DECISION ON REQUEST FOR REVIEW

Cases nos.
CH/98/124, CH/98/130, CH/98/142, CH/98/148,
CH/98/160, CH/98/172, and CH/98/178

Ivan LAUS, Mehmed BRADARIĆ, Safet KARABEGOVIĆ, Pero OPARNICA,
Radomir STOŠIĆ, Milenko ADŽAIP, and Branko GALUŠIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 October 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 Federation of Bosnia and Herzegovina's request for a review of the decision of the Second Panel of the Chamber on the admissibility and merits of the aforementioned cases;

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. In 1992 the seven 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).

2. 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.

3. 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 Article 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and of Article 1 of Protocol No. 1 to the Convention.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced and registered in January 1998. On 7 April and 15 May 1998 the Second 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.

5. The Federation of Bosnia and Herzegovina submitted observations on 8 June 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied in June and July 1998.

6. The Second Panel deliberated on the admissibility and the merits of the cases on 14 April 1999. Under Rule 34 of its Rules of Procedure, it decided to join the applications and adopted the challenged decision on the admissibility and merits of the cases which was delivered on 11 June 1999 pursuant to Rule 60. The Chamber 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 11 September 1999 on the steps taken to give effect to the decision. More particularly, the Second Panel decided, *inter alia,* as follows:

> "...
> 3. ..., that the recognition and application of the legislation providing for the retroactive nullification of the purchase contracts in question (had) violated the applicants' 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 render ineffective the annulment of the purchase contracts in question imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

7. ..., to order the Federation to take effective 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; ..."

7. On 9 July 1999 the Federation submitted a request for a review of the Second Panel's decision. In pursuance of Rule 64(1) of the Chamber's Rules of Procedure, the request was considered by the First Panel which, on 6 October 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 8 October 1999.

III. REQUEST FOR REVIEW

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

9. The Federation appears to argue that the Chamber lacked competence to examine the applications, because the applications were lodged out of time. The Federation suggests that the Decree with legal force issued on 22 December 1995 which was confirmed as Law on 18 January 1996 should be considered as a "final decision" for the purpose of Article VIII(2)(a) of the Agreement. Therefore, the Chamber should have declared all applications lodged in January 1998, hence after 22 June 1996 (6 months after the issuance of the Decree in question) or after 18 July 1996 (6 months after the Decree was proclaimed as Law), as out of time. The Federation further submits that the applicants were on notice of the six-month time-limit as the text of the Agreement was published in the newspaper "Dnevni Avaz" on 28 November 1995 and by the editors' house of the (then) "Official Gazette of the Republic of Bosnia and Herzegovina" in a special edition on an unspecified date.

10. Finally, the Federation challenges the Second Panel's decision in so far as it orders the Federation to take effective 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, 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 1996-1997) these remedies could not be considered ineffective. The amendments to the housing legislation enacted towards the end of 1997 made it possible for the courts to process cases or to resume the proceedings in question. The Federation questions how it may lift the adjournment of court proceedings when such proceedings have to be re-initiated by the applicants. Regarding those applicants who have not initiated proceedings, the Federation submits that they should have filed civil suits with the courts.

IV. OPINION OF THE FIRST PANEL

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

12. The Federation has argued that the applications were introduced out of time. The First Panel recalls that these arguments of the Federation were in essence already rejected in the Chamber's decision on the Federation's request for review in *Grbavac and others* (cases nos. CH/97/81 *et al.*, decision of 15 May 1999, paragraphs 19 and 30, Decisions January-July 1999; 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 16 and 26, Decisions January-July 1999; and again in cases nos. CH/97/63 *et al.*, *Šećerbegović and others*, cases nos. CH/98/159 *et al.*, *Huseljić and others*, and cases nos. CH/98/174 *et al.*, *Vidović and others,* all decisions on requests

for review of 9 September 1999, to be published). The First Panel sees no reason for departing from the Chamber's prior jurisprudence in this respect.

13. The Federation finally challenges the Second 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 First 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 First Panel further notes that the Federation's observations on the admissibility and merits of the present cases were submitted in June 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 Second Panel.

14. All of the arguments for requesting a review have repeatedly been raised in identical circumstances and have been 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 First Panel, unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

15. 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.

16. 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 pursuant to Rule 64(2) of its Rules of Procedure (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) the whole circumstances justify reviewing the decision.

17. In the present cases 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 pursuant to Rule 64(2) of the Rules of Procedure.

VI. CONCLUSION

18. 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