



## DECISION ON REQUEST FOR REVIEW

Case no. CH/98/697

**Bakir DŽONLIĆ**

against

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 April 2000 with the following members present:

Mr. Giovanni GRASSO, Acting 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. Vitomir POPOVIĆ  
Mr. Viktor MASENKO-MAVI  
Mr. Andrew GROTRIAN  
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar  
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the applicant's request 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 Yugoslavia of Bosniak descent. He is the owner of a house located at Milana Rakića street in Banja Luka, in which he lives with his father. The house is also occupied by two families of displaced persons from the Federation of Bosnia and Herzegovina.
2. The case concerns his attempts before the authorities of the Republika Srpska to regain full possession of the house. All of his attempts in this regard have so far been unsuccessful.
3. The cases raise issues principally under Articles 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

## **II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER**

4. On 15 June 1998 the application was forwarded to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina, at the request of the applicant. It was registered on the same day.
5. On 14 September 1998 the applicant requested that the Chamber order the Republika Srpska as a provisional measure to evict the R. and B. families from the house. On 15 October 1998 the Chamber refused this request. On the same day it decided to transmit the application to the respondent Party for its observations on its admissibility and merits. No such observations were received.
6. On 13 May 1999 the First Panel of the Chamber declared the case admissible. This decision was sent to the Parties on 25 August 1999. On 12 January 2000 the First Panel adopted its decision on the merits of the case. In its decision the First Panel reached the following conclusions:

“1. by 5 votes to 1, that the impossibility for the applicant to have the merits of his civil action determined by a tribunal constitutes a violation of his right to effective access to court within the meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

2. by 5 votes to 1, that there has been a violation of the right of the applicant to respect for his home and family life within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. by 5 votes to 1, that there has been a violation of the right of the applicant to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, to order the Republika Srpska, as soon as possible and in any event no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, to take all necessary steps to ensure the enforcement of the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka of 27 May 1999 ordering that the applicant be entitled to regain full possession of his house;

5. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, within one month of the date of the present decision becoming final in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,960 (one thousand nine hundred and sixty) Convertible Marks as compensation for the occupation of his house by the R. and B. families and the utility costs incurred by such occupation in respect of the period from 1 August 1999 until 29 February 2000;

6. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, as compensation for the occupation of his house by the R. and B. families and the utility costs incurred by such occupation, within two months of the date of the applicant regaining full possession of his house, the sum of 280 (two hundred and eighty) Convertible Marks in respect of each full month from 1 March 2000 until the date he regains such possession;

7. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, within one month of the date of the present decision becoming final in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 2,000 (two thousand) Convertible Marks as compensation for moral suffering;

8. unanimously, to reject the remainder of the applicant's claim for compensation as unsubstantiated,

9. by 5 votes to 1, to order that simple interest at an annual rate of four per cent will be payable on the sum awarded in conclusions 5, 6 and 7 above after the expiry of the period set in those conclusions for the payment of such sums; and

10. unanimously, to order the Republika Srpska to report to it, within two weeks of the expiry of the time-limit referred to in conclusion 4 above, on the steps taken by it to comply with the above orders."

7. On 11 February 2000 this decision was delivered, in pursuance of Rule 60 of the Rules of Procedure. On 29 February 2000 the applicant submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 4 April 2000, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the Second Panel's recommendation on 5 April 2000.

### III. REQUEST FOR REVIEW

8. In his request the applicant argues that the decision of the First Panel, insofar as it concerns the remedies ordered against the Republika Srpska, should be reconsidered. He claims that he should be awarded compensation for the occupation of the house and in respect of utility costs as and from 13 February 1998, the date the Ministry for Refugees and Displaced Persons issued a decision entitling the current occupants of the house to occupy it, rather than from 1 August 1999, the date from which the First Panel awarded such compensation. He claims that the decision of 13 February 1998 was not in accordance with the legislation in force in the Republika Srpska and therefore the Republika Srpska is responsible as and from that date for the occupation of his house. The applicant suggests that if he cannot be awarded compensation in respect of utility costs incurred by the current applicants, these costs should be written off or some other suitable solution found.

### IV. OPINION OF THE SECOND PANEL

9. 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).

10. The applicant claims that part of the compensation award ordered by the First Panel should be reconsidered. The Second Panel recalls that if the Chamber finds a violation of any of the rights of an applicant as protected by the Agreement, it is empowered by Article XI(1)(b) to order the respondent Party to pay monetary relief to that applicant.

11. The Second Panel notes that the First Panel considered at length the remedies to be ordered. It examined in detail the period from which the Republika Srpska could be considered to be responsible for the occupation of his house by displaced persons (at paragraphs 81-85). The Second Panel considers that the remedies ordered by the First Panel are reasonable in view of the violations of the applicant's rights it found. The arguments of the applicant therefore do not raise a serious

question affecting the interpretation or application of the Agreement or a serious issue of general importance and therefore do not satisfy the first condition set out in Rule 64(2).

12. Having found that the first condition set out in Rule 64(2) has not been satisfied, it is not 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 Second Panel, unanimously, recommends that it be rejected.

#### **V. OPINION OF THE PLENARY CHAMBER**

13. 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.

14. The plenary Chamber agrees with the Second Panel, for the reasons stated above, that 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**

15. For these reasons, the Chamber, unanimously,

**REJECTS THE REQUEST FOR REVIEW.**

(signed)  
Anders MÅNSSON  
Registrar of the Chamber

(signed)  
Giovanni GRASSO  
Acting President of the Chamber