



**DECISION ON REQUEST FOR REVIEW OF THE DECISION ON THE CLAIM FOR
COMPENSATION**

DELIVERED IN WRITING ON 22 JULY 1998

in

CASE No. CH/96/30

Sretko DAMJANOVIĆ

against

The Federation of Bosnia and Herzegovina

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

Michèle PICARD, President
Manfred NOWAK, Vice-President
Dietrich RAUSCHNING
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jakob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Vitomir 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 14 April 1998;

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

I. THE FACTS

1. The applicant, Sretko Damjanović, is currently held in prison in Sarajevo under sentence of death passed by a military court in Sarajevo in 1993. By a Decision on the Merits of 5 September 1997, the Chamber held that the carrying out of the death penalty against the applicant would involve a breach by the Federation of Bosnia and Herzegovina (the "Federation") of its obligations under Article I of the Agreement. The Chamber ordered the Federation, amongst other things, not to carry out the death penalty against the applicant and to secure that the death penalty against him was lifted without delay.

2. By a Decision on the applicant's claim for compensation, delivered by notification in writing on 16 March 1998 in accordance with Rule 60(3) and (4) of the Chamber's Rules of Procedure (the "Rules"), the Chamber ordered the Federation as respondent Party to, *inter alia*, pay to the applicant the sum of 16,750 German Marks by way of compensation for non-pecuniary injury and costs and expenses.

3. On 14 April 1998, the Federation as respondent Party, submitted a request for review (the "Request") of the Decision on the claim for compensation. The Request was stated to be made on the basis of Rules 63, 64, 65 and 66 of the Rules.

II REQUEST FOR REVIEW

4. The substance of the Request was that the applicant, Sretko Damjanović, had not exhausted all domestic remedies available to him, as a request for a pardon was instituted *ex officio* on 17 May 1994 on his behalf, in accordance with the Law on Pardon (SL R BiH No. 17/77; SL R BiH No. 6/92). This request had a suspensive effect on the execution of the death sentence. The Federation accordingly argued that Sretko Damjanović was not in fear of being executed and was not therefore entitled to compensation. In addition, as the applicant had not exhausted all domestic remedies available to him, his claim for compensation was premature.

III PROCEEDINGS BEFORE THE CHAMBER

5. The application was received at the Chamber on 13 December 1996 and was registered on the same day under Case No. CH/96/30. On 16 December 1996, the President of the Chamber ordered the Federation as a provisional measure not to carry out the death penalty against the applicant. This order was made in accordance with Article X(1) of the Agreement and Rule 36. The case was declared admissible on 11 April 1997 by a Decision of the Chamber.

6. A public hearing was held in the case on 9 July 1997. Both the applicant and the respondent Party were represented at the hearing. The Chamber delivered its Decision on the merits of the case on 5 September 1997. The orders made by the Chamber in that Decision are outlined briefly at paragraph 1 above.

7. The Chamber issued its Decision on the claim for compensation on 16 March 1998 by notification in writing. The Chamber ordered the Federation as respondent Party to, *inter alia*, pay to the applicant the sum of 16,750 German Marks by way of compensation for non-pecuniary injury and costs and expenses.

8. The Request was received at the Chamber on 15 April 1998. It was considered by the plenary Chamber on 9 June 1998.

9. In accordance with Rule 21(1)(b), Mr. Hasan Balić did not participate in any of the proceedings before the Chamber, having participated in proceedings relating to the case as a member of the Supreme Court of Bosnia and Herzegovina.

IV OPINION OF THE CHAMBER

10. 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

11. 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."

12. 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."

13. 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.

14. In the present case, the Decision on the claim for compensation was made by the plenary Chamber. Accordingly, the Agreement does not provide for any review of it.

B. The Rules

15. The Request was based on Rules 63, 64, 65 and 66. Rule 63(1) 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."

16. Rule 64(2) provides as follows:

"2. 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.”

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

18. Rule 66(1) provides as follows:

“1. 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.

19. It can be seen that the Rules follow and elaborate upon the provisions of the Agreement relating to 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.

20. 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.

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