



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/1374

Velimir PRŽULJ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 April 2000 with the following members present:

Mr. Giovanni GRASSO, Acting President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request for a review of the decision of the Second Panel of the Chamber on the admissibility and merits of the aforementioned case;

Having considered the First 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 AND COMPLAINTS

1. In January 1997 the applicant, a Republika Srpska policeman, was arrested by the Federation police in the vicinity of the Inter Entity Boundary Line at Vraca, Sarajevo, on charges of genocide and war crimes. In the course of his arrest and on the way to the police station, he was severely maltreated by his captors. The following day the investigation was terminated and the applicant released.

2. The applicant complained of a violation of his right not to be subjected to torture, inhuman or degrading treatment, protected by Article 3 of the European Convention on Human Rights, of his right to liberty and security, as guaranteed by Article 5 of the Convention, and of his right to be promptly informed of the charges against him under Article 6 paragraph 3(a). He also complained that he had been discriminated against in the enjoyment of the rights guaranteed by these provisions.

II. PROCEEDINGS BEFORE THE OMBUDSPERSON AND THE CHAMBER

3. The case was introduced by the applicant to the Ombudsperson on 26 March 1997 and registered on 28 March 1997. By a decision of 19 February 1998 the Ombudsperson decided to open an investigation into the possible violation of Articles 3 and 5 of the Convention. On 18 December 1998 the Ombudsperson referred the case to the Chamber pursuant to paragraph 5 of Article V of the Agreement.

4. On 21 December 1998 the case was registered with the Chamber, which held a public hearing on admissibility and merits of the application in the Cantonal Court in Sarajevo on 7 October 1999.

5. On 10 January 2000 the Second Panel adopted its decision on admissibility and merits of the case, which was delivered in a public hearing on 14 January 2000. The Second Panel declared the application admissible, except for the complaint under Article 6 of the Convention. It found that there had been a violation by the Federation of Bosnia and Herzegovina of the applicant's rights under Articles 3 and 5 paragraph 1 of the Convention, and that the Federation was thereby in breach of Article I of the Agreement. The Chamber found that the application did not reveal discrimination against the applicant in the enjoyment of the mentioned rights. As to the remedies, the Federation was ordered to carry out an investigation into the conduct of the policemen involved in the applicant's arrest and transportation to the police station, with a view to initiating criminal proceedings against them in accordance with the law of the Federation. It was furthermore ordered to pay to the applicant 3,000 Convertible Marks (*Konvertibilnih Maraka*; KM) by way of compensation for the fear and pain suffered during the arrest and detention, as well as in the immediate aftermath of the release. Finally, the Chamber decided to reserve its decision on the applicant's claim for compensation for the medical expenses, for the reduced personal income due to the sick leave since September 1998, and on the claim for "reduced general ability".

6. On 11 February 2000 the Federation submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the First Panel, which on 4 April 2000 decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the First Panel's recommendation on 5 April 2000.

III. REQUEST FOR REVIEW

7. In its request the Federation asks the plenary Chamber to review the findings of the Second Panel concerning three issues. Firstly, it objects to the finding that the application is admissible. In case the plenary Chamber should confirm the admissibility of the application, the Federation requests a review of the finding that the applicant was subjected to inhuman or degrading treatment in violation of Article 3 of the Convention and, thirdly, of the amount awarded to the applicant as compensation.

8. As to the admissibility, the Federation argues that the Second Panel erred in finding the application admissible, notwithstanding the undisputed fact that the applicant did not pursue any

domestic remedy. It submits that Article VIII(2)(a) does not give the Chamber discretion to completely dispense the applicant from pursuing domestic remedies against the alleged violations. It recalls that the requirement to exhaust domestic remedies is intended to give the respondent Party the possibility to remedy possible breaches of its international obligations within the domestic legal order before undergoing international supervision and review. The Federation further recalls the principle that doubts about the prospects of success offered by a remedy do not free the applicant from pursuing that remedy. It finally disputes the applicant's statement, assertedly accepted by the Chamber, that he could not be expected to come to Federation territory to pursue domestic remedies. The Federation submits that these alleged fears did not prevent the applicant from lodging an application with the Ombudsperson only two months after his arrest.

9. As to the finding of a violation of Article 3 of the Convention, the Federation argues that the Chamber erred in finding that the injuries sustained by the applicant attained the gravity necessary to be considered the result of inhuman or degrading treatment.

10. The Federation finally has two objections to the compensation payment ordered in favour of the applicant. Firstly, it is argued that the amount awarded is disproportionate in comparison to the order for compensation issued by the Chamber in favour of other applicants, who had suffered more serious violations of their rights not to be subjected to inhuman or degrading treatment and to security and liberty of person. Secondly, the Federation submits that no causal link between the alleged action of its organ (the policemen) and the alleged psychological damage suffered by the applicant was established.

IV. OPINION OF THE FIRST PANEL

11. The First Panel notes at the outset that the request for review has been lodged within the time-limit prescribed by Rule 63(2). The First Panel has therefore examined whether (a) the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and, if so, (b) the whole circumstances justify reviewing the decision, as required in Rule 64 of the Chamber's Rules of Procedure.

A. The request to review the finding of admissibility

12. The First Panel notes that, for the reason recalled by the Federation of Bosnia and Herzegovina in its request for review, applicants are, as a rule, required to avail themselves of the remedies offered by the domestic legal system against alleged violations of their rights protected by the Agreement before having recourse to the Chamber. As stated in paragraph VIII(2)(a), the Chamber shall, in deciding which applications to accept, "take into account ... whether effective remedies exist, and the applicant has demonstrated that they have been exhausted". The wording of this provision evidences that applicants are required to have recourse only to "effective remedies". According to the statement of principle of the European Court of Human Rights in the *Akdivar v. Turkey* case (judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, paragraph 66), referred to also by the Second Panel in its decision on admissibility and merits in the present case (paragraph 111), and pursuant to the constant jurisprudence of the Chamber, this means that "the existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness".

13. The First Panel notes that in its decision on admissibility and merits of the case, the Second Panel has upheld the principle outlined above and applied it to the applicant's case. The First Panel is of the opinion that the question whether the domestic remedies available in theory are sufficiently certain in practice and therefore enjoy the requisite accessibility and effectiveness, is a factual issue to be assessed with reference to the specific circumstances of the individual applicant's case. Accordingly, the Federation's submissions with regard to this issue do 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). The request for review of the decision to declare the application admissible should therefore be rejected.

14. The First Panel also notes, however, that in its decision on admissibility and merits the Second Panel has taken a new approach to an issue of principle concerning the requirement to exhaust domestic remedies (as well as the application of Article 5 paragraph 5 of the Convention), i.e. the question whether the legal system of the Federation provides for a right to compensation for non-pecuniary damages suffered due to unlawful detention. On the basis of a systematic interpretation of paragraphs 541-545 of the Law on Criminal Procedure in force at the time of the alleged violations (Official Gazette of the Socialist Federal Republic of Yugoslavia ("SFRY") nos. 26/86, 74/87, 57/89 and 3/90 and Official Gazette of the Republic of Bosnia and Herzegovina nos. 2/92, 9/92, 16/92 and 13/94), substituted since 28 November 1998 in the Federation of Bosnia and Herzegovina by the new Law on Criminal Procedure (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98), which took over the mentioned provisions without substantive changes, and in the light of two decisions of the Supreme Court of the former SFRY (paragraphs 81-83 and 122-124 of the decision on admissibility and merits), the Second Panel found that under the applicable domestic law the applicant could not have obtained compensation for the fear and pain suffered in the course of the detention, where these did not result in any long-term deterioration of his physical or mental health, and for the harm allegedly suffered by his honour and reputation. The Second Panel concluded that in this regard the remedy for the alleged violation of Article 5 paragraph 1 indicated by the Federation, in addition to not offering in practice reasonable prospects of success in the circumstances of the applicant's case, was not sufficient in theory to redress the harm complained of.

15. The Federation has not submitted in its request for review any arguments concerning this specific finding, which touches upon an issue of general importance. The First Panel is of the opinion that in this respect the Second Panel has correctly construed the applicable domestic law and Article VIII(2)(a) of the Agreement. The circumstances therefore do not justify reviewing the Second Panel's decision on this point.

B. The request to review the finding under Article 3

16. The Federation submits that the injuries sustained by the applicant due to his contact with the Federation policemen were not sufficiently serious to constitute a violation of Article 3 of the Convention, even if they were caused by deliberate ill-treatment, which the respondent Party disputes.

17. The First Panel takes the view that the gravity of the ill-treatment suffered by the applicant is primarily a factual issue to be assessed on the evidence, medical and other, submitted to the Chamber during the main proceedings. It does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required in Rule 64(2)(a). The request for review of the Second Panel's finding under Article 3 should therefore be rejected.

C. The request to review the pecuniary compensation ordered as a remedy

18. The Federation appears to object to the pecuniary compensation ordered in favour of the applicant on two grounds. Firstly, the amount of KM 3,000 allegedly is disproportionate in comparison to the compensation found appropriate by the Chamber in other cases of more serious inhuman or degrading treatment and longer deprivation of freedom. Secondly, it is submitted that no causal link between the alleged action of its organ (the policemen) and the alleged bodily and mental harm suffered by the applicant was established.

19. The First Panel notes that the Chamber has previously held that a request for review directed against "the amount and type of compensation awarded [...] as well as the method used when deciding on [the] claim for compensation" does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required in Rule 64(2)(a), even assuming that the concerns expressed were well-founded (case no. CH/97/59, *Rizvanović*, decision on requests for review of 13 November 1998, paragraph 17, Decisions and Reports 1998). Accordingly, the First Panel takes the view that the request for review of the Second Panel's award of pecuniary compensation should be rejected.

20. Moreover, with regard to the issue of the causal link between the applicant's ill-treatment at the hands of the Federation policemen and the harm suffered, the First Panel notes that the compensation awarded refers only "to the bodily and mental suffering during the arrest, the custody and the immediate aftermath of the custody" (paragraph 179 of the decision on admissibility and merits). The Second Panel reserved its decision on the compensation claim relating to the applicant's alleged long-term psychological problems. Therefore, the Federation's argument that the applicant's long-term psychological problems are due to events different from the disputed ill-treatment by the Federation policemen is directed against a finding the Chamber has not (yet) made. It can therefore not be accepted as a request for review of the decision on admissibility and merits delivered by the Second Panel on 13 January 2000.

D. Conclusion

21. To sum up, the First Panel does not consider that the objections moved by the respondent Party to the Second Panel's decision on admissibility and merits, including the decision on the compensation claim, raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" and which would justify reviewing the decision, as stipulated in Rule 64(2). Therefore, the First Panel, by 4 votes to 1, recommends that the request for review be rejected.

V. OPINION OF THE PLENARY CHAMBER

22. The plenary Chamber recalls that it shall consider the request for review as well as the recommendation of the Panel, and decide whether to accept the request. Under Rule 64(2) 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.

23. The plenary Chamber agrees with the First Panel, for the reasons stated above, that the request for review does not meet the conditions required for the Chamber to accept such a request pursuant to Rule 64(2)(a) and (b).

VI. CONCLUSION

24. For these reasons, the Chamber, by 10 votes to 3,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
Acting President of the Chamber