



## **DECISION ON THE CLAIM FOR COMPENSATION**

**CASE No. CH/97/41**

**Milorad MARČETA**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

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

Ms. Michèle PICARD, President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Vlatko MARKOTIĆ  
Mr. Želimir JUKA  
Mr. Jakob MÖLLER  
Mr. Mehmed DEKOVIĆ  
Mr. Giovanni GRASSO  
Mr. Miodrag PAJIĆ  
Mr. Vitomir POPOVIĆ  
Mr. Viktor MASENKO-MAVI  
Mr. Andrew GROTRIAN

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

Having considered the claim for compensation submitted by the applicant on 3 October 1998;

Adopts the following decision under Article XI(1)(b) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rule 59 of its Rules of Procedures:

## **I. PROCEEDINGS BEFORE THE CHAMBER**

1. 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.
2. On 3 December 1997 a public hearing was held in the case. Both the applicant and the respondent Party were present.
3. On 6 April 1998 the Chamber delivered its decision on the admissibility and merits. The Chamber found that the applicant's arrest and detention had involved a violation of Article 5 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the 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 had 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.
4. On 15 July 1998 the plenary Chamber rejected the request for review of the respondent Party.
5. On 26 September 1997, the applicant submitted a compensation claim to the Chamber. The claim included costs and expenses incurred by his lawyer. On 6 April 1998 the Chamber awarded 30,000 DM as compensation for pecuniary and non-pecuniary damages, not including legal fees and expenses.
6. On 9 June 1998 the Chamber decided to transmit the claim for legal fees and expenses to the respondent Party for observations.
7. On 2 July 1998 the Federal Attorney's Office transmitted the observations of the respondent Party. The respondent Party objected to the amount claimed stating that "under the provisions of Article 100 of the Law on Criminal Proceedings, the amount which should be paid by the applicant to his lawyer is regulated by provisions of the Advocates's Tariff."
8. On 9 September 1998 the Chamber considered the applicant's claim for compensation and decided to ask for further information from the applicant and to transmit the respondent Party's observations to him.
9. On 8 October 1998 the Registry received a specific bill from the applicant's representative in response to the respondent Party's observations of 2 July 1998. The Registry transmitted the bill to the respondent Party on 23 October 1998. On 5 November 1998 the Chamber received observations from the respondent Party, arguing that the bill still failed to meet the requirements of the Advocate's Tariff.

## **II. CLAIM FOR COMPENSATION**

10. The applicant's claim for legal fees, totalling DEM 13,711, consists of seven items:
  1. Compensation for attending the investigation and the main trial (7 times), amounting to DEM 5,200;
  2. Compensation for the appeal and submissions (3 pcs.), amounting to DEM 1,350;
  3. Compensation for per diem (seven) x 80 DM, amounting to DEM 560;
  4. Compensation for absence from office (7 x 7 hours), amounting to DEM 294;
  5. use of private vehicle, amounting to DEM 1,500;
  6. lump sum of 23% of above fees and expenses, amounting to DEM 3,561; and
  7. tax of 14% of above fees and expenses, amounting to DEM 1,246.

## **III. OPINION OF THE CHAMBER**

11. The respondent Party did not contest the right of the applicant to claim compensation for legal fees and expenses. However, the respondent Party did object to the amount of the compensation sought. The respondent Party, using the Advocate's Tariff for the Federation of Bosnia and Herzegovina suggested compensation of KM 1,710.

12. The Chamber notes that under the Tariff on Payment and Costs Renumeration for the Work of Advocates in the Republika Srpska applicable at the time legal services were rendered, the applicant's lawyer would be entitled to KM 952 for legal fees and compensation. Although the applicant's lawyer had submitted a bill for KM 13,711, the Chamber finds that she has failed to meet the requirements of the Advocate's Tariff in identifying specific activities and the amount to be paid for each activity. No further substantiation of the claim has been submitted by the applicant.

#### **IV. CONCLUSION**

13. For these reasons, the Chamber decides by eight votes to four to order the respondent Party to pay to the applicant, within three months, the sum of KM 1,710 (one thousand seven hundred and ten Konvertible Marks), by way of compensation for legal costs and expenses.

(signed)  
Leif BERG  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the Chamber

## **A N N E X**

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate opinion by Mr. Hasan Balić:

### **SEPARATE OPINION OF MR. HASAN BALIĆ**

I did not vote in favour of the Chamber's conclusion on the merits in the case of Milorad Marčeta v. the Federation of Bosnia and Herzegovina (CH/97/41) relating to the breach by the Federation of Bosnia and Herzegovina for keeping him detained.

The present decision concerns a related request which shares the same fate as the merits of the case. That is the reason for my separate opinion, although I fully respect the Chamber's decision on the merits.

(signed)  
Hasan BALIĆ