



DECISION ON REQUEST FOR REVIEW

CASE No. CH/98/1062

THE ISLAMIC COMMUNITY IN BOSNIA AND HERZEGOVINA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 February 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-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. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the applicant's and 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. The Chamber refers to the decision of the Second Panel, which is appended to the present decision (Annex 1).

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

2. On 9 November 2000, the Second Panel's decision on admissibility and merits was delivered in pursuance of Rule 60. On 21 November 2000, the applicant, the Islamic Community in Bosnia and Herzegovina, submitted a request for review of the decision, and on 18 December 2000, the respondent Party, the Republika Srpska, also submitted a request for review of the decision.

3. In accordance with Rule 64 (1), the request was considered by the First Panel.

III. THE REQUEST FOR REVIEW

4. The Chamber refers to the two requests for review, which are appended to the present decision (Annexes 2 and 3).

IV. OPINION OF THE FIRST PANEL

5. The First Panel notes that the applicant's request for review has been lodged within the time-limit prescribed by Rule 63 (2).

6. The First Panel notes that the respondent Party submitted its request for review 39 days after the public delivering of the decision on admissibility and merits. Under the terms of Rule 63 (2), according to the English text, a request for review of a decision delivered at a public hearing in accordance with Rule 60 (2) must be lodged within one month from the date of such delivery. However, under the terms of Rule 63 (2) as it reads in the Bosnian, Croatian and Serbian languages, such a request for review may be lodged within one month from the date on which the decision is transmitted by the Registrar to the parties concerned and others in accordance with Rule 60 (4). The First Panel is of the opinion that the various language versions of the Chamber's Rules are all equally authoritative and that, in the present case, it is proper that the discrepancy noted should not be detrimental to the position of a party seeking review. Consequently, the First Panel, by 6 votes to 1, recommends that the request for review of the respondent Party also be deemed to have been lodged within the time-limit prescribed by Rule 63 (2).

7. The applicant submits that paragraph 6, 8 and 9 (a) of the conclusions meet the conditions set out in Rule 64 (2).

8. The First Panel considers that the remedies ordered by the Second Panel raise "a serious issue of general importance", as required by Rule 64 (2) (a) and that "the whole circumstances justify reviewing the decision", as required by Rule 64 (2) (b). Being of the opinion that the request for review meet the conditions set out in Rule 64 (2), the First Panel unanimously recommends that the applicant's request for review be accepted.

9. The respondent Party, for its part, disagrees with the award of monetary relief made in favour of the applicant. In the particular circumstances of the present case as reflected in the previous paragraph, the First Panel is of the opinion that this matter raises "a serious issue of general importance", as required by Rule 64 (2) (a) and that "the whole circumstances justify reviewing the decision", as required by Rule 64 (2) (b).

10. The respondent Party also submits that the application ought to have been declared inadmissible on the ground that the available effective domestic remedies had not been exhausted. The First Panel is of the opinion that this submission cannot be accepted. It notes that an objection to this effect was considered by the Second Panel in paragraphs 67–75 of the decision and that it was rejected on adequate grounds.

11. The respondent Party submits, finally, that the application is incompatible with the Agreement *ratione personae* within the meaning of Article VIII (c), Annex 6. The First Panel is of the opinion that this submission cannot be accepted either. It refers to the case The Islamic Community of Bosnia and Herzegovina against The Republika Srpska (The Islamic Community of Bosnia and Herzegovina against The Republika Srpska, decision on admissibility and merits, CH/96/29, paragraphs 125-131).

12. Accordingly, the First Panel unanimously recommends that the applicant's request for review should be accepted. It further recommends that the respondent Party's request for review should be accepted in so far as it is directed against the award of monetary relief made in the decision.

V. OPINION OF THE PLENARY CHAMBER

13. The Plenary Chamber agrees with the First Panel that the applicant's request for review meets the two conditions required for the Chamber to accept such a request pursuant to Rule 64 (2).

14. The Plenary Chamber further agrees with the First Panel that the respondent Party's request for review should not be refused as out of time.

15. Finally, the Plenary Chamber agrees with the First Panel that the respondent Party's request for review meets the two conditions required for the Chamber to accept such a request pursuant to Rule 64 (2) in so far as it is directed against the award of monetary relief made in the decision. It will reject the respondent Party's request for review for the remainder.

VI. CONCLUSION

16. For these reasons, the Chamber,

1. by 12 votes to 2, decides to accept the applicant's request for review;
2. by 10 votes to 4, decides not to refuse the respondent Party's request for review as out of time;
3. by 10 votes to 4, decides to accept the respondent Party's request for review in so far as it is directed against the award of monetary relief made in the decision;
4. unanimously, decides to reject the respondent Party's request for review for the remainder.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber