



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/640

S.J.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 July 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 applicant's request for a review of the decision on admissibility and merits of the Second Panel of the Chamber in the aforementioned application;

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. This case concerns the applicant's attempts to establish ownership over an apartment which he purchased on 3 April 1992. The applicant purchased the apartment from Boris Čorev ("B.Č."), who had purchased the apartment from the former Yugoslav National Army ("JNA") on 24 February 1992.

2. The applicant alleges a violation of his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights ("the Convention") and the right to respect for his home under Article 8 of the Convention, his right to a fair trial within a reasonable time under Article 6 of the Convention and his right to an effective remedy under Article 13 of the Convention.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. On 9 May 2003, the Second Panel delivered a decision finding that the respondent Party had violated the applicant's right to a fair trial within a reasonable time, given that the proceedings are pending before the Municipal Court II in Sarajevo since 1 April 1996. The Second Panel also found that the respondent Party violated the applicant's right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention as the authorities of the Federation failed to recognise his rights to the apartment flowing from the purchase contract which he concluded with B.Č. in 1992.

4. Accordingly, the Second Panel found that the Federation was in breach of Article I of the Agreement and ordered it to take all necessary steps to secure the speedy resolution of the applicant's claim before the Municipal Court II in Sarajevo, and in all further judicial proceedings in the matter. The Federation was further ordered to bring an end to all attempts to evict the applicant from the apartment, pending the issuance of a final and binding decision determining the applicant's rights to the apartment.

5. On 21 May 2003 the applicant submitted a request for review of the decision. In accordance with Rule 64(1) the request was considered by the First Panel on 1 July 2003.

6. In accordance with Rule 64(2), on 3 July 2003, the plenary Chamber considered the request for review and the recommendation of the First Panel, and adopted the present decision.

III. THE REQUEST FOR REVIEW

7. In his request for review, the applicant requests that the Chamber add two more conclusions to the decision in which the organs of the Federation would be ordered to take all necessary steps through legislative, court and administrative actions to withdraw the annulling of the contract on purchase between B.Č. and the JNA concluded on 24 February 1992, and to withdraw the annulling of the contract on purchase between himself and B.Č. concluded on 3 April 1992, both contracts which were declared invalid by the Decree of 22 December 1995, which was adopted as law on 26 January 1996. The applicant points out that his case is similar to the decision the Chamber issued in case no. CH/96/3, 8 and 9 *Medan, Bastijanović and Marković*, decision on the merits of 3 November 1997, Decisions on Admissibility and Merits March 1996-December 1997, which contained a similar conclusion, and therefore, it is warranted to have the above-mentioned conclusions in his decision as well.

8. Also the applicant seeks the Chamber to amend conclusion no. 5 of paragraph 96 whereby the Chamber found it unnecessary to consider the complaint under Article 8 of the Convention. The applicant states that he has been living in the apartment in question since before the war, and then after the reintegration of Grbavica, and he has been paying all the bills related to maintaining the apartment. He can submit the bills as evidence, and his neighbors can also testify. As to the respondent Party's allegation that the apartment in question is used by sub-tenants, the applicant

states that this is only an allegation, and asserts that he can have guests, and is free to dispose of his private property as he wishes. He requests that the Chamber recognise that the apartment in question is his home within the meaning of Article 8 of the Convention.

IV. OPINION OF THE FIRST PANEL

9. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b). The First Panel recalls that, under Rule 64(2), the Chamber “shall not accept the request for review 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.”

10. As to the applicant’s request that the Chamber include a conclusion which would order the respondent Party to take all necessary steps through legislative, court and administrative actions to withdraw the annulling of B.Č.’s contract with the former JNA, the First Panel notes that the applicant is correct in pointing out that the Chamber has issued such orders to the respondent Party in previous decisions concerning contracts concluded under the Law on Securing Housing for the JNA. The First Panel therefore finds that the applicant does point out an inconsistency which could raise a serious question affecting the interpretation or application of the Agreement. Moreover, Articles 39a, 39b, 39c, and 39d of the Law on Sale of Apartments with an Occupancy Right, which remedy the annulling of purchase contracts provided for in the Decree of 22 December 1995 for most contracts concluded under the Law on Securing Housing for the JNA, are not directly applicable to the applicant’s case. However, in reviewing the opinion on the merits, as well as the remedies and conclusions issued by the Second Panel in its decision of 9 May 2003, the First Panel concludes that, given the current legal regime and the numerous Chamber’s decisions issued concerning JNA apartments, the respondent Party cannot apply the Decree of 22 December 1995 to annul the contract between B.Č. and the former JNA. Therefore, a specific conclusion in this regard was not necessary. Thus, as to this aspect of the request for review, the First Panel finds that the circumstances on the whole do not justify reviewing the decision, as required by Article 64(2)(b).

11. As to the applicant’s request that the Chamber include a conclusion which would order the respondent Party to take all necessary steps through legislative, court and administrative actions to withdraw the annulling of his contract with B.Č., the First Panel notes that there is no specific legislation which would provide for the annulment of the applicant’s contract with B.Č. Thus, the First Panel finds that the Second Panel was justified in not issuing any order in this respect. In this regard, the request for review fails to raise “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”, as required by Article 64(2)(a).

12. As to the applicant’s statement in his request for review that the apartment in question is his home within the meaning of Article 8 of the Convention, the First Panel notes that the applicant was provided with ample time during the course of the proceedings before the Chamber to contest the allegation of the respondent Party that sub-tenants were found in the apartment. The applicant did not do so, and therefore, the Second Panel found that it was not necessary to consider the application under Article 8 of the Convention. The First Panel finds that, therefore, in this respect the circumstances on the whole do not justify reviewing the decision, as required by Article 64(2)(b).

13. In conclusion, for the above stated reasons, the First Panel does not find that the conditions for the Chamber to review the decision, as provided in Rule 64(2), have been met. Therefore, the First Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

CH/98/640

14. The plenary Chamber agrees with the First Panel that, for the reasons stated, the request for review does not meet the conditions required by the Chamber pursuant to Rule 64(2) of the Chamber's Rules of Procedure.

VI. CONCLUSION

15. 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