



**DECISION ON REQUESTS FOR REVIEW
OF DECISION ON ADMISSIBILITY AND MERITS**

CASE No. CH/97/59

Nail RIZVANOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 13 November 1998 with the following members present:

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

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the applicant's and the respondent Party's requests for a review of the decision of the First Panel of the Chamber on the admissibility and merits in the aforementioned case;

Having considered the Second 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

1. The applicant was a member of the 7th Muslim Brigade of the Army of the Republic of Bosnia and Herzegovina during the war. On 17 June 1993 he was arrested on charges related to the murders of a mother and father in the village of Rebrovac (Zenica municipality) and the rape and attempted rape of their two teenage daughters respectively. He has been held in prison in Zenica since his arrest.
2. On 4 August 1993 the District Military Court in Zenica convicted the applicant of aggravated robbery, two counts of murder, rape and attempted rape. For these acts the court sentenced the applicant to death.
3. The applicant subsequently appealed to the Supreme Court of Bosnia and Herzegovina against the death penalty imposed by the District Military Court. On 20 January 1994 the Supreme Court sitting in Zenica denied the applicant's appeal as ill-founded and upheld the decision of the District Military Court.
4. The applicant appealed against the Supreme Court's decision. On 1 September 1994 a different panel of the Supreme Court, acting as a Court of Third Instance, refused the appeal.
5. The applicant subsequently filed requests with the District Military Court, the Cantonal Court in Zenica, the Supreme Court and the Presidency, seeking the lifting of the death penalty against him. These requests were either rejected or remain pending.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 9 August 1997 and registered on 1 September 1997. On 1 September 1997 the Chamber considered the case and decided, as a provisional measure, to order the respondent Party to secure that the death sentence against the applicant was not carried out pending the Chamber's consideration of the case. After the establishment of panels in accordance with Article X(2) of the Agreement the case was assigned to the First Panel.
7. On 12 June 1998 the First Panel delivered the Chamber's decision on the admissibility and merits of the case. It found that the execution of the death penalty against the applicant would involve a violation by the respondent Party of its obligations under Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 6 to the Convention, and that the respondent Party was thereby in breach of its obligations under Article I of the Agreement. Accordingly, the respondent Party was ordered: (1) not to execute the death penalty against the applicant; and (2) to secure that the death penalty against him was lifted without delay. As compensation for the violations, the respondent Party was ordered to pay the applicant the sum of DEM 3,000 (three thousand German Marks) for non-pecuniary damage. However, the applicant's claim for remuneration of his legal costs and expenses was rejected because the applicant had not provided any specification or documentation in support of such a claim, although so requested.
8. On 3 July 1998 the applicant submitted a request for a review of the decision on the admissibility and merits with respect to the amount of awarded compensation and legal expenses.
9. On 10 July 1998 the respondent Party submitted a request for a review of the decision on the admissibility and merits to the effect that the Chamber render the First Panel's decision ineffective.
10. On 16 July 1998 the Second Panel of the Chamber considered the requests for review of the decision of the First Panel in accordance with Rule 64(1). On 7 September 1998 the Second Panel adopted a recommendation to the Plenary Chamber to the effect that the requests for review should be rejected.
11. On 10 September 1998 and 14 October 1998 the Plenary Chamber considered the requests for review and the Second Panel's recommendation.

III. REQUESTS FOR REVIEW

12. The applicant's request, which referred to the Chamber's *Damjanović* decision (Case No. CH/96/30, *Damjanović v. Federation of Bosnia and Herzegovina*, Decision on Admissibility of 11 April 1997), was based on four arguments: 1) that the applicant's mental suffering was equal, if not greater, than that of Mr. Damjanović; 2) that while the damage suffered by the applicant cannot by its nature be accurately defined, the First Panel failed to define non-pecuniary damages adequately; 3) that in the *Damjanović* case the Chamber granted compensation for legal costs and fees, although such costs were also not specified in that case; and 4) that despite the applicant's failure to specify legal expenses, those expenses were obvious (e.g., the lawyer's visits to see the applicant at the Zenica prison, the lawyer's appearances before domestic courts). For these reasons, the applicant requested that the Chamber review the First Panel's decision on the admissibility and merits with respect to the amount of compensation for non-pecuniary damage as well as legal expenses.

13. The respondent Party's request was based on three arguments: 1) that effective domestic remedies for obtaining a pardon were available; 2) that the applicant had failed to exhaust those remedies; and 3) that the application was not submitted to the Chamber within six months after a final decision in the case was issued. For these reasons, the respondent Party requested that the Chamber "render ineffective" the First Panel's decision on the admissibility and merits.

IV. OPINION OF THE CHAMBER

14. Article X(2) of the Agreement provides:

"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 only in the Chamber as a whole."

15. Article XI(3), of the Agreement stipulates that "subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding."

16. It follows from the aforementioned provisions that the proceedings provided for in Article X(2) are the only possibility envisioned in the Agreement for reviewing a decision on the merits delivered by the Chamber. This is, however, an exceptional procedure which, firstly, applies only to applications decided by a panel. Secondly, the Plenary Chamber has discretionary power as to whether it wishes to accept a request for review. Article X(2) of the Agreement does not further specify how the Chamber shall exercise this power. When adopting its Rules of Procedure, the Chamber decided to be guided in its proceedings by the provisions adopted by the Council of Europe in the 11th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The relevant Rules read as follows:

Rule 63:

"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 para. 2 of Article VIII of the Agreement;
- a decision of a Panel to reject an application under Article VIII para. 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."

Rule 64:

- "1. Any request for review under Rule 63 shall be referred to the Panel which did not take the decision in question and that Panel shall make a recommendation to the Plenary Chamber as to whether the decision should be reviewed or not.
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."

Rule 65:

- "1. If the Plenary Chamber accepts the request for review it shall decide on the procedure to be followed. It may invite the parties to submit written or oral observations or additional evidence on any aspect of the case.
2. During review proceedings the Plenary Chamber may make such orders for provisional measures as it thinks fit.
3. The Plenary Chamber shall decide any case in which it accepts a request for review. The provisions of Rules 55-61 shall apply *mutatis mutandis*."

Rule 66:

- "1. Decisions of the Chamber shall be final and binding in accordance with para. 3 of Article XI of the Agreement.
2. Decisions of Panels which are reviewable under Rule 63 shall become final and binding:
 - (a) when the parties declare that they will not request review;
 - (b) when the time limit referred to in Rule 63 para. 2 has expired without any request for review
 - (c) when a request for review has been refused under Rule 64.
3. When a Panel takes a decision which is reviewable under Rule 63 it may order such provisional measures as it thinks fit to protect the interests of the parties until the decision becomes final and binding under the preceding paragraph.
4. After a request for a review has been made the Plenary Chamber may make any such order for provisional measures and may revoke or vary any such order made by the Panel which took the decision under review."

17. The Chamber notes that the requests were based upon specific arguments, summarised in paragraphs 12 and 13 above. The applicant's request for review concerns the amount and type of compensation awarded by the First Panel as well as the method used when deciding on his claim for compensation. While the Chamber does not rule out the possibility that those concerns may be well-founded, it nevertheless does not find that the applicant's request raises "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as stipulated in Rule 64(2).

18. As for the respondent Party's request for review, the grounds upon which it is based could have been raised during the proceedings before the panel which considered the admissibility and merits of the case. However, during the ordinary course of the proceedings, the respondent Party did not submit any observations on the admissibility or merits of the case. It raised certain admissibility issues only at a later stage, namely in its observations on the applicant's claim for compensation (see the decision on admissibility and merits, paras. 43 - 49). Furthermore, the respondent Party did not raise the objection regarding the six-month time limit at any stage prior to the review proceedings. The Chamber therefore does not consider that "the whole circumstances justify reviewing the decision" as stipulated in Rule 64(2)(b). In addition, the case does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as stipulated in Rule 64(2)(a).

19. In conclusion, neither the applicant's request for review nor that of the respondent Party meets the two conditions required for the Chamber to accept such a request.

V. CONCLUSION

20. For these reasons, the Chamber unanimously

REJECTS THE REQUESTS FOR REVIEW.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber