



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/2028

Nenad CRNOGORČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 February 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 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 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

1. The applicant's father was the occupancy right holder over the apartment in Sarajevo, Ulica Grbavička 66, apartment no. 4. On 18 March 1992 the applicant's father concluded a contract on purchase of the apartment with the former SFRY Federal Secretariat for National Defense – Military Board for Civil Engineering ("Vojno građevinska direkcija"). Taking into account the contributions to the JNA Housing Fund made by the applicant's father, the purchase price was determined to amount to 0.00 dinar. The applicant's father died on 7 March 1993 and the applicant's mother continued occupying the apartment until her death in 1998. The applicant then initiated proceedings before the Municipal Court in Sarajevo for the establishment of inheritance. On 2 April 1999 the Court issued a procedural decision on inheritance. It is stated in the procedural decision that the inheritance of the late Miodrag Crnogorčević consists of rights and obligations under purchase contract of real estates, which was concluded on 18 March 1992. The applicant and his brother were declared the legal inheritors. The applicant states that on 31 March 1999 military authorities informed him that the apartment in question was to be sealed on 12 April 1999 if they did not vacate the apartment and did not return the keys.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 11 October 2002 the Second Panel delivered a decision finding that the respondent Party interfered with the applicant's right to peaceful enjoyment of possessions. The Second Panel found that the eviction proceedings initiated against the applicant constitute a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. The Second Panel also found "that the refusal to register the applicant as the owner of the apartment constitutes a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention" (conclusion no. 3).

3. Accordingly the Chamber found that the Federation of Bosnia and Herzegovina ("the Federation") was in breach of Article I of the Agreement and ordered it to take all necessary steps to terminate the eviction proceedings against the applicant swiftly. The Federation was further ordered "to take all necessary steps to register the applicant as the owner of his apartment swiftly, and in any event, not later than one month after the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure" (conclusion no. 5). The Second Panel decided that its order for provisional measures issued on 12 April 1999, preventing the applicant's eviction, will remain in force until the applicant is registered in the land books as the owner of the apartment.

4. On 12 November 2002 the respondent Party submitted a request for review of the decision. In accordance with Rule 64(1) the request was considered by the First Panel on 2 December 2002.

5. On 9 December 2002 the applicant submitted to the Chamber a judgement of the Municipal Court II Sarajevo of 13 December 2001, ordering the defendant (Federation of BiH, Ministry of Defence, represented by the Military Public Attorney) to tolerate the registration of the right of ownership to be carried out in the Book of Deposited Registry Entries of the Municipal Court I Registry Office in Sarajevo, on the basis of the contract on the purchase ... concluded between the State SFRY SSNO ... as the seller, and Miodrag Crnogorčević as the purchaser. ...". The Federal Ministry of Defence represented by the Military Public Attorney filed an appeal. The Cantonal Court rejected the appeal on 23 October 2002, confirming the first instance judgement.

6. In accordance with Rule 64(2), on 7 February 2003 the plenary Chamber considered the request for review and the recommendation of the First Panel, as well as the documents submitted by the applicant. On this date, the Chamber adopted the present decision.

III. THE REQUEST FOR REVIEW

7. In the request for review, the respondent Party challenges the conclusion no. 5 of the Second Panel's decision, ordering the Federation "to take all necessary steps to register the applicant as the owner of his apartment swiftly, and in any event, not later than one month after the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure". The respondent Party argues that the applicant's father, as the buyer, concluded a contract on purchase of real estate with the former JNA, as the seller. The respondent Party concludes from the facts established in this case that, on the basis of the contract on purchase of real estate, the applicant's father failed to request the special consent from the seller, the SFRY. This special consent constitutes *clausula intabulandi*. The respondent Party adds that the contract does not contain the *clausula intabulandi* (consent for transfer of ownership). The contract concluded by the applicant's father could not be even *justus titulus* for obtaining ownership. The respondent Party notes that the seller did not give that consent, or the applicant did not enclose evidence on that. Therefore, the applicant's father could not be considered the owner, but only the buyer of the apartment, who as such had the right to seek consent for transfer of ownership from the other contracting party on the basis of the contract.

8. In addition, the respondent Party states that the consent for transfer of the ownership right should now be sought from the Federation of Bosnia and Herzegovina, because the assets of the former SFRY, which belonged to JNA and other state bodies of SFRY, and are located on the territory of the Federation of BiH, became property of the Republic of Bosnia and Herzegovina, and then of the Federation of Bosnia and Herzegovina.

9. The respondent Party proposes that the Chamber review its order in conclusion no. 5 in paragraph 66 of this decision. According to the Federation the Chamber should order instead that the applicant be given the consent for transfer of ownership and registration into the land registry of the Municipal Court I in Sarajevo, as the universal successor of all the rights and obligations of the deceased Crnogorčević Miodrag, on the condition that in the procedure it is established that the contract on purchase of apartment, which the deceased Crnogorčević Miodrag concluded with the Secretariat for Federal National Defence – JNA, is legally valid, i.e. that the full sales price was paid and that it was concluded prior to 15 February 1992.

10. The respondent Party submits that its challenge of the Second Panel's decision raises serious issues concerning the application of the Agreement, raises serious issues of general importance and that the complete situation justifies the review of the decision. Therefore the Federation requests the Chamber to review its decision.

IV. OPINION OF THE FIRST PANEL

11. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(a). 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.

12. The First Panel has next considered the arguments summarised in paragraphs 5 to 7 above as to the form of the order made in conclusion no. 5 of the Second Panel's decision (that the respondent Party "take all necessary steps to register the applicant as the owner of his apartment"). In essence, the position of the respondent Party appears to be that the Panel should not have made an order in unconditional terms, but should have left it open to the competent domestic authorities to refuse registration if the validity of the contract was not established. The First Panel considers that this aspect raises "a serious question affecting the interpretation or application of the Agreement" and "that the whole circumstances justify reviewing the decision", as required under Rule 64(2)(a) and (b). Therefore, by 4 votes to 2, the First Panel recommends that the request for review be accepted in respect of conclusions no. 3 and 5.

V. OPINION OF THE PLENARY CHAMBER

13. The plenary Chamber notes that the First Panel recommended that the request for review be accepted on the ground that the Second Panel “should not have made an order [to register the applicant as owner] in unconditional terms, but should have left it open to the competent domestic authorities to refuse registration if the validity of the contract was not established”. The plenary Chamber further notes that already on 13 December 2001 the Municipal Court II Sarajevo had ordered the Federation of BiH, Ministry of Defence, to tolerate the registration of the right of ownership with the Municipal Court I Registry Office in Sarajevo. Neither party to the proceedings before the Chamber had submitted this decision, which establishes that the contract on purchase is valid, to the Chamber before the adoption of the decision of the Second Panel on 11 October 2002. The Cantonal Court confirmed the judgment of the Municipal Court II on 23 October 2002. The Chamber was informed of these developments after the adoption of the opinion of the First Panel in the request for review proceedings. In the light of these decisions of the domestic courts, the plenary Chamber finds that the objection raised by respondent Party and accepted by the First Panel as a ground deserving review, is now moot. For this reason the plenary Chamber decides to reject the request for review.

VI. CONCLUSION

14. For these reasons, the Chamber, by 13 votes to 1

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber