# DECISION ON REQUEST FOR REVIEW

**Cases nos.**
**CH/98/752, CH/98/827, CH/98/828, CH/98/847,**
**CH/98/848, CH/98/1102, CH/98/1104, CH/98/1114, CH/98/1117,**
**CH/98/1119, CH/98/1120, CH/98/1121, CH/98/1125,**
**CH/98/1128, and CH/98/1129**

**Mirsada BAŠIĆ, Sakib GALIĆ, Hikmet and Muharema BEGOVIĆ, Ismet MISIMOVIĆ,**
**Ahmet AHMETAGIĆ, Hajrija GANIĆ, Emir KOLARIĆ, Mujo ZUKANOVIĆ, Mujaga HADŽIĆ,**
**Atif GOLUBIĆ, Haso SAMARDŽIĆ, Nedžad HADŽIHAFIZOVIĆ, Šuhra RIZVIĆ,**
**Muharem ĆEHAJIĆ, and Mehmed BAHIĆ**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 11 February 2000 with the following members present:

Ms. Michèle PICARD, 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. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request for a review of the decision of the Second Panel of the Chamber on the admissibility and merits of the aforementioned cases;

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 applicants are citizens of Bosnia and Herzegovina of Bosniak descent. They are owners of real property in the Gradiška area in the Republika Srpska, which they were forced to leave during the war. The great majority of these properties are occupied by refugees and displaced persons of Serb origin. Most of the applicants have now returned to the area.

2. The cases concern their attempts before various authorities of the Republika Srpska to regain possession of their property. The applicants have taken various steps to regain possession of their properties. The majority of the applicants have so far been unsuccessful.

3. The cases raise issues principally under Articles 6 and 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention and under Article II(2)(b) of the Agreement.

## II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between 3 July and 26 August 1998 and registered between 9 July and 27 August 1998.

5. In December 1998 the Second Panel of the Chamber decided, pursuant to Rule 49(3)(b), to transmit the applications to the respondent Party for observations on their admissibility and merits. The respondent Party submitted observations in the cases on 19 March and 21 June 1999.

6. On 6 December 1999, having decided to join the cases, the Second Panel adopted its decision on the admissibility and merits. It found that there had been a violation by the respondent Party of the applicants' rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. Further, all of the applicants had been discriminated in the enjoyment of those rights, on the ground of national origin. The respondent Party was, as a result, in breach of Article I of the Agreement. Accordingly, the respondent Party was ordered, *inter alia*, to enable the applicants who had not already done so to regain possession of their properties without further delay and to pay to the applicants certain specified amounts in compensation.

7. On 10 December 1999 the Second Panel's decision was delivered, in pursuance of Rule 60. On 3 January 2000 the respondent Party submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the First Panel which, on 7 February 2000, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the First Panel's recommendation on 11 February 2000.

## III. REQUEST FOR REVIEW

8. In its request the respondent Party argues that the decision of the Second Panel should be reconsidered as the cases raise serious issues of general importance concerning the interpretation of the General Framework Agreement for Peace in Bosnia and Herzegovina.

### A. Annex 7 of the General Framework Agreement

9. The respondent Party points out that Annex 7 of the General Framework Agreement was entered into by the Parties, in order to allow the free return of refugees and displaced persons to their prewar homes, in accordance with a plan designed for this purpose drawn up in cooperation with the United Nations High Commissioner for Refugees ("UNHCR"). In addition, the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission") was established to assist in this process. The respondent Party points out that the above reflects the recognition of the Parties of the fact that a large number of citizens of Bosnia and Herzegovina abandoned their property due to the war and accordingly do not currently enjoy possession of it. To remedy this problem, the Parties established a mechanism for the return of property into the possession of its owners.

10. Article XIII of Annex 7 allows the Parties to temporarily house refugees and displaced persons in vacant property, pending the determination of ownership of such property by the Annex 7 Commission. The respondent Party passed the Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96, "the old law"), to provide a legal framework for this.

11. The respondent Party states that the applicants left their properties during the war and that, therefore, those properties were abandoned within the meaning of Annex 7. Accordingly, it acted in accordance with Annex 7 in allowing those properties to be used by refugees and displaced persons, which is a legitimate aim. In addition, the respondent Party claims that it was not responsible for the fact that the applicants left their properties, as this was a result of the war.

12. The respondent Party states that it has not taken any actions to prevent the applicants from regaining possession of their properties in accordance with the procedure established by Annex 7. On the contrary, by adopting the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, as amended (OG RS no. 38/98, "the new law"), it established a procedure to regain possession of property where such an application has not been made to the Annex 7 Commission. It points out that under the new law, a person is entitled at any time to apply to the Annex 7 Commission to regain possession of their property. In this event, the new law provides for the proceedings to be stayed pending the examination by the Annex 7 Commission. Accordingly, individuals have been provided with the right to choose to which organ they apply to regain possession of their property.

13. The respondent Party therefore considers that there has been no violation of the rights of the applicants as guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. This is because at the time of filing their applications to the Chamber, the applicants were not the owners of the properties as this issue was being dealt with under the mechanisms described above. Decisions issued in accordance with these procedures have the effect of declaring the applicants to be the owners of their properties and entitle the applicants to regain possession of their properties. Accordingly, the Chamber is not competent to consider the applications which, instead, should be dealt with under the new law.

14. Furthermore it is allegedly not possible to equate "ownership" and "possession" of the properties concerned in the applications. The owner of a property does not always possess a property and the right to use abandoned property is to be considered a "temporary possession" until such time as that right is terminated by the competent organs. This matter is dealt with by the relevant laws.

15. The respondent Party states that it dealt with the issue of accommodating refugees and displaced persons in the same way as did the Federation of Bosnia and Herzegovina. It states that people of all national origins were forced to leave their properties during the war and that due to this fact it cannot be concluded that only the applicants were discriminated against in the enjoyment of their rights as guaranteed by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, as found by the Second Panel in its decision.

**B. Exhaustion of domestic remedies**

16. The respondent Party also reiterates that, in its observations during the proceedings before the Second Panel, it pointed out that the cases are inadmissible for failure to exhaust domestic remedies as required by Article VIII(2)(a) of the Agreement. While not disputing that the Court of First Instance in Gradiška declared itself incompetent to deal with the applicants' claims for repossession of their property, it refers to a decision of the Regional Court in Banja Luka in an appeal brought by another person, not an applicant in the present case, where that court returned the case for re-examination to the Court of First Instance, where the matter is still pending.

17. This allegedly shows that efficient remedies are available to the applicants at domestic level and that the applications were filed with the Chamber before these had been exhausted.

18. The respondent Party further states that both the old and the new law require that matters concerning abandoned property are dealt with by an administrative procedure rather than by the courts. Accordingly, the courts of the Republika Srpska are not competent to deal with requests for the return of property. It also claims that the applicants did not exercise their rights of appeal against the failure of the administrative organs to decide upon their appeals. In addition, certain of the applicants did not initiate proceedings before the courts of the Republika Srpska. Concerning the applicants who received decisions under the new law entitling them to regain possession of their properties, none of them requested enforcement of these decisions, as is required under the relevant national law.

19. Due to the above factors, the applicants have not exhausted the domestic remedies available to them, as they are required to do. Therefore the Chamber is unable to consider the applications.

### C. Compensation awards

20. Regarding the sums awarded for compensation for mental suffering and rental payments, the respondent Party considers that these awards should be reconsidered. It states that the applicants did not apply for compensation under national law and also that the Second Panel did not consider the question of when the damage concerned occurred. It claims that the Chamber should apply national law in determining the nature and amount of compensation to be awarded to the applicants.

21. In addition, the respondent Party claims that the applicants did not supply evidence of the costs they incurred. It considers that these claims should have been rejected for the same reasons as the rejection of the claim for compensation in the *Pletilić* case (no. CH/98/777, decision on admissibility and merits delivered on 8 October 1999, Decisions August-December 1999).

22. Furthermore, the sums awarded to the applicants for mental suffering are unjustified as this suffering was a consequence of the war in Bosnia and Herzegovina and was suffered by all citizens of that country, not just the applicants. In the event that the Chamber finds that compensation should be awarded to the applicants under this head it states that the sum awarded, KM 1,200, is excessive as it is equivalent to six months average wage in the Republika Srpska.

23. For all of the above reasons, the respondent Party suggests that a review of the decision is justified and asks the Chamber to so decide.

## IV. OPINION OF THE FIRST PANEL

24. The First Panel recalls that under Article X(2) of the Agreement the Chamber 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.

25. The First 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).

**A. The merits of the challenged decision**

26. As regards the respondent Party's arguments under Annex 7, the First Panel notes that it raised substantively identical arguments in the proceedings before the Second Panel and that this Panel dealt with the issue in detail in its decision. At paragraph 134 of its decision in the cases, the Second Panel held that Article VIII(2)(d) of the Agreement enables the Chamber to declare an application inadmissible if the same matter is already pending before the Annex 7 Commission. However, as none of the applicants had applied to that Commission, the cases could not be declared inadmissible under that provision.

27. Regarding the respondent Party's claim that there has been no violation of the rights of the applicants as protected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the First Panel notes that the respondent Party did not submit any observations under these provisions during the proceedings before the Second Panel. In any event, the Second Panel found a violation of the rights of the applicants as protected by these provisions of the Convention only after a detailed examination of that provision (see paragraphs 137-151 and 152-160 of the decision). The First Panel does not consider that the argument of the respondent Party in this regard satisfies the first condition set out in Rule 64(2), as it does not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance.

28. The respondent Party further claims that the Second Panel was wrong to conclude that only the applicants were discriminated against. The First Panel notes that the Second Panel in its decision did not decide that only the applicants had been discriminated against. The Chamber can only decide on the cases before it and cannot make general statements. Thus, this argument also fails to satisfy the first condition set out in Rule 64(2).

**B. Exhaustion of domestic remedies**

29. The respondent Party claims that the applicants cannot be considered to have exhausted the domestic remedies available to them.

30. The First Panel notes that the Second Panel considered in detail the question of whether the applicants had exhausted domestic remedies (at paragraphs 125-132). The First Panel also notes that the decision of the Regional Court in the case referred to by the respondent Party does not alter the fact that the courts in the Republika Srpska, including in that case, have consistently declined jurisdiction over matters concerning abandoned property. In the proceedings before the Second Panel and in its request for review, the respondent Party itself seeks to justify this position by reference to the relevant laws of the Republika Srpska. This serves to further reinforce the finding of the Second Panel at paragraph 129 of its decision that "having recourse to the courts ... does not appear to be a remedy at all". The respondent Party's argument in this regard thus fails to satisfy the first condition set out in Rule 64(2).

**C. Compensation awards**

31. The respondent Party also claims that the compensation awards ordered by the Second Panel should be reconsidered. The First 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. There is no requirement that an applicant must first seek compensation at domestic level.

32. The First Panel notes the respondent Party's claim that the Second Panel failed to consider when the damage occurred. The Second Panel did, however, consider this issue in detail (at paragraph 206 of its decision) and ordered compensation to be paid accordingly.

33. The respondent Party also claims that the claims for compensation made by the applicants should be rejected on the same ground as in the Chamber's decision in *Pletilić* (ibid.). The First Panel notes that the claim for compensation in that case concerned costs for redecorating of the property of that applicant. It was rejected on the ground that it related to potential future costs and was unsubstantiated. The First Panel notes that similar claims in the present cases were rejected on the

same ground. Consequently, this argument of the respondent Party does not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and therefore does not satisfy the first condition set out in Rule 64(2). The First Panel makes the same consideration with regard to the other arguments made by the respondent Party concerning the compensation awards.

### D. The First Panel's conclusion

34. In conclusion, the First Panel notes that the grounds upon which the respondent Party's request for review is based were, in large part, raised in the proceedings before the Second Panel. In any event, the First Panel does not consider that the case raises "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" or that "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 First Panel, unanimously, recommends that it be rejected.

## V. OPINION OF THE PLENARY CHAMBER

35. The plenary Chamber agrees with the First 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

36. For these reasons, the Chamber, unanimously,

**REJECTS THE REQUEST FOR REVIEW.**

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber