



**DECISION ON REQUEST FOR REVIEW
OF THE DECISION ON THE ADMISSIBILITY AND MERITS**

DELIVERED IN WRITING ON 22 JULY 1998

in

CASE No. CH/96/41

Milorad MARČETA

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber of Bosnia and Herzegovina, sitting in plenary session on 15 July 1998 with the following members present:

Michèle PICARD, President
Manfred NOWAK, Vice-President
Dietrich RUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jakob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Vitimir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the request for review by the Federation of Bosnia and Herzegovina submitted on 4 May 1998;

Adopts the following Decision on the request for review under Article X (2) of the Human Rights Agreement (“Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent and a resident of Prokuplje. Before the war, he lived in Sanski Most, which now lies in the Federation.
2. On 22 October 1996 the applicant returned to Sanski Most to visit his house and the local cemetery. He was recognised as a Bosnian Serb by persons who had known him before he left Sanski Most, including at least one person who had lost a son allegedly killed by the Bosnian Serb side. The applicant's presence was reported to the authorities and he was subsequently arrested.
3. On the day of his arrest, the Chief of the Sanski Most police ordered that the applicant be detained for a maximum of three days on suspicion of an unspecified criminal act. On 25 October 1996 the investigative judge of the Higher Court in Bihać charged the applicant with war crimes and ordered his pre-trial detention for a period of one month.
4. On 21 November 1996 the applicant was indicted on war crimes charges. On 27 November 1996 the applicant appealed against the indictment, alleging firstly, that there was no *prima facie* evidence of his guilt and secondly, that the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague had not given prior approval of the prosecution as required by the Rome Agreement of 18 February 1996 (the "Rules of the Road").
5. On 8 August 1997 the ICTY informed the Embassy of Bosnia and Herzegovina in The Hague that there was insufficient evidence by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law.
6. On 12 August 1997 the Cantonal Court and the Cantonal Prosecutor's Office in Bihać were informed of ICTY's decision. The applicant was released the same day.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina on 6 June 1997 and registered on 27 June 1997.
8. On 3 December 1997 a public hearing was held in the case. Both the applicant and the respondent Party were present at the hearing.
9. On 6 April 1998 the Chamber delivered its Decision on the Admissibility and Merits. The Chamber found that the applicant's arrest and detention involved a violation of Article 5 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention") and that the respondent Party was thereby in breach of its obligations under Article I (4) of the Agreement. The Chamber also found that the applicant suffered discrimination on the ground of his national origin in the enjoyment of his rights under Article 5 (1) of the Convention and Articles 9 (1), 12 (1) and 26 of the International Covenant on Civil and Political Rights and that the respondent Party was thereby in breach of its obligations under Article I (14) of the Agreement. As compensation for these violations, the Chamber ordered the respondent Party to, *inter alia*, pay the applicant the sum of 30,000 German Marks for pecuniary and non-pecuniary damage.
10. On 4 May 1998 the respondent Party submitted a request for review ("Request") of the Decision on the Admissibility and Merits. The Request was stated to be made on the basis of Rules 63, 64, 65 and 66 of the Chamber's Rules of Procedure ("Rules").
11. On 9 June 1998 the plenary Chamber considered the Request.

III. REQUEST FOR REVIEW

12. In its Request the respondent Party argued firstly, that the Chamber should have applied national laws, in particular the Law on Obligation Relations and the Law on Criminal Procedure, to determine the form and amount of compensation to be awarded. Consequently, the respondent Party argued that the amount awarded by the Chamber was excessive.

13. Secondly, the respondent Party argued that the applicant had not exhausted all domestic remedies available to him and that his claim for compensation was thus premature. In particular the respondent Party pointed out that the Law on Criminal Procedure provides that persons who have suffered damage may apply to the competent administrative organ or court for an agreement on the existence of damage, and the form and sum of compensation.

IV. OPINION OF THE CHAMBER

14. Before considering the merits of the Request, the Chamber must decide whether it is within its competence taking into account the relevant provisions of the Agreement and the Rules.

A. The Agreement

15. Article X (2) of the Agreement, entitled "Proceedings before the Chamber", provides for a review of Decisions of the Chamber in certain defined circumstances. It provides as follows:

"The Chamber shall normally sit in panels of seven, composed of two members from the Federation, one from the Republika Srpska, and four who are not citizens of Bosnia and Herzegovina or any neighbouring state. When an application is decided by a panel, the full Chamber may decide, upon motion of a party to the case or the Ombudsman, to review the decision; such review may include the taking of additional evidence where the Chamber so decides. References in this Annex to the Chamber shall include, as appropriate, the Panel, except that the power to develop general rules, regulations and procedures is vested in the Chamber as a whole."

16. Article XI (3) of the Agreement, entitled "Decisions", provides as follows:

"Subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding."

17. It is accordingly clear that the only possibility of a review of a Decision of the Chamber is where a decision is made by a Panel and one of the parties or the Ombudsperson requests a review of it.

18. In the present case, the Decision on the Admissibility and Merits was made by the plenary Chamber. Accordingly, the Agreement does not provide for its review.

B. The Rules

19. The Request was based on Rules 63, 64, 65 and 66. Rule 63 provides as follows:

"1. Upon motion of a party to the case or the Ombudsperson the full Chamber may decide to review:

- a decision of a Panel declaring an application inadmissible under paragraph 2 of Article VIII of the Agreement;

- a decision of a Panel to reject an application under Article VIII paragraph 3 of the Agreement;

- a decision of a Panel on the merits of an application, including a Decision on pecuniary or other remedies, under Article XI of the Agreement.

2. Any such request for review shall be made within one month of the date on which the Panel's reasoned decision is communicated to the Parties under Rule 52 or delivered under Rule 60 and shall specify the grounds of the request."

20. Rule 64 (2) provides as follows:

"The Plenary Chamber shall consider the request for review and the recommendation of the Panel and decide whether to accept the request or not. 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."

21. Rule 65 concerns the procedure to be followed by the Chamber in considering requests for review that it has accepted.

22. Rule 66 (1) provides as follows:

"Decisions of the Chamber shall be final and binding in accordance with paragraph 3 of Article XI of the Agreement."

Rule 66 (1) - (4) concerns decisions of Panels.

23. It can be seen that the Rules follow and elaborate upon the provisions of the Agreement relating to the review of Decisions of the Chamber. As provided for in the Agreement, the Rules only provide for a review, in certain defined circumstances, of decisions issued by a Panel. They do not provide for any review of decisions of the plenary Chamber in any circumstances.

24. In light of the provisions of the Agreement and the Rules outlined above, it is clear that no review of decisions of the plenary Chamber is provided for and that such decisions are final and binding.

25. For these reasons, the Chamber unanimously

DECIDES TO REJECT THE REQUEST FOR REVIEW.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber