. CH/98/126 *et al.*, *Marić and others,* decision on admissibility and merits delivered on 10 March 1999, paragraphs 31-32, Decisions January-July 1999, and again in cases nos. CH/98/129 *et al.*, *Ivković and others,* decision on admissibility and merits delivered on 10 March 1999, paragraphs, 39-40, Decisions January-July 1999. The Second Panel sees no reason for departing from the Chamber's prior jurisprudence in this respect.

14. The Federation further argues that the First Panel failed to consider the argument that the impugned acts resulted from the Federation's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination to ensure equal treatment of all occupants of socially-owned apartments. The Second Panel again refers to the Chamber's decisions on the Federation's requests for review, where an identical argument was rejected (see *Grbavac and others*, loc.cit., paragraphs 21-22 and 30, as well as *Ostojić and others*, loc.cit., paragraphs 18-19 and 26). Accordingly, the Second Panel sees no reason for departing from the Chamber's prior jurisprudence in this respect.

15. The Federation finally challenges the First Panel's decision with reference to the court proceedings whose adjournment the Federation was ordered to lift, regardless of whether proceedings were ever initiated or re-initiated by the applicants. In the Second Panel's opinion the Federation has not, however, referred to any official act which formally lifted the adjournment of the proceedings or revoked the Decree of 3 February 1995 ordering the adjournment. This was also the Chamber's opinion in its aforementioned decision on the Federation's request for review in *Grbavac and others*, where an identical argument was rejected (see paragraphs 26 and 30). The Second Panel further notes that the Federation's observations on the admissibility and merits of the present cases were submitted between June and December 1998. It follows that in all of these cases the present grounds of the request for review could at any rate have been invoked during the ordinary proceedings before the First Panel. In these circumstances the Second Panel finds, in this respect of the present request for review, that neither of the conditions which Rule 64(2) stipulates for the review of a Panel decision has been met.

16. All of the arguments for requesting a review have repeatedly been raised in identical circumstances and rejected by the Chamber. Therefore, 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

17. 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).

18. In the present cases 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

19. For these reasons, the Chamber, by 12 votes to 1,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber