



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/896

Mirko ČVOKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 September 2000 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. Vitomir POPOVIĆ
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the request of the Federation of Bosnia and Herzegovina for 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 is a citizen of Bosnia and Herzegovina of Serb descent, resident in Banja Luka. On 1 June 1996, while visiting his pre-war home in Glamoč in the Federation of Bosnia and Herzegovina, he was detained by Bosnian Croat police officers. He was detained in various places until 16 July 1996, when, after the intervention of the International Committee of the Red Cross, he was released. During his detention he was subjected to verbal abuse and threats, and forced to perform hard labour. The applicant was never informed of the reasons for his arrest and detention and was at no time brought before a judge or other officer exercising judicial power.
2. The cases raise issues principally under Articles 3, 4 and 5 of the European Convention on Human Rights, under Article 1 of Protocol No. 1 to the Convention and under the provisions of the Agreement guaranteeing the right not to be discriminated against in the enjoyment of the rights enumerated in the Appendix thereto.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 24 August 1998 and registered on the same day.
4. On 10 May 2000 the Second Panel of the Chamber adopted its decision on the admissibility and merits of the case. In its decision the Second Panel reached the following conclusions:
 - “1. by 5 votes to 2, to declare the application admissible;
 2. by 6 votes to 1, that the arrest and detention of the applicant by the police in Glamoč between 1 June and 16 July 1996 constituted a violation of the right of the applicant not to be subjected to inhuman and degrading treatment as guaranteed by Article 3 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;
 3. by 6 votes to 1, that the forcing of the applicant to carry out hard labour during his detention constituted a violation of his right not to be subjected to forced or compulsory labour as guaranteed by Article 4 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
 4. by 6 votes to 1, that the arrest and detention of the applicant by the police in Glamoč between 1 June and 16 July 1996 constituted a violation of the right of the applicant to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
 5. by 4 votes to 3, that the failure to inform the applicant promptly of the reason for his arrest constituted a violation of his right as guaranteed by Article 5 paragraph 2 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
 6. unanimously, that Article 5 paragraph 3 of the Convention is inapplicable in the present case;
 7. by 6 votes to 1, that the inability of the applicant to take proceedings to challenge the lawfulness of his detention constituted a violation of his right as guaranteed by Article 5 paragraph 4 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
 8. by 6 votes to 1, that the non-availability to the applicant of an enforceable right to compensation in respect of the illegal arrest and detention he suffered constituted a violation of the right of the applicant as guaranteed by Article 5 paragraph 5 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
 9. unanimously, that it is not necessary to examine the application under Articles 8 and 13 of the Convention;
 10. by 6 votes to 1, that the taking from the applicant of his personal property upon his arrest and the failure to return it to him constituted a violation of the right of the applicant to peaceful enjoyment of

his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

11. by 6 votes to 1, that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Articles 3, 4 and 5 of the Convention and by Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

12. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chambers Rules of Procedure, the sum of KM 5,000 (five thousand *Konvertibilnih Maraka*) by way of compensation for moral damage suffered;

13. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Rules, the sum of KM 1,310 (one thousand three hundred and ten *Konvertibilnih Maraka*) by way of compensation for pecuniary damage suffered;

14. unanimously, to reject the remainder of the applicant's claim for compensation;

15. by 6 votes to 1, that simple interest at an annual rate of 4% (four per cent) will be payable on the sum awarded in conclusions number 12 and 13 above from the expiry of the period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

16. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within three months from the date on which this decision becomes final and binding in accordance with Rule 66 on the steps taken by it to comply with the above orders."

5. Mr. Deković exercised his right under Rule 61 to annex a dissenting opinion.

6. On 9 June 2000 this decision was delivered, in pursuance of Rule 60. On 7 July 2000 the Federation of Bosnia and Herzegovina 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 4 September 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 8 September 2000.

III. REQUEST FOR REVIEW

7. The Federation commences its request for review of the decision of the Second Panel by stating that it considers that the case raises serious issues concerning the interpretation of the Agreement, which issues are of general importance.

8. The Federation states that the application should have been declared inadmissible for non-compliance with the six-month rule set out in the Agreement, which it claims that the applicant did not comply with. As this rule is of an absolute nature and any failure to comply with it cannot be remedied, the decision of the Second Panel should be reviewed and declared inadmissible by the plenary Chamber.

9. The Federation also contests the remedies ordered by the Second Panel in its decision. It notes that it was ordered to pay to the applicant the sum of 5,000 *Konvertibilnih Maraka* ("KM") as compensation for moral damage suffered. The Federation refers to another decision of the Chamber, *Hermas* (case no. CH/97/45, decision on admissibility and merits delivered on 18 February 1998, Decisions and Reports 1998), where the Federation was ordered to pay the applicant the sum of KM 18,000 in respect of moral and pecuniary damages. It compares the severity of the violations suffered by the applicant in the *Hermas* case with those suffered by the applicant in the present case and concludes that the applicant in the present case should not have been awarded any monetary compensation at all. In support of this contention, the Federation refers to the *Šljivo* case (no. CH/97/34, decision on admissibility and merits delivered on 10 September 1998) where the Chamber, having found violations of the rights of that applicant as guaranteed by Article 5

paragraphs 1 and 3 and Article 6 paragraph 3(b) of the Convention, did not award that applicant any monetary compensation.

10. In conclusion, the Federation first suggests to the plenary Chamber to accept the request for review and to declare the application inadmissible. Alternatively, it suggests that if, having accepted the request, it does not decide to declare the application inadmissible, the Chamber should decide that the finding of a violation of the rights of the applicant is of itself sufficient remedy for those violations and not award the applicant any monetary compensation.

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(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).

12. The Federation first claims that the application should have been declared inadmissible for failure to comply with the six-month time-limit set out in Article VIII(2)(a) of the Agreement. It claims that this rule is of an absolute nature and must be applied strictly.

13. The First Panel notes that the Second Panel in its decision considered this issue in detail (at paragraphs 41-45). It held, citing relevant jurisprudence, that the Chamber has a certain discretionary power to take into account special circumstances when applying the rule. In the present case, the Second Panel found that as the applicant had been hospitalised at certain relevant times, the delay in submitting his application was justifiable. Accordingly, it found that the application was not inadmissible on this ground.

14. The First Panel finds that this argument of the Federation does not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and therefore do not satisfy the first condition set out in Rule 64(2).

15. The Federation also contests the remedies ordered by the Second Panel, claiming that no monetary compensation should have been awarded to the applicant.

16. The First Panel notes that, having established that serious violations of the rights of the applicant had taken place, the Second Panel considered at length the remedies to be ordered. The First Panel considers that the remedies ordered by the Second Panel are reasonable in view of the violations of the applicant's rights it found. The arguments of the Federation in this regard therefore do not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and therefore do not satisfy the first condition set out in Rule 64(2).

17. Having found that the first condition set out in Rule 64(2) has not been satisfied, it is not necessary to consider whether the whole circumstances justify reviewing the decision. Consequently, as the request for review does not meet the conditions set out in Rule 64(2), the First Panel, unanimously, recommends that it be rejected.

V. OPINION OF THE PLENARY CHAMBER

18. The Chamber first recalls that under Article X(2) of the Agreement it 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.

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

VI. CONCLUSION

20. For these reasons, the Chamber, by 10 votes to 2,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a dissenting opinion by Mr. Jakob MÖLLER.

DISSENTING OPINION BY MR. JAKOB MÖLLER

While I agree with the decision of the Second Panel referred to by the First Panel and endorsed by the Plenary, namely that the Chamber has a certain discretionary power to take into account special circumstances when applying the six-month rule set out in Article VIII(2)(a) of the Agreement, and accordingly disagree with the contention of the respondent Party that the rule is of an absolute nature, I am of the opinion that the request for review meets the conditions set out in Rule 64(2) of the Chamber's Rules of Procedure and should therefore have been accepted. A review of the contested decision would have given the Chamber an opportunity further to elucidate, in general, its interpretation and application of the six-month rule and, in particular, to test whether its discretionary power was properly applied by the Second Panel in the case at hand.

(Signed) Jakob MÖLLER