



DECISION ON ADDITIONAL CLAIM FOR COMPENSATION

CASE NO. CH/96/30

Sretko DAMJANOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 16 April 1999, with the following members present:

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

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

Having considered the additional claim for compensation relating to the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement (“the Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article XI(1)(b) of the Agreement and Rule 59 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant requests additional compensation for the respondent Party's non-compliance with the Chamber's decision delivered on 16 March 1998. In its decision the Chamber ordered the Federation of Bosnia and Herzegovina ("the Federation") to inform it of the steps taken to conform with the Chamber's decision on the merits of 5 September 1997 which ordered the respondent Party to take steps to secure that the death penalty against the applicant be lifted. The Chamber further ordered the Federation to pay compensation for non pecuniary damage as well as for costs and expenses. The Chamber reserved the applicant the right to submit further claims for compensation if sufficient steps were not taken within one month to lift the death penalty against him.

II. PROCEEDINGS BEFORE THE CHAMBER

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

3. On 16 December 1996 the President of the Chamber decided, under Article X(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 adopted its decision on the merits of the case. It held that the carrying out of the death penalty would violate Article 1 of Protocol No. 6 to the European Convention for Human Rights and Article 2 of that convention, the Federation thereby being in violation of its obligations under Article I of the Agreement. The Chamber ordered the respondent (a) not to carry out the death sentence imposed on the applicant and (b) to secure that the death sentence be lifted without delay. The Chamber ordered the respondent Party to report to it by 8 November 1997 on the steps taken to comply with those orders.

6. On 16 March 1998 the Chamber delivered its decision on the applicant's claim for compensation, the conclusions of which read as follows:

"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;
3. (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;
4. to **order** the respondent Party to inform the Chamber, within three months, of the steps taken by it to comply with the above Order;
5. 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;
6. 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."

7. On 14 April 1998 the Federation submitted a request for review of the decision on the claim for compensation on the basis of Rules 63-66. The Chamber rejected the request for review on 22 July 1998.

8. The Chamber notes that in June 1998 the Federation Public Defender's office appealed against the Chamber's decision on the merits to the Constitutional Court of Bosnia and Herzegovina.

9. The applicant's claim for additional compensation was received by the Chamber on 29 September 1998 and examined by the Chamber on 13 January and 12 March 1999.

III. RESPONDENT PARTY'S OBSERVATIONS RELATING TO THE COMPLIANCE WITH THE CHAMBER'S DECISION ON THE MERITS

10. On 23 March 1998, the Federation forwarded a letter from the Federal Ministry of Justice to the competent authorities, notifying them of the Chamber's decision on the merits and of the time limit within which to take steps to lift the death penalty.

11. On 6 April 1998 the Federal Ministry of Justice informed the Chamber that it had drafted a new Article of the Criminal Law of the Federation of Bosnia and Herzegovina, which pronounced that the death penalty would be commuted into forty years in prison.

12. Additional observations submitted by the Federation were received by the Chamber on 4 June 1998 and 11 January 1999. On the later date, the Federation informed the Chamber that on 28 November 1998 legislation which abolished the death penalty had entered into force (Article 393 of the Criminal Law of the Federation and Herzegovina, Official Gazette no. 43/98, published on 20 November 1998). A procedural decision issued on 30 November 1998 had commuted the applicant's sentence into 40 years imprisonment. The Federation confirmed payment of the compensation awarded to the applicant in March 1999.

IV. APPLICANT'S CLAIM FOR COMPENSATION

13. The applicant's claim consists of three different items:

1. DEM 30,000 for mental suffering for the period from 17 March 1998 to date based on the fact that the Federation had demonstrated that it did not intend to comply fully with the Chamber's decision on the merits of 16 March 1998;
2. DEM 360 for the lawyer's preparation of the additional compensation claim; and
3. DEM 120 for the applicant's lawyer to reply to the respondent Party's appeal against the Chamber's decision which is pending before the Constitutional Court of Bosnia and Herzegovina.

14. The applicant provides primarily three reasons for his fear that the Chamber's decision on the merits would not be fully implemented. First, at the time of his claim for additional compensation the Federation had not yet paid the amount of DEM 16,750 to the applicant. Second, the Federation had delayed implementing the Chamber's decision by submitting an appeal to the Constitutional Court of Bosnia and Herzegovina. Finally, the applicant argues that he would most likely still face death in prison because his sentence has been commuted into a 40-year prison sentence. The Federation should have applied the criminal law in force at the time of the Chamber's decision on the merits which provided a maximum of 20 years imprisonment.

V. OPINION OF THE CHAMBER

15. As far as the applicant claims additional compensation for mental suffering, the Chamber notes that at the time this claim was submitted the Federation had not yet fully executed the Chamber's decision on the merits of 5 September 1997 and its decision of 16 March 1998 on the initial compensation claim. The Chamber must therefore determine whether the applicant suffered

additional emotional damage as a result of the Federation's then breach of its obligations under Article XI(6) of the Agreement to take steps to lift the death penalty.

16. The Federation's obligation under the Chamber's order of 16 March 1998 did not specify what steps were to be taken to lift the death penalty. The Federation duly informed the Chamber of the sufficient steps taken to comply with the decision on the merits in its letters of 6 April, 4 June 1998 and 11 January 1999. The applicant was aware of the proceedings by the Federation to commute his death sentence to 40 years in prison. He claims that the alleged unfairness of these proceedings has created an additional feeling of helplessness. The issue of the fairness of these proceedings is not within the scope of this case before the Chamber.

17. The Chamber further notes that the respondent Party at the time of the complaint had not confirmed its payment of compensation awarded to the applicant. The Chamber finds that this could not have been a reasonable basis for the applicant's fear of being executed.

18. The Chamber considers therefore that the applicant did not and does not have any objective reasons to suffer additional emotional damage for fear that the death penalty would be carried out. This aspect of his additional compensation claim must therefore be rejected.

19. In these circumstances the Chamber also finds it appropriate to reject the applicant's claim for DEM 360 for the lawyer's preparation of the claim for additional compensation.

20. The Chamber further rejects the claim of DEM 120 for the applicant's lawyer's reply to the Constitutional Court of Bosnia and Herzegovina. The Chamber considers that the proceedings before the Constitutional Court do not fall within the scope of the present case as examined by the Chamber in a "final and binding" manner within the meaning of Article XI(3) of the Agreement.

VI. CONCLUSION

21. For these reasons the Chamber decides by 9 votes to 1, to reject the applicant's claim for additional compensation.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber