



DECISION ON REQUEST FOR REVIEW

Case No. CH/98/234

Nada LEBERL

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 November 2001 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. Vitimir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

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

Having considered the applicant's request for a review of the decision of the Second Panel of the Chamber on the admissibility of and to strike out 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, which struck out the application in so far as it concerns the applicant's claim to be reinstated into her apartment and declared the remainder of the application inadmissible. Said decision is appended to the present decision (Annex 1).

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 17 August 2001 the Second Panel's decision was communicated to the parties in pursuance of Rule 52. On 13 September 2001 the applicant submitted a request for review of the decision.

3. In accordance with Rule 64(1) the request for review 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). The applicant complains that the Second Panel wrongly and incompletely established the facts relating to the proceedings before the domestic courts. She further complains about a violation of her rights to property and compensation. Finally, she claims that the Second Panel wrongly interpreted the notion of "home" as protected by Article 8 of the Convention in regard to her case when it said that the apartment could not be considered to be the applicant's "home" for the purposes of Article 8 of the Convention.

IV. OPINION OF THE FIRST PANEL

5. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). The First Panel must now consider 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) and whether "the whole circumstances justify reviewing the decision" as required by Rule 64(2)(b) of the Chamber's Rules of Procedure.

6. In regard to the complaint of the applicant, that the Second Panel wrongly and incompletely established the facts, the First Panel is of the view that whether the court proceedings were unreasonably long, and what caused the length complained of, is an entirely factual question which does not raise "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).

7. In regard to the complaint about the right to property and compensation, the First Panel notes that the Chamber has set forth in its decision in the case of *S.P. v the Federation of Bosnia and Herzegovina* the criteria it will apply in deciding whether it is appropriate to continue the consideration of cases in which the applicant maintains a claim for compensation having regained possession of his apartment. These include:

"...the *bona or mala fides* of the applicant; the length of time the applicant has had to wait for reinstatement; other exceptional suffering incurred by the applicant, e.g. through maltreatment or violent eviction; the circumstances in which the applicant may have been living; and the proven effectiveness, in a particular locality, of the domestic remedies. As to the latter point, the Chamber would make it clear that the effectiveness of domestic remedies may be questioned if the applicant has been reinstated through the intervention of the High Representative, OSCE, IPTF, UNHCR or another international organisation. Additionally, the record of the competent local authorities with regard to return of displaced persons and

refugees may also be a matter to be considered in this connection.” (case no. CH799/2336, *S.P.*, decision to strike out of 2 July 2001, paragraph 15).

8. In deciding on the applicant’s case, the Second Panel’s decision appears to be compatible with the above listed criteria. Hence, the whole circumstances do not justify reviewing the decision in regard to that complaint as prescribed by Rule 64(2)(b).

9. In regard to the complaint of the applicant that the Second Panel wrongly interpreted Article 8 of the Convention, the First Panel notes that the Second Panel decided the applicant’s case in accordance with the Chamber’s well established case-law on Article 8 of the Convention. The First Panel recalls the Chamber’s decision in the cases CH/99/2425-2435, *Ubovic et. al.*, decision on admissibility and merits of 7 September 2001 in which the Chamber says in paragraph 149:

“...these properties did not constitute a home, as protected under Article 8 of the Convention. It is not enough to maintain close ties to a previous home. The fact that one was born at a place or that one’s ancestors had lived and were buried at a place is not sufficient for the place to be considered a “home” for the purposes of Article 8 of the Convention. Also, in the case of Nikola Hajder, the mere intention to establish permanent residence does not make this place his home (see European Court of Human Rights, *Loizidou v Turkey*, judgment of 18 December 1996, Reports 1996-VI, fasc. 26, p. 2216 *et seq.*, paragraph 66).”

Hence, the First Panel is of the opinion that the condition laid out in Rule 64 (2)(b) that the “whole circumstances justify reviewing the decision” is not met when looking at the applicant’s complaint in the request for review.

10. The First Panel is of the opinion that the grounds upon which the applicant’s request for review is based were in essence already examined and rejected on adequate grounds by the Second Panel when it struck out the applicant’s claim in regard to the reinstatement into possession of her apartment and considered the admissibility of the remainder of the case. As none of the issues raised in the request for review meets both of the conditions set out in Rule 64(2), the First Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

11. 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

12. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber