



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/166

Omer BJELONJA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 April 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the respondent Party's request 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. INTRODUCTION

1. The applicant is the owner of a house in the Municipality of Ilidža, the Federation of Bosnia and Herzegovina. From 3 August 1993 to 26 August 1997 the Secretariat for National Defence of the Municipality of Ilidža seized the applicant's house for military purposes. Then the applicant was given back the *de facto* possession of his house.
2. On 3 May 1996, the applicant initiated proceedings to obtain compensation for the use of his house during the time of seizure.
3. On 1 December 1997, the applicant also filed a claim for compensation for damage and loss of property. Both proceedings are still pending.
4. The applicant alleged violations of his right to peaceful enjoyment of possessions and his right to a fair trial in reasonable time. The applicant specifically complained about the fact that the administrative organs and domestic courts failed to issue decisions on his complaints within the prescribed time limits.

II. PROCEEDINGS BEFORE THE CHAMBER

5. On 7 February 2003 the Second Panel delivered its decision on admissibility and merits in this case. The Second Panel found a violation of the applicant's right protected by Article 1 of Protocol No. 1 to the Convention. The Second Panel further found a violation of the applicant's right protected by Article 6 paragraph 1 of the Convention with regard to the length of proceedings. The Second Panel ordered the respondent Party to promptly conclude both sets of the pending proceedings and to pay to the applicant the sum of 3,000 Convertible Marks (*Konvertibilnih Maraka*) in non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time and for the unlawful interference with his possession. Finally, the Second Panel reserved the right to order additional remedies.
6. On 7 February 2003 the Second Panel's decision was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber's Rules of Procedure. On 7 March 2003 the respondent Party submitted a request for review of the decision.
7. In accordance with Rule 64(1) the request for review was considered by the First Panel on 1 April 2003. In accordance with Rule 64(2), on ... the Plenary Chamber considered the request for review and recommendation of the First Panel.

III. REQUEST FOR REVIEW

8. The Federation requests review of the Chamber's decision as a whole. In particular the Federation disagrees with the finding that the Cantonal Court failed to deal with the applicant's cases in reasonable time.
9. The Federation claims that the Cantonal Court received the applicant's complaint in the proceedings conducted under no. U-461/99 on 26 July 1999 and issued a judgement in favour of the applicant on 19 October 2001 which became valid on 6 December 2001.
10. In the second proceedings conducted under no. U-424/98 regarding the applicant's claim for compensation for the use of his house the respondent Party claims that on 7 June 2000 the Cantonal Court referred the case back to the Supreme Court of the Federation as the competent court.
11. For those reasons the respondent Party considers that applicant's right to a fair trial within reasonable time as protected under Article 6, paragraph 1 of the Convention has not been violated. In

addition, the Federation submits that the Chamber's order to take all necessary steps to promptly conclude the proceedings pending before Cantonal Court is unjustified and moot in light of the Cantonal Court's judgement of 19 October 2001.

IV. OPINION OF THE FIRST PANEL

12. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b).

13. The First 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".

14. The First Panel notes that the finding of the Second Panel in paragraph 73 of the decision on admissibility and merits of 7 February 2003 that the Cantonal Court appears "not to have taken any procedural steps in the cases since 1998" is incorrect in light of the new information provided by the respondent Party in its request for review. The First Panel notes that on 15 January 2003 the applicant was asked to update the information in the case. The First Panel also notes that the respondent Party was not asked for an update in the case in January 2003 and the applicant's reply of 20 January 2003 was never transmitted to the respondent Party. However, the First Panel finds that it is the obligation of the respondent Party, *proprio motu*, to inform the Chamber about any relevant developments in the case. In particular, it failed to inform the Second Panel that the Cantonal Court had referred back to the Supreme Court the proceedings regarding the compensation claim for use of the house on 7 June 2000 and that in the other proceedings regarding compensation for damage of his property the Cantonal Court had issued a decision on 19 October 2001. There is no indication that this information was not available to the respondent Party while the proceedings before the Second Panel were still pending. In addition, also according to the new information provided by the respondent Party in its request for review, the proceedings introduced by the applicant before the domestic courts are still pending and the applicant's claim for damages has not been resolved as of to date.

15. The First Panel therefore does not consider that "the whole circumstances justify reviewing the decision" as required by Rule 64(2)(b). That being so the Chamber need not consider the question whether the request for review raises "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required by Rule 64(2)(a). As the request for review does not meet the condition set out in Rule 64(2)(b), the First Panel, unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

16. The plenary Chamber agrees with the First Panel that, for the reasons stated, the request for review does not meet the condition required for the Chamber to accept such a request pursuant to Rule 64(2)(b).

VI. CONCLUSION

17. For these reasons, the Chamber, unanimously,

REJECTS THE REQUESTS FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber