



## **DECISION ON REQUEST FOR REVIEW**

**Case no. CH/98/1044**

**Dragan OPAČIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 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 applicant's request for a review of the decision of the First Panel of the Chamber on the admissibility of 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 AND COMPLAINTS**

1. The applicant, born in 1975, was a soldier in the army of the Serbs in Bosnia and Herzegovina. In 1994 he was captured by the Army of the Republic of Bosnia and Herzegovina. In January 1995 he was charged with war crimes and genocide, and on 16 May 1995 he was sentenced to 10 years imprisonment. He appealed this decision. On 2 June 1995 the Supreme Court of Bosnia and Herzegovina rejected the appeal and confirmed the decision of the lower court. As he was convicted of crimes committed while still a minor, he began serving his sentence in a juvenile detention facility. He was later transferred to Zenica Correctional Facility.

2. Later in 1995, the applicant was summoned to appear before the International Criminal Tribunal for the Former Yugoslavia at the Hague (“the ICTY”) as a witness. He was held there until 1997 when he was returned to Bosnia and Herzegovina and continued to serve his sentence. At that time he filed a request for review of the criminal proceedings which had led to his conviction. On 8 January 1998, this request was rejected. He has later lodged other similar requests, all of which have been rejected.

3. The applicant also initiated civil proceedings against the publishers of the newspaper “Slobodna Bosna”, as on 16 April 1997 they published an article about him that contained facts from his trial which were allegedly to be kept confidential because he was a minor.

4. The applicant complained that his rights to a fair trial were violated during the criminal proceedings of 1995. Further, he complained that he was being denied justice in his suit against the newspaper publisher and asked the Chamber to help have the proceedings completed.

## **II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER**

5. The application was introduced and registered on 2 November 1998. The applicant is represented by Mr. Almin Dautbegović, a lawyer in Zenica.

6. On 12 January 2000 the First Panel adopted its decision in the case, declaring it inadmissible pursuant to Article VIII(2)(c) of the Agreement, partly because it was outside the Chamber’s competence *ratione temporis* and partly because it was manifestly ill-founded.

7. The Chamber first attempted to deliver the decision to the applicant’s representative on 4 February 2000. It was returned to Chamber undelivered on 14 February 2000. On the same day the Chamber again sent the decision. The applicant’s representative states that he received the decision on 17 February 2000. On 9 March 2000 the applicant submitted a request for a review of the decision.

8. In pursuance of Rule 64(1) of the Rules of Procedure the request was considered by the Second Panel which, on 3 April 2000, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the Second Panel’s recommendation on 6 April 2000.

## **III. REQUEST FOR REVIEW**

9. In the request the applicant states that he was originally convicted on the basis of his confession only and no other evidence. While he acknowledges that the relevant judgments in his case were taken before the Agreement came into force, he argues that the human rights violations are ongoing.

10. Further, he alleges that his testimony, assumedly before the ICTY (although it is not clearly stated in the request), was given in accordance with an agreement between the applicant and authorities in Bosnia and Herzegovina, possibly for a lessening of the applicant’s prison sentence. Therefore, he asserts that his human rights have been violated and asks for an oral hearing at which he could present evidence to support the claims.

11. The applicant also objects to the Chamber's procedure, arguing that it was overly long and that he did not have access to members of the Chamber's Registry.

#### **IV. OPINION OF THE SECOND PANEL**

12. In the circumstances, the Second Panel considers that the request for review has been lodged within the time-limit prescribed by Rule 63(2). It is of the opinion, however, that the part of the request dealing with the applicant's judgment were in essence already examined by the First Panel which considered the admissibility of the case. Further, any allegations of human rights violations regarding the applicant's testimony before the ICTY could have been raised during the proceedings before the Chamber. Lastly, the Second Panel cannot find those proceedings were in any way irregular but were conducted in accordance with the Chamber's Rules of Procedure.

13. The Second Panel 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). As the request for review does not meet the two conditions set out in Rule 64(2), the Second Panel unanimously recommends that the request be rejected.

#### **V. OPINION OF THE PLENARY CHAMBER**

14. The Chamber first recalls that under Article X(2) of the Agreement it shall normally sit in panels of seven members. When an application is decided by a Panel, the plenary Chamber may decide, upon motion of a party to the case or the Human Rights Ombudsperson, to review the decision. Article XI(3) of the Agreement stipulates that subject to the aforementioned review the decisions of the Chamber shall be final and binding.

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

#### **VI. CONCLUSION**

16. For these reasons, the Chamber, unanimously,

**REJECTS THE REQUEST FOR REVIEW.**

(signed)  
Anders MÅNSSON  
Registrar of the Chamber

(signed)  
Giovanni GRASSO  
Acting President of the Chamber