



DECISION ON REQUEST FOR REVIEW

Case no. CH/97/70

Ćazim LAČEVIĆ

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 December 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 respondent Parties' requests 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 63-66 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The applicant exchanged his house in Herceg Novi (Montenegro) for a Yugoslav National Army (“JNA”) apartment in Sarajevo which had been purchased by M.G. from the Army Housing Fund on 6 December 1991. On 15 January 1992 the exchange contract was concluded and shortly afterwards M.G. moved into the house in Herceg Novi and the applicant’s daughter’s family moved into the apartment in Sarajevo. The applicant also moved to the apartment in September 1992. Neither M.G. nor the applicant had their respective ownership recognised or entered into the Land Register. On 30 September 1992 the apartment in Sarajevo was declared abandoned. The applicant and his family were threatened by the Army Housing Fund with eviction throughout and after the war, until the beginning of 1998.
2. The applicant alleged a violation of his right to peaceful enjoyment of his apartment which he considers to be his property. The case raises issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. The application as directed against the Federation of Bosnia and Herzegovina was introduced on 25 September 1997 and registered on 25 November 1997. The applicant was represented by his son-in-law, Mr. Elvedin Mehić, and by Mr. Ismet Mehić. On 15 May 1998 the Chamber decided to transmit the application to the Federation for observations on the admissibility and merits thereof.
4. The Federation submitted observations on 15 June 1998. The applicant replied to the Chamber on 14 July 1998. Considering that the case might also raise issues attracting the responsibility of Bosnia and Herzegovina, the Chamber, by a letter of 17 February 1999, transmitted the application also to Bosnia and Herzegovina as respondent Party for observations. On the same day, the Chamber invited the two respondent Parties to a public hearing on 10 March 1999. At the public hearing appeared the applicant’s representative Mr. Elvedin Mehić, the Agent of Bosnia and Herzegovina Mr. Jusuf Halilagić, and the Agent of the Federation Ms. Seada Palavrić.
5. On 4 October 1999 the Second Panel adopted the challenged decision on admissibility and merits. It delivered the decision on 7 October 1999. It found that the apartment in question was a possession of the applicant and that the conduct of the authorities violated his right to peaceful enjoyment of that possession. Therefore, the Chamber found that the non-recognition of the applicant’s right to the apartment based, *inter alia*, on the legislation passed by the authorities of Bosnia and Herzegovina violated the applicant’s rights under Article 1 of Protocol No. 1 to the Convention. Furthermore, the attempts by the Federation of Bosnia and Herzegovina authorities to evict the applicant and his family based on the non-recognition of his right to the apartment in question violated the applicant’s rights under the aforementioned Article.
6. The Chamber ordered the Federation to refrain from any act threatening the applicant and his family with eviction from the apartment in question. The Federation was furthermore ordered, in recognition of the purchase contract of 6 December 1991 and the exchange contract of 15 January 1992, to permit the applicant to validly apply for registration as owner of the apartment in question in accordance with the Law on Amendments to the Law on the Sale of Apartments with an Occupancy Right which entered into force on 6 July 1999.
7. On 3 and 5 November 1999, respectively, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina submitted requests for a review of the decision. In pursuance of Rule 64(1) of the Rules of Procedure the request was considered by the First Panel which, on 9 December 1999, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the First Panel’s recommendation on 9 December 1999.

III. REQUEST FOR REVIEW

A. Bosnia and Herzegovina

8. In its request Bosnia and Herzegovina argues that the Chamber failed to discern whether the parties to the exchange contract in question ever actually desired to exchange property. Reference is made to M.G.'s request for the reinstatement into the possession of the apartment in Sarajevo submitted to the Sarajevo housing authorities on 29 June 1999.

9. Bosnia and Herzegovina further points out that the exchange contract was not registered by the competent court and was not concluded according to the relevant legal provisions. The contract did not contain the seller's (M.G.'s) explicit consent concerning the registration into the Land Register (a so-called *clausula in tabulandi*) which is a mandatory prerequisite for registration. Thus, the exchange of the properties was actually never really intended and the exchange contract was invalid *ab initio*.

10. Bosnia and Herzegovina further submits that M.G. has not submitted a request for the recognition of his purchase contract of the apartment. The new legislation adopted by the Federation, however, requires such a request by the purchaser. Moreover, at the time of the adoption of the challenged decision the Federation had already adopted legislation allowing registration of JNA apartment purchase contracts provided the criteria were fulfilled.

B. The Federation of Bosnia and Herzegovina

11. The Federation refers to relevant domestic law and asserts that the courts of the Federation have resumed proceedings in disputes relating to so-called JNA apartments after the issuance of the Law on the Cessation of the Application of the Law on Abandoned Apartments. Moreover, the Federation points out that the applicant did not institute proceedings before the competent court with a view to establishing the legal validity of the exchange contract and his rights arising from it. Therefore, the applicant failed to exhaust the given and effective domestic remedies. Thus, the application should have been declared inadmissible.

12. As to the merits, the Federation asserts that the applicant and members of his family never lost possession of the apartment and that the authorities did not take any action to end his possession of it. Further, the Federation holds that the exchange contract in question lacked the above-mentioned *clausula in tabulandi*. Therefore, the intention of the contractual parties to actually fully exchange the real properties is doubtful.

13. In the Federation's view, this is confirmed by the request for reinstatement into the possession of the apartment submitted by M.G. on 29 June 1999. Hence, the applicant has not acquired a position that could have been violated. In any case there was no violation. As to the remedies ordered by the Chamber, the Federation underlines that it is not established that M.G. would have requested the registration of his JNA apartment. Therefore, the Chamber cannot order the applicant's registration as he – if at all – derives his legal title over the apartment from M.G.

IV. OPINION OF THE FIRST PANEL

14. The First Panel first notes that the requests for review have been lodged within the time-limit prescribed by Rule 63(2) of the Rules of Procedure. It is of the opinion, however, that there are no grounds justifying the review of the decision.

15. The First Panel finds that some of the grounds presented in the requests could have been invoked during the proceedings before the Second Panel. For instance, at no stage of the proceedings did the respondent Parties submit the argument that the exchange contract lacked the above-mentioned consent concerning the purchaser's entry as owner into the Land Register which is stated to be a mandatory prerequisite for such registration. The respondent Parties are precluded from invoking grounds in review proceedings that could have been presented at an earlier stage.

16. Reverting to the other grounds presented, the First Panel notes that the Second Panel has considered the question whether the lack of registration of the exchange contract by the competent

local court made it invalid. It recalls that the Second Panel has found in its decision that this did not influence the contract's legal validity as the parties have carried out the essential obligation contained in it. Furthermore, the fact that M.G. has requested his reinstatement into possession of the apartment in Sarajevo does not constitute a reason to review the Second Panel's decision.

17. The question whether the new legislation adopted by the Federation allowing the registration of JNA apartment purchase contracts would provide a domestic remedy for the applicant might be of general importance. However, the Second Panel has examined the issue in its decision and has noted – as pointed out by Bosnia and Herzegovina – that M.G. has not submitted a request for registration as owner of the apartment in Sarajevo. The new legislation requires a purchaser to submit such a request. As the applicant did not purchase the apartment but rather acquired it through the above-mentioned exchange contract, he has no opportunity to achieve registration by submitting a request to the courts under the currently applicable domestic legal provisions. Hence, court proceedings, initiated with a view to obtaining recognition of what has been considered by the Second Panel as a valid exchange contract, would not have enabled the applicant to register as owner of the apartment in question and to peacefully enjoy his possession.

18. In the light of the foregoing, the First Panel does not consider that the arguments presented by the respondent Parties lead to circumstances that justify reviewing the decision as stipulated in Rule 64(2)(b). As, accordingly, the request for review does not meet the conditions set out in Rule 64(2), the First Panel, by 6 votes to 1, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

19. 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.

20. 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. According to Rule 64(2), 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).

21. The plenary Chamber agrees with the First 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.

VI. CONCLUSION

22. For these reasons, the Chamber, by 13 votes to 1,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber