



DECISION ON REQUEST FOR REVIEW

CASE No. CH / 98 / 457

Milan ANUŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on December 2000 with the following members present: 7

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

Having considered the request from the respondent Party, The Federation of Bosnia and Herzegovina, for 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 Chamber refers to the decision of the First Panel, which is appended to the present decision (Annex 1).

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 13 October 2000, the First Panel's decision was delivered in pursuance of Rule 60. On 13 November 2000, the respondent Party, the Federation of Bosnia and Herzegovina, submitted a request for review of the decision.

3. In accordance with Rule 64(1), the request was considered by the Second Panel.

III. THE REQUEST FOR REVIEW

4. The Chamber refers to the request for review, which is appended to the present decision (Annex 2).

IV. OPINION OF THE SECOND PANEL

5. The Second Panel notes that the request for review has been lodged within the time-limit prescribed by Rule 63(2). It is of the opinion, however, that the grounds upon which the respondent Party's request is based were in essence already examined by the First Panel which considered the admissibility and merits of the case. The Second Panel notes that the respondent Party alleges that the First Panel failed to consider the Instructions on the Application of the Law on Abandoned Apartments which pertain to proceedings which could have been brought before the organs of the respondent Party to reinstate the applicant to his apartment. This is an argument that the applicant has not fully exhausted the available administrative remedies. However, the respondent Party raised this and related arguments based upon the same law in challenging the admissibility of the application in its Observations on Admissibility and Merits. The First Panel considered these arguments. It pointed out that the applicant pursued his claims for 4 years and 6 months without receiving final decisions from the relevant organs of the respondent Party. While other recourse may also be available to the applicant, as the respondent Party raises once again, "given the factual background of this case, i.e., the failure of the relevant municipal and judicial authorities to bring the applicant's case to closure, the applicant cannot be reasonably required to continue to pursue any other domestic remedy." (Decision on Admissibility and Merits of 10 October 2000, paragraph 62.) The Second Panel therefore does not consider that "the whole circumstances justify reviewing the decision" as required by Rule 64(2)(b). In addition, the case 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).

6. The Second Panel also notes that the party seeking review, the respondent Party in the proceedings which led to the original decision, further disagrees with the award of monetary relief made in favour of the applicant. However, that involves neither a serious issue affecting the interpretation of the Agreement nor an issue of general importance. Moreover, it cannot be said that the whole circumstances justify reviewing the original decision.

7. In conclusion, the Second Panel unanimously recommends that the Plenary Chamber not accept the request.

V. OPINION OF THE PLENARY CHAMBER

8. 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

9. For these reasons, the Plenary Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

AMD/AN-1001