



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/1789

Dragica GADŽA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 November 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the request of the applicant 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. FACTS AND COMPLAINTS

1. The applicant is a citizen of Bosnia and Herzegovina of Croat descent, resident in Banja Luka. Until 1995 she lived in a property in Franje Seferina street in Banja Luka, of which she is a part owner. She was evicted from it by displaced persons from Jajce, in the Federation of Bosnia and Herzegovina.

2. On 22 December 1995 the applicant initiated proceedings against the occupants of the property before the Court of First Instance ("*Osnovni Sud*") in Banja Luka, seeking their eviction from it. On 5 February 1996 the court ordered the occupants, as a provisional measure, to vacate the property. This order was not complied with. On 23 July 1996 the court issued its decision on the merits of the case, and ordered the occupants to vacate the property. An appeal by the occupants was rejected by the Regional Court on 17 October 1996.

3. In pursuance of the orders of the court, the eviction of the occupants was scheduled on a number of occasions between 5 February 1996 and 1 July 1998. However, none of these attempts was successful for various reasons, including the failure of the police to assist in carrying out the eviction, the appearance of hostile crowds seeking to obstruct the eviction and the interference of the Ministry for Refugees and Displaced Persons in the matter. On 14 December 1998 the applicant regained possession of the property, as the occupants moved out voluntarily. They had been offered alternative accommodation by the office of the United Nations High Commissioner for Refugees. The applicant informed the Chamber of this fact on 5 November 1999.

4. The applicant complains of a violation of her right to respect for her home, as guaranteed by Article 8 of the European Convention on Human Rights. She also states that her rights as guaranteed by Article 1 of Protocol No. 1 to the Convention have been violated. In addition, she claims that she has been discriminated against in the enjoyment of the above rights on the basis of her Croat origin.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

5. The application, which bears the date 8 October 1998, was submitted on 21 December 1998 and registered on the same day. On 19 March 1999 it was transmitted to the Republika Srpska for its observations on admissibility and merits, which were never received.

6. On 4 August 1999 the applicant was requested to submit her further observations and any claim for compensation or other relief she wished to make. These were received on 5 November 1999, a reminder having been sent.

7. On 8 February 2000 the First Panel of the Chamber adopted its decision on the admissibility of the case. It struck out the part of the application concerning the attempts of the applicant to regain possession of the property, as the applicant had done so, and therefore the matter was resolved. Concerning the complaint of the applicant that she had been discriminated against on the basis of her Croat origin, the First Panel held that she had not substantiated this allegation. It therefore refused to accept this part of the application on the ground that it is unsubstantiated.

8. On 2 March 2000 this decision was delivered to the parties, in pursuance of Rule 52. On 10 March 2000 the applicant submitted a request for a review of the decision. On 5 April 2000 she made a further submission in support of this request. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 12 October 2000, decided to recommend to the plenary Chamber that the request be accepted. The plenary Chamber considered the request and the Second Panel's recommendation on 13 October 2000.

III. REQUEST FOR REVIEW

9. The applicant claims that the Chamber should have awarded her compensation for monetary loss she suffered due to damage caused to the property by the previous occupants and also due to the costs of conducting court proceedings to regain possession of it. She claims that the total amount involved is approximately 11,000 *Konvertibilnih Maraka*.

IV. OPINION OF THE SECOND PANEL

10. The Second Panel notes that the request for review has been lodged within the time-limit prescribed by Rule 63(2). According to 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. 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. Under 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).

11. The applicant claims that the Chamber should have awarded her compensation for the damages she alleges she suffered as a result of the occupation of the property by displaced persons.

12. The Second Panel notes that the application was partially struck out and partially declared inadmissible by the First Panel. The First Panel did not consider the claim for compensation made by the applicant. This decision was correct as, in accordance with Article XI of the Agreement, the Chamber can only order remedies against a respondent Party if it has found that a party has violated one or more of the rights guaranteed by the Agreement. The First Panel did not find any such violations in the present case.

13. However, the Second Panel disagrees with the opinion expressed by the First Panel in paragraph 8 of its decision of 8 February 2000, i.e. that the part of the application relating to the alleged violation of the applicant's rights to respect for her home and to peaceful enjoyment of her possessions, has been resolved by the fact that she had regained possession of the property. The Second Panel recalls that the applicant had for more than two and a half years unsuccessfully attempted to obtain the execution of the relevant court decisions ordering the illegal occupants to vacate her property. As the Chamber has found in similar cases (see *Blentić v. Republika Srpska*, Case No. CH/96/17, decision of 5 November 1997, Decisions 1996-97, *Bejdić v. Republika Srpska*, Case No. CH/96/27, decision of 2 December 1997, Decisions and Reports 1998 and *M.J v. Republika Srpska*, Case No. CH/96/28, decision of 7 November 1997, Decisions 1996-97) the failure of the authorities of the respondent Party, in particular the police, to enforce court decisions may amount to a violation of Article 6 and other relevant provisions of the European Convention on Human Rights. The issue before the Chamber is whether the mere fact that the applicant, at a certain date, regained possession of her property, resolves the matter complained of or not.

14. For the above reasons, the Second Panel is of the opinion that the case raises a serious question affecting the interpretation and application of Article VIII(3)(b) of the Agreement, i.e. the meaning of the words "the matter has been resolved". Since the decision of the First Panel seems to deviate from the established jurisprudence of the Chamber in the cases cited above, the Second Panel also finds that the whole circumstances of the case justify reviewing of the decision. The Second Panel is therefore by 5 votes to 2 of the opinion that the request should be accepted

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.

16. The plenary Chamber disagrees with the Second Panel. It notes that the applicant requests review on the grounds that the original decision should have been in her favour so that she would have been entitled to monetary compensation. However, in the circumstances of the present case the Plenary Chamber considers that the primary aim of the application was for the applicant to be reinstated into her apartment. The Plenary Chamber is therefore of the opinion that the principal

matter was resolved when the applicant regained the use of her apartment and that it is not justified to continue with the consideration of the application solely to decide on the compensation claim. Furthermore, the Plenary Chamber does not consider that the decision of the first panel deviates from existing case-law. Consequently, the Plenary Chamber is of the opinion that the request does not raise a serious issue affecting the interpretation of the Agreement or a serious issue of general importance. Having found that the first condition set out in Rule 64(2) has not been satisfied, the Plenary Chamber does not find it necessary to consider whether the whole circumstances justify reviewing the decision. Consequently, as the request for review does not meet the two conditions set out in Rule 64(2), the Plenary Chamber will not accept the request.

VI. CONCLUSION

17. For these reasons, the Chamber, by 7 votes to 6,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber