



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/916

Nebojša TOMIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 March 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, 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 of the aforementioned case;

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 AND SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. In his application filed on 1 September 1998, the applicant complained of violation of right to home and peaceful enjoyment of possession and requested to regain possession over the apartment he occupied before the war.
2. On 8 January 2002 the Second Panel adopted its decision on admissibility and merits in the present case. The Second Panel found that the respondent Party violated the applicant's right to home and peaceful enjoyment of property and awarded him compensation for the loss of use of the apartment in the amount of 3000 KM. On 11 January 2002 the Second Panel's decision was delivered to the parties in pursuance of Rule 60.
3. On 11 February 2002 the respondent Party submitted a request for review of the decision. In accordance with Rule 64(1) the request for review was considered by the First Panel.
4. On 21 February 2002 the respondent Party submitted further observations related to its request for review of the Chamber's decision in present case. The respondent Party informed the Chamber that on 28 January 2002 the applicant had been reinstated into possession of his apartment and asked the Chamber to strike out the application.

II. THE REQUEST FOR REVIEW

5. The party seeking review disagrees with the award of monetary compensation made by the Second Panel in favour of the applicant. The party seeking review refers to Rule 63 (2) and (3) of the Chamber's Rules of Procedure, which allows the plenary Chamber to review the decision of a Panel on the merits, including a decision on pecuniary or other remedies. It further argues that the Second Panel failed to establish a causal link between failure of bodies of the respondent Party to return the applicant into possession of his apartment and possible non-pecuniary damage.
6. The observations referred to in paragraph 4 above evidence that the applicant was reinstated into his pre-war apartment on 28 January 2002. Therefore, the respondent Party asks the case to be struck out of the Chamber's list of cases.

III. OPINION OF THE FIRST PANEL

7. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). The First 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 First Panel is of the opinion that the Second Panel's award of compensation is in accordance with the plenary Chamber's case law and is based on adequate grounds.
9. In relation to the further observations of the respondent Party, mentioned in paragraph 4 above, the First Panel finds that the stated fact can be considered as partial compliance with the Chamber's decision and not as a reason which could justify review of the decision or striking the case out of the Chamber's list of cases.
10. Therefore, the First Panel is of the opinion that the request for review 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). Accordingly, the First Panel unanimously recommends that the request be rejected.

IV. OPINION OF THE PLENARY CHAMBER

11. The plenary Chamber agrees with the First Panel that, for the reasons stated, the request for review does not meet first of the two conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

V. CONCLUSION

12. 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