



DECISION ON REQUEST FOR REVIEW

Cases Nos. CH/98/1311 and CH/01/8542

Džavid KURTIŠAJ and M.K.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 November 2002 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. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request 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. INTRODUCTION

1. On 10 February 1992, the applicant Džavid Kurtišaj concluded a purchase contract of an apartment over which he had an occupancy right in Sarajevo (Grbavica), Đure Salaja No. 6, now Kemala Kapetanovića No. 6, with the Yugoslav National Army. On 17 February 1992 he paid the full price, but due to the war he was not able to register his ownership rights in the land books. In their applications, the applicants, who are husband and wife, asked for repossession of the apartment and for registration in the land books of this possession. The applicants also asked the Chamber to order the respondent Party, as a provisional measure, not to evict the applicants. On 2 April 2001 the Chamber issued the provisional measure requested.

2. In its decision on admissibility and merits of 2 September 2002, the First Panel found a violation of Article 1 of Protocol No. 1 to the Convention and discrimination in relation to this Article, the respondent Party thereby being in breach of Article 1 of the Agreement. The Chamber ordered the respondent Party to take remedial action by rendering ineffective the annulment of the contract of Džavid Kurtišaj and allowing his registration of ownership over the apartment. The Chamber further decided that its order for provisional measures would be in force until Džavid Kurtišaj is registered in the land books as the owner of the apartment.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. On 6 September 2002 the First Panel's decision on admissibility and merits of 2 September 2002 was delivered to the parties in pursuance of Rule 60. On 7 October 2002 the respondent Party submitted a request for review of the decision.

4. In accordance with Rule 64(1) the request for review was considered by the Second Panel on 4 November 2002. In accordance with Rule 64(2), on 6 November 2002 the Plenary Chamber considered the request for review and the recommendation of the Second Panel.

III. THE REQUEST FOR REVIEW

5. In the request for review, the respondent Party challenges the First Panel's decision on two grounds. Firstly, the respondent Party states that the Chamber erred in considering Džavid Kurtišaj the owner of the apartment, since he was only a purchaser, who would have become the owner when the seller issues the consent for registration in the land books. The respondent Party also underlines that the aim and purpose of the laws and decrees which caused the annulment of the purchase contract of Džavid Kurtišaj, was meeting the problem of the lack of housing. The respondent Party further argues that returning the purchase price and compensating any damage would have constituted a sufficient remedy to the violations found by the Chamber.

6. Secondly, the respondent Party argues that, since on 28 May 2002 the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter: CRPC), in deciding upon a request of Džavid Kurtišaj, decided that Džavid Kurtišaj was not to be considered a refugee, the respondent Party has not violated the applicants' rights.

IV. OPINION OF THE SECOND PANEL

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

8. The Second Panel recalls that under Rule 64(2) the Chamber "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".

9. The second Panel is of the opinion that the grounds related to the ownership rights of Džavid Kurtišaj and the ratio of the domestic laws annulling the purchase contract, upon which the respondent Party's request for review is based, were in essence already examined and rejected by the plenary Chamber in the *Miholić and Others decision* (cases no. CH/97/60 et al., decision on

admissibility and merits of 3 December 2001), on which the First Panel's decision relies. The serious questions affecting the interpretation and application of the Agreement raised by both the present application and the *Miholić and Others* cases have therefore already been dealt with.

10. With regard to the ordered remedies, the Second Panel notes that the Chamber in its jurisprudence has always held that a request for review directed against "the amount and type of compensation awarded (...) as well as the method used when deciding on (the) claim for compensation" does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance", as required in Rule 64(2)(a). The Second Panel is of the opinion that this reasoning applies in general insofar a request for review is directed against the remedies that are ordered to compensate the found violations.

11. The respondent Party finally claims that the CRPC decision of 28 May 2002 confirms that Džavid Kurtišaj was not to be considered a refugee and therefore the decisions and actions of the respondent Party in this case do not constitute a violation of any of the applicant's rights. With regard to this CRPC decision, the Second Panel considers that this "new fact" does not justify a review of the decision, since the decision of the First Panel of 2 September 2002 is in no way based on the assumption that Džavid Kurtišaj was to be considered a refugee. Paragraphs 91 and 92 of the aforementioned decision state that excluding persons who fall under the category of the second paragraph of Article 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments from the peaceful enjoyment of their possessions in Bosnia and Herzegovina is not proportional to the stated aims. The failure to recognise the applicant's purchase contract and the attempts to evict him constitute the violation, whether or not the respondent Party considers Džavid Kurtišaj to be a refugee. As a consequence, also in this respect the request for review fails to raise any "serious question affecting the interpretation or application of the Agreement or a serious issue of general importance".

12. Since none of the arguments on which the request for review is grounded raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance", as required in Rule 64(2)(a), the request for review does not meet the conditions set out in Rule 64(2). Therefore the Second Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

13. The plenary Chamber agrees with the Second 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

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

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber