



DECISION ON THE CLAIM FOR COMPENSATION

DELIVERED ON 16 MARCH 1998 BY NOTIFICATION IN WRITING

in

CASE No. CH/96/30

Sretko DAMJANOVIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 11 March 1998, with the following members present:

Michèle PICARD President
Manfred NOWAK, Vice-President
Dietrich RAUSCHNING
Rona AYBAY
Vlatko MARKOTIĆ
Jakob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the claim for compensation submitted by Sretko Damjanović against the Federation of Bosnia and Herzegovina following the Decision of the Human Rights Chamber of 5 September 1997 on the merits of Case No. CH/96/30, between the same applicant and respondent Party,

Adopts the following Decision on the said claim under Article XI of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

I. INTRODUCTION

1. The applicant is Sretko Damjanović, who is currently held in prison in Sarajevo under sentence of death passed by a military court in Sarajevo in 1993. By a Decision of 5 September 1997 the Chamber held that the carrying out of the death penalty on the applicant would involve a breach by the Federation of Bosnia and Herzegovina ("the Federation") of its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, and ordered the Federation, amongst other things, not to carry out the death sentence on the applicant and to secure that the death sentence against him was lifted without delay. It reserved to the applicant the right to apply to the Chamber for any other redress he might wish to claim and further reserved for future decision the question of procedure to be followed in relation to any such claim.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The case originated in an application lodged with the Chamber on 13 December 1996 by the applicant's sister, Ms Ranka Đukić, on the applicant's behalf and registered the same day.

3. On 16 December 1996 the President of the Chamber decided, under Article X paragraph 1 of the Human Rights Agreement and Rule 36 of the Chamber's Rules of Procedure, to order the respondent Party to secure that the death penalty on the applicant was not carried out pending the Chamber's consideration of the case.

4. The Chamber declared the application admissible on 11 April 1997.

5. On 5 September 1997 the Chamber delivered its decision on the merits of the case, the conclusions of which read as follows:

"47. For the reasons given above the Chamber:

1. **Decides** unanimously that the carrying out of the death penalty on the applicant would involve a violation by the respondent Party of its obligations under Article 1 of Protocol No.6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the respondent Party would thereby breach its obligations under Article 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

2. **Decides** unanimously that the carrying out of the death penalty on the applicant would involve a breach by the respondent Party of its obligations under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the respondent Party would thereby breach its obligations under Article 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

3. Unanimously **orders** the respondent Party (a) not to carry out the death sentence on the applicant and (b) to secure that the death sentence against him is lifted without delay and **further orders** the respondent Party to report to it before 8 November 1997 on the steps taken by it to give effect to these orders;

4. Unanimously **reserves** to the applicant the right to apply to the Chamber before 8 December 1997 for any other redress he wishes to claim and further reserves for future decision the question of procedure to be followed in relation to any such claim."

6. The applicant's claim for financial compensation was received at the Chamber's registry on 10 December 1997 and forwarded to the Agent of the respondent Party. The latter's response was received at the registry on 9 February 1998.

III. AS TO THE FACTS

7. On 8 October 1997 the Ministry of Justice of the Federation forwarded the Chamber's Decision on the merits in the present case to the Minister of Justice of the Canton of Sarajevo, the Cantonal Court of Sarajevo and the Prosecutor's Office of the Canton of Sarajevo.

8. On 7 November 1997 the Minister of Justice of the Federation, Mr Mato Tadić, wrote to the above-mentioned bodies pointing out that they had not yet informed the Ministry on the steps which they had taken to give effect to the Chamber's decision and reminding them that the Chamber's decisions were final and binding.

9. On 14 November 1997 the President of the Cantonal Court of Sarajevo, Ms Azra Omeragić, replied to Mr Tadić's letter informing him that the case was pending before the Supreme Court of the Federation following an appeal against a decision given on an application for renewal of the proceedings. In addition, a decision on a request for a pardon submitted ex officio on 17 May 1994 by the District Military Court which had sentenced the applicant was still pending. Accordingly it was not yet legally possible to proceed with the execution of the applicant's death sentence. Moreover, the Chamber's Decision on the Merits itself was sufficient reason not to proceed with the execution. Given that the Federation was the respondent Party in the proceedings before the Chamber, and that the Federation had not enacted legislation governing compliance with the Chamber's decisions, the Cantonal Court considered that the Minister should define exactly what it was requesting the Cantonal court to do.

10. On 17 November 1997 Minister Tadić wrote to the Federal Prosecutor in Sarajevo, Mr Suljo Babić, asking him to order the Cantonal Prosecutor to apply for the proceedings to be reopened.

11. The applicant is still in prison in Sarajevo.

IV. AS TO THE LAW

(A) The Preliminary Objection of the Respondent Party

12. The Agent of the respondent Party, in her written response to the applicant's claims for compensation expressed the view that those claims were premature. She drew attention to Article 541 of the Federation's Law on Criminal Proceedings, pursuant to which any person who had suffered damage as a result of a conviction or sentence which had subsequently been overturned by another judgement or shown to be ill-founded had a right to financial compensation. It did not appear that the applicant had applied to the competent authority for such compensation; accordingly, the requirement contained in Article VIII paragraph 2 (a) that domestic remedies should be exhausted before an application was made to the Chamber had not been met.

13. The Chamber considers that the rule, contained in Article VIII paragraph 2 (a) of Annex 6, that available remedies should be exhausted does not apply to claims for monetary relief under Article XI paragraph 1 (b), which states:

“1. Following the conclusion of the proceedings, the Chamber shall promptly issue a decision, which shall address: ...

(b) what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.”

14. That rule defines one of the conditions relating to the Chamber's jurisdiction to consider allegations of violations of human rights as referred to in the first two Articles of the Agreement; in

other words, it relates to the institution of proceedings before the Chamber. A claim for monetary compensation or other relief, which the Chamber may consider if a violation is found, does not constitute a new application under Article VIII paragraph 1; it is an element of the case which the Chamber must consider in reaching its decision, as follows from the clear wording of Article XI (see, *mutatis mutandis*, the judgement of the European Court of Human Rights in the case of De Wilde, Ooms and Versyp v. Belgium (Article 50), Series A no. 14, § 15).

15. It might be noted in addition that to require a victim of a violation of human rights to exhaust domestic remedies a second time before being able to approach the Chamber for an appropriate remedy would not be in keeping with the idea of the effective protection of human rights as envisaged by the drafters of Annex 6 (*ibid.*, § 16).

16. The preliminary objection must therefore be rejected.

(B) The Chamber's Decision on the Applicant's Claims

17. The applicant claimed compensation for damage. In addition he claimed remuneration of his legal costs and expenses.

18. The respondent Party did not contest these claims, confining itself to arguing that they were premature.

(a) Damage

(i) The applicant's claims

19. The applicant's claims for compensation for damage were based on the fear which he had suffered ever since he had been convicted that he might eventually be executed. Moreover, he had been maltreated while in pre-trial detention, in addition to which he had been convicted and sentenced by a tribunal whose impartiality was suspect.

20. The applicant stated that his fears had been fed by certain additional factors. There was, firstly, the fact that the war was still going on at the time when he had been sentenced and for a long time thereafter, which made his execution all the more likely. Nonetheless this situation of uncertainty had continued even after the signature of the General Framework Agreement for Peace in Bosnia and Herzegovina. When certain persons whom he was supposed to have murdered were found alive and well, an application had been made for the reopening of the criminal proceedings. This application had initially been supported by the Cantonal Prosecutor's office, but the competent Cantonal Prosecutor was replaced by another who opposed such a course; the new Cantonal Prosecutor had in fact been the Army Prosecutor who had prosecuted the applicant at first instance.

21. To compensate him for this fear, the applicant claimed 20,000 German Marks (DEM) per year. For nearly five years, this amounted, according to his calculations, to DEM 90,000.

(ii) The Chamber's decision

22. The Chamber accepts that the fear arising from the death penalty imposed upon the applicant constituted mental suffering for which monetary relief is in order. However, it is necessary for the Chamber to have regard to the following facts:

23. Firstly, the Chamber's jurisdiction *ratione temporis* is limited to the period after the entry into force of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, that is 14 December 1995. This means that the Chamber cannot award any compensation for damage suffered before that date.

24. Secondly, any compensation which the Chamber may award can only relate to the possibility of execution of the death sentence hanging over the applicant – that being the basis for the finding of a violation by the respondent Party of its obligations under Article I of Annex 6. This means that

compensation in respect for the defects in the trial proceedings and the alleged maltreatment cannot be awarded either.

25. Thirdly, there appears to be some uncertainty as to which Federation authority is competent to ensure that the orders given in the Chamber's Decision on the merits are carried out. This is not a matter for the Chamber to address. The Chamber will confine itself to noting that although the order for provisional measures given by its President on 16 December 1996 and the orders given in its Decision on the Merits, which are both binding on the Federation, have made it highly unlikely that the applicant will now be executed, until now no Federation legislation has been enacted abolishing the death penalty altogether. Nor has there been any decision or measure by any Federation authority which, as a matter of Federation law, would make it impossible for the execution of the applicant to be carried out. It follows, as the Chamber sees it, that the threat of execution has not been completely dispelled; in other words, the death sentence against the applicant has not been "lifted".

26. By its nature, the damage suffered by the applicant does not lend itself to precise quantification. Deciding on an equitable basis, the Chamber will award the applicant DEM 15,000 in respect of damage up to and including the date of this decision.

(b) Costs and expenses

27. The applicant also claimed remuneration of his legal costs and expenses. These came to a total of DEM 2,800.

28. The Chamber reiterates that compensation may be awarded in particular in respect of pecuniary or non-pecuniary (moral) damage and may include costs and expenses incurred by the applicant in order to prevent the breach found or to obtain redress therefor (see paragraph 117 of the Chamber's decision of 18 February 1998 in the case of *Hermas v. the Federation of Bosnia and Herzegovina*, Case No. CH/96/45)

29. No specification has been provided of the applicant's claims under this head. The Chamber cannot therefore determine whether the entire sum or only part thereof is intended to cover the proceedings subsequent to the entry into force of the General Framework Agreement. Making an estimate, the Chamber will award DEM 1,750 in respect of the applicant's costs and expenses.

IV. ORDERS

30. The Chamber will order the respondent Party to pay to the applicant the sum of the amounts awarded within three months. After the expiry of that period, simple interest at an annual rate of 4 % - the legal rate obtaining in Germany - will be due over any unpaid residue of that sum until the date of settlement.

31. In addition, the Chamber considers it appropriate in the present case to allow the respondent Party a further month from the delivery of the present Decision to inform the Chamber on the steps taken by it to comply fully with the order, given in the Chamber's Decision on the merits of the case, to secure that the death penalty against the applicant is lifted. However, the Chamber will reserve to the applicant the right to submit further claims for compensation if sufficient steps are not taken within that time.

VI. CONCLUSIONS

32. For the reasons given above the Chamber decides unanimously:

- 1. to **reject** the respondent Party's preliminary objection;

- 2. (a) to **order** the respondent Party to pay to the applicant, within three months, the sum of DEM 16,750 (sixteen thousand seven hundred and fifty German Marks), by way of compensation for non-pecuniary injury and costs and expenses;

(b) that simple interest at an annual rate of 4% will be payable over this sum or any unpaid portion thereof from the day of expiry of the above-mentioned three-month period until the date of settlement;
- 3. to **order** the respondent Party to inform the Chamber, within three months, of the steps taken by it to comply with the above Order;
- 4. to **order** the respondent Party to inform the Chamber, within one month, of the steps taken by it to conform with the Order, given by the chamber in its Decision on the merits of the present case, to secure that the death penalty against the applicant is lifted;
- 5. to **reserve** to the applicant the right to submit further claims for compensation if sufficient steps are not taken within one month to lift the death penalty against him.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber