



DECISION ON REQUEST FOR REVIEW

Cases nos. CH/98/1027 and CH/99/1842

R.G. and Predrag MATKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 September 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

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

Having considered the request of the Federation of Bosnia and Herzegovina for review of the decision of the First Panel of the Chamber on the admissibility and merits of the aforementioned cases;

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 first applicant, R.G., is a citizen of Bosnia and Herzegovina of Serb descent, resident in Trnovo, Republika Srpska. The second applicant, Mr. Matković, is a citizen of the Federal Republic of Yugoslavia of Montenegrin descent, resident in Serbia.

2. On 6 September 1996, while driving in the Federation of Bosnia and Herzegovina near Sarajevo, they were shot at and detained by soldiers of the Army of Bosnia and Herzegovina ("BH Army") and detained without any legal basis until 30 October 1996. The first applicant, R. G., suffered serious gunshot wounds, was treated in hospital under a false name, and after his release from hospital on 23 September 1996 was detained in different places by the BH Army. The second applicant, Mr. Matković, was detained in various places by the same army until 15 October 1996.

3. On 14 October 1996 an investigation was opened against the applicants on suspicion that they had committed war crimes. On 15 October 1996, they were brought before a judge who ordered their detention. On 30 October 1996 their release from detention was ordered by the (then) Higher Court in Sarajevo and they were released that day.

4. Both cases were referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina. They raise issues principally under Articles 3 and 5 of the European Convention on Human Rights and under the provisions of the Agreement guaranteeing freedom from discrimination in the enjoyment of the rights set out in the Appendix to it.

II. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION

5. The Ombudsperson adopted her report in the above case, which had been submitted to her office on 6 October 1996, on 6 April 1998. She concluded that there had been violations of the rights of the applicant as protected by Article 3 of the Convention, Article 5 paragraphs 1, 2,4 and 5 of the Convention. She also found a violation of the applicant's rights as guaranteed by Article 13 of the Convention, taken together with Article 3 of the Convention and of his rights as guaranteed by Article 14 of the Convention taken together with Articles 3 and 5.

6. She recommended to the Government of the Federation that, within four weeks of the date of the report, it pay to the applicant the sum of 15,000 German Marks ("DEM") as compensation for the non-material damage he suffered and that it issue a written and public apology to the applicant in respect of the illegal detention. Neither of these recommendations has been complied with.

7. The Ombudsperson decided to open an investigation in the above case on 25 June 1998. On 29 January 1999, in pursuance of paragraph 5 of Article V of the Agreement, she referred the case to the Chamber.

8. In relation to the R.G. case, on 1 October 1998 the Ombudsperson, pursuant to paragraph 7 of Article V of the Agreement, initiated proceedings before the Chamber. The case had been submitted to her office on 6 October 1996. On 12 October 1998 the application was registered. Both applicants are represented by Ms. Gordana Vlačić, a lawyer practising in Pale in the Republika Srpska.

9. On 12 November 1998 the First Panel decided to transmit the application to the Federation for observations on its admissibility and merits, which were received on 18 March 1999. On 7 April 1999 these observations were transmitted to the applicant for his further observations and also any claim for compensation or other relief which he wished to make, which were received on 7 May 1999 and sent to the Federation. The Federation's observations on the claim for compensation were received on 16 July 1999.

10. The Matković case was registered on 16 February 1999 and on 18 March 1999 it was transmitted to the Federation for observations on its admissibility and merits, which were received on 18 May 1999. These were transmitted to the applicant for his further observations and any claim for

compensation or other relief which he wished to make, which were received on 16 August 1999 and sent to the Federation. The Federation's observations were transmitted to the applicant.

11. All of the above observations were also transmitted to the Ombudsperson, who did not submit any additional observations at that stage.

12. On 8 March 2000 a public hearing on the admissibility and merits of the application was held, which was attended by both applicants and their representative, representatives of the Federation and the Ombudsperson.

13. The First Panel deliberated upon the admissibility and merits of the application on 10 March, 6 April and 11 and 12 May 2000. On the last date, it adopted the present decision. The First Panel concluded as follows:

- “1. unanimously, to declare the applications admissible;
2. unanimously, that the treatment of the applicants by the Army of Bosnia and Herzegovina between 6 September until 15 October 1996 constituted a violation of their rights not to be subjected to inhuman and degrading treatment as guaranteed by Article 3 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
3. unanimously, that the treatment of the applicant R.G. during his arrest and detention on 6 September 1996 by the Army of Bosnia and Herzegovina constituted a violation of his right not to be subjected to torture as guaranteed by Article 3 of the Convention, the Federation thereby being in breach of Article I of the Agreement;
4. unanimously, that the arrest and detention of the applicants by the applicants by the Army of Bosnia and Herzegovina constituted a violation of their rights to liberty and security of person as guaranteed by Article 5 paragraphs 1,2,4 and 5 of the Convention, the Federation thereby being in breach of Article I of the Agreement;
5. unanimously, that it is not necessary to examine the applications under Articles 6 and 13 of the Convention;
6. unanimously, that the applicants have been discriminated against in the enjoyment of their rights as guaranteed by Articles 3 and 5 of the Convention, the Federation thereby being in breach of Article I of the Agreement;
7. unanimously, to order the Federation to pay to the applicant R.G., within one month of the date of this decision becoming final within the meaning of Rule 66 of the Chamber's Rules of Procedure, the sum of KM 25,000 (twenty five thousand Convertible Marks) by way of compensation for moral damage suffered;
8. unanimously, to order the Federation to pay to the applicant Mr. Matković, within one month of the date of this decision becoming final within the meaning of Rule 66 of the Chamber's Rules of Procedure, the sum of KM 10,000 (ten thousand Convertible Marks) by way of compensation for moral damage suffered;
9. unanimously, that simple interest at an annual rate of 4% (four per cent) will be payable on the sum awarded in conclusions 7 and 8 above from the expiry of the three-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and
10. unanimously, to order the Federation to report to it within one month of the date of this decision becoming final within the meaning of Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.”

14. On 9 June 2000 this decision was delivered, in pursuance of Rule 60. On 7 July 2000 the Federation of Bosnia and Herzegovina submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 4 September 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 8 September 2000.

III. REQUEST FOR REVIEW

15. The Federation commences its request for review of the decision of the First Panel by stating that it considers that the case raises serious issues concerning the interpretation of the Agreement, which issues are of general importance.

16. Concerning the admissibility of the applications, the Federation claims that the finding of the First Panel that the application in case no. CH/99/1842 was submitted before the six-month period referred to in Article VIII(2)(a) of the Agreement began to run is unacceptable. It requests the plenary Chamber to explain how it is possible to file an application before this period starts to run and also to explain when it actually did start to run in the present case.

17. The Federation also claims that the United Nations International Police Task Force (“UNIPTF”) is not competent to submit applications to the Human Rights Commission on behalf of persons. Consequently, it claims that the application submitted on behalf of the applicant Mr. Matković could not have been accepted by the Human Rights Ombudsperson for Bosnia and Herzegovina and therefore the applicant did not comply with the six-month requirement.

18. The Federation also attaches to its request a document prepared by the Prosecutor’s Office of the Canton of Sarajevo, which it incorporates into its request for review of the decision of the First Panel of the Chamber. While this document concerns only the case of Mr. Matković (no. CH/99/1842), the Federation states that it considers that it should apply equally to the case of R.G. The Chamber will accordingly do so.

19. In this document, the Cantonal Prosecutor claims firstly that the arrest of the applicants was justified under the relevant law and under the Convention. It claims that a request for investigation of the applicants existed and that there was sufficient evidence to open an investigation against them on suspicion of them having committed war crimes. Concerning the length of their detention, the Cantonal Prosecutor claims that this was not excessive as the applicants were released after fifteen days in detention, pursuant to a decision of the (then) Higher Court in Sarajevo. He claims that this is in accordance with the requirements of the Convention.

20. Concerning the legality of detention, the Cantonal Prosecutor states that in the legal system of the Federation, remedies are available to persons who consider that they have been detained illegally by the authorities. He claims that the applicants are required, under the Convention, to seek to exhaust these remedies before applying to the Chamber.

21. In conclusion, the Cantonal Prosecutor suggests to the plenary Chamber to accept the request for review and find that the applicants did not suffer any violations of their rights as protected by the Convention. He further requests the Chamber to hold that the applicants had effective remedies available to them at domestic level which they did not exhaust. To hold otherwise would negate the domestic legal system, as applicants would not be required to seek to exhaust domestic remedies and would be able instead to apply directly to the Chamber, thus creating legal uncertainty.

22. The Federation claims that even if the Chamber considers that there have been violations of the rights of the applicant, as the First Panel did, the remedies ordered against the Federation are inappropriate and incorrect. It notes that the First Panel ordered it to pay the sum of 25,000 *Konvertibilnih Maraka* (“KM”) to the applicant R.G. and KM 10,000 to the applicant Mr. Matković. It compares the award of KM 18,000 the applicant in case no. CH/97/45, *Hermas* (decision on admissibility and merits delivered on 18 February 1998, Decisions and Reports 1998). The Federation seeks to compare the severity of the violations found in the *Hermas* case with those found in the present cases, and concludes that the compensation awarded by the First Panel in its decision in the present cases is excessive. Referring to case no. CH/97/34, *Šljivo* (decision on admissibility and merits delivered on 10 September 1998, Decisions and Reports 1998), the Federation points out that in that case, having established violations of certain of the rights of the applicant, the Chamber held that the finding of a violation of those rights was in itself a sufficient remedy and did not order the payment of any monetary compensation to the applicant. It suggests to

the plenary Chamber to decide the same in the present cases. Finally, the Federation proposes that if the Chamber decides in any event to award monetary compensation to the applicants, it should award the sum of KM 10,000 to the applicant R.G. and the sum of KM 1,750 to the applicant Mr. Matković.

IV. OPINION OF THE SECOND PANEL

23. The Second Panel notes that the request for review has been lodged within the time-limit prescribed by Rule 63(2). According to Rule 64(1), the request shall be referred to the Panel which did not take the challenged decision and that Panel shall make a recommendation to the plenary Chamber as to whether the decision should be reviewed. The plenary Chamber shall consider the request for review as well as the recommendation of the aforementioned Panel, and shall 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 (see cases nos. CH/97/59 and CH/97/69, *Rizvanović* and *Herak*, decisions on requests for review of 13 November 1998, Decisions and Reports 1998).

24. The Federation first claims that the application of Mr. Matković should have been declared inadmissible for failure to comply with the six-month time-limit set out in Article VIII(2)(a) of the Agreement. It also requests that the plenary Chamber explain the finding of the First Panel that this time-limit had not started to run at the time of the submission of the application by UNIPTF on the applicant's behalf.

25. The Second Panel notes that the Federation raised this issue in the proceedings before the First Panel and that it was dealt with at paragraph 114 of the decision of the First Panel. The plenary Chamber considers the finding of the First Panel that the six-month period had not commenced at the time of the submission of the application to it on Mr. Matković's behalf to be correct. This is because this period commences at the date of the final decision concerning the matter at national level. In cases such as the present where there is no such decision, it commences when the violations complained of cease. At the time of the submission of the application to the Human Rights Commission, Mr. Matković was still being held incommunicado by authorities of the Federation and therefore the violations complained of had not ended and therefore the six-month period had not commenced.

26. The Second Panel therefore finds that this argument of the Federation does not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and therefore do not satisfy the first condition set out in Rule 64(2).

27. Concerning the argument of the Federation that the UNIPTF has no jurisdiction to submit an application on behalf of Mr. Matković, the Chamber notes that it could have raised this objection during the course of the proceedings before the First Panel but did not do so. The Second Panel finds that this argument does not satisfy the second condition set out in Rule 64(2), as the whole circumstances do not justify reviewing the decision. Therefore it must be rejected.

28. Concerning the arguments raised by the Cantonal Prosecutor in his submission, the Chamber notes that these effectively concern the admissibility of the application. The Chamber notes that substantively identical arguments were raised by the Federation during the proceedings before the First Panel. The First Panel considered these arguments in detail (at paragraphs 116-118, 126, 139-140 and 145-147) and, on the basis of the facts established by it during the course of the proceedings, did not accept these arguments. At any rate, the Second Panel finds that these arguments do not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and therefore do not satisfy the first condition set out in Rule 64(2).

29. The Federation also contests the amount of compensation ordered by the First Panel. The Second Panel notes that, having established that serious violations of the rights of the applicant had taken place, the First Panel considered at length the remedies to be ordered (at paragraphs 157-

168). The Second Panel notes that the Chamber has previously held that a request for a review of the amount of compensation awarded by a Panel does not raise a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance (case no. CH/97/57, *Rizvanović*, decision on request for review of 13 November 1998, paragraph 17, Decisions and Reports 1998). Consequently, this argument of the Federation does not satisfy the first condition set out in Rule 64(2) and must be rejected.

30. Consequently, as the request for review does not meet either of the two conditions set out in Rule 64(2), the Second Panel, unanimously, recommends that it be rejected.

V. OPINION OF THE PLENARY CHAMBER

31. 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.

32. 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

33. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber