



DECISION ON REQUEST FOR REVIEW

CASE No. CH/98/1018

Zoran POGARČIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 September 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
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. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request for a review of the decision of 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 Chamber refers to the decision of the Second Panel, by which the respondent Party was found to be in violation of the Agreement and ordered to pay compensation. Said decision is appended to the present decision (Annex 1).

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 6 April 2001 the Second Panel's decision was delivered in pursuance of Rule 60. On 7 May 2001 the respondent Party submitted a request for a review of the decision.

3. In accordance with Rule 64(1) the request was considered by the First Panel.

III. THE REQUEST FOR REVIEW

4. The Chamber refers to the request for review, which is appended to the present decision (Annex 2).

IV. OPINION OF THE FIRST PANEL

5. The First Panel notes that the party seeking review, being the respondent Party in the proceedings which led to the original decision, appears not to challenge the Second Panel's finding of a violation of Article 6 of the Convention in that the underlying court proceedings did not terminate within a reasonable time limit.

6. The First Panel further notes that the party seeking review contests the finding that the applicant adequately exhausted domestic remedies and contests the finding of discrimination pursuant to Article 6 of the International Covenant on Economic, Social and Cultural Rights and Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination, and the award of compensation, based upon the facts of the case. The claim of non-exhaustion has previously been examined by the Second Panel and was rejected on adequate grounds.

7. The First Panel is also of the opinion that the original decision does not appear to contain an incorrect assessment of the facts and is based on adequate grounds. Further, the First Panel notes that the party seeking review is barred, in its request for review, from raising new factual allegations. Specifically, Panel II requested information from the respondent Party regarding the ethnic composition of the school in 1991, 1995 and the present. The respondent Party provided information asserting that since 1995, two persons of Serb origin, four persons of Croat origin and thirty-four persons of Bosniak origin have been working in the school. In its request for review, the respondent Party now claims, for the first time, that 18 new workers have been employed of which 40% are non-Bosniak. This information was not provided during original proceedings before Panel II. Additionally, the respondent Party never asserted before Panel II that the applicant worked for a school in Buća Potok in 1991, nor did it directly contest the applicant's claim that he worked in the Electrical Engineering School in Sarajevo for part of 1991. Accordingly, the First Panel will not consider such new allegations (see paragraphs 2 and 4 of the Request for Review).

8. In addition, with respect to the allegation that the applicant had been untruthful before the Chamber, the First Panel is satisfied that the veracity of each parties' claims was thoroughly considered (see paragraphs 62-66 of the Decision). Additionally, contrary to the assertion raised by the party seeking review, the First Panel notes that the Second Panel had not made findings of fact that were contrary to those established by the domestic court. As conceded by the party seeking review, the domestic courts had not concluded their proceedings and therefore had not made an assessment of the facts. Finally, the fact that the domestic courts allegedly reached a decision on the applicant's domestic proceeding following issuance of the Chamber's decision does not change this conclusion.

9. The First Panel is accordingly of the opinion that, in the present case, the request for review involves neither a serious question affecting the interpretation or application of the agreement nor a serious issue of general importance. Nor can it be said that the whole circumstances justify reviewing the original decision. That being so, the First Panel, unanimously recommends that the Plenary Chamber not accept the request.

V. OPINION OF THE PLENARY CHAMBER

10. 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

11. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

Ulrich GARMS
Registrar of the Chamber

Michèle PICARD
President of the Chamber