



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/799

Željko BRČIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 July 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

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

Having considered the respondent Party's and the applicant's requests 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 AND SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. In his application, the applicant complained of the failure of the competent authorities to reinstate him into his apartment in the Municipality Mostar Stari Grad. The applicant claimed that this failure violated his rights as protected under Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and his right not to be discriminated against.

2. On 6 May 2002 the First Panel issued a decision finding that the authorities of the Federation of Bosnia and Herzegovina (the Federation) had, by not fulfilling their obligation to permit the reinstatement of the applicant into his apartment, interfered with his right to respect for his home and violated Article 8 of the Convention. The Chamber further found a violation of the applicant's right to peaceful enjoyment of his possession guaranteed by Article 1 Protocol No.1 to the Convention. Accordingly the Chamber found that the Federation was in breach of Article I of the Agreement and ordered it to enable the applicant to regain possession of his apartment without further delay and at the latest one month after the date on which the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. The Federation was further ordered to pay the applicant compensation for non-pecuniary damage in the amount of 1200 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the applicant's suffering as a result of his inability to regain possession of his apartment. Moreover the Federation was ordered to pay compensation on the amount of 8800 KM for loss of use of his home. Finally, the Federation was also ordered to pay the applicant 200 KM for each further month that he remains excluded from his apartment as from June 2002 until the end of the month in which he is reinstated.

3. On 10 May 2002 the First Panel's decision was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber's Rules of Procedure.

4. On 11 June 2002 the Federation and the applicant submitted a request for review of the decision. In accordance with Rule 64(1) the requests for review were considered by the Second Panel.

II. THE REQUESTS FOR REVIEW

5. In its request for review, the respondent Party challenges the First Panel's decision on the following grounds:

- (a) that the Chamber should have declared the case inadmissible for non-exhaustion of domestic remedies as the respondent Party had requested in its written observations of 2 April 2001;
- (b) that the Chamber had misinterpreted the respondent Party's observations and that it has continuously considered the apartment of the applicant as his home;
- (c) that the order to compensate the applicant for loss of possibility to use his home was excessive.

6. In his request for review, the applicant challenges the First Panel's decision on the following grounds:

- (a) that the decision does not solve his working and health situation;
- (b) that the compensation is not proportionate to his suffering.

III. OPINION OF THE SECOND PANEL

7. The Second Panel notes that the requests for review have been lodged within the time limit prescribed by Rule 63(3)(a). The Second Panel recalls that under Rule 64(2) the Chamber 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.

8. The respondent Party and the applicant have failed to give any grounds as to why the issues referred to in the requests for review would raise “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”.

9. As the requests for review fail to meet the first of the two requirements set forth in Rule 64(2), the Second Panel unanimously, recommends that the requests be rejected.

IV. OPINION OF THE PLENARY CHAMBER

10. The plenary Chamber agrees with the Second Panel that, for the reasons stated, the requests for review do not meet the first of the two conditions required for the Chamber to accept such requests pursuant to Rule 64(2).

V. CONCLUSION

11. For these reasons, the Chamber, unanimously,

REJECTS THE REQUESTS FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber