



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/2150

ĐORĐO UNKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 10 January 2002 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. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the respondent Party's request for 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 applicant, a citizen of Bosnia and Herzegovina of Serb ethnic origin, is a pensioner living in Sarajevo. At the beginning of the 1992-95 war in Bosnia and Herzegovina, the applicant's daughter, Vlasta Golubović, and her husband and two children, all of Serb ethnic origin, were living in Konjic, presently located in the Federation of Bosnia and Herzegovina. The applicant lost contact with his daughter and her family in the summer of 1992. Thereafter, the applicant heard rumours that his daughter's family had been killed, but he did not receive any official information to confirm such rumours. In January 1999, the applicant learned from the newspapers that two men had been arrested for killing the Golubović family in Konjic at the beginning of July 1992. In May 1999, the applicant applied, and was later recognised, as an injured party in the main criminal trial against the three men charged with killing the Golubović family. On 25 July 2000, the Cantonal Court in Mostar issued a verdict finding the defendants guilty of war crimes against civilians. The applicant complains that the authorities of the respondent Party wilfully withheld information from him until 1999 concerning his daughter's fate and that this has caused him "mental suffering, pain and sorrow".

2. This case raises issues under Articles 3 (prohibition of torture), 6 (right to a fair trial), 8 (right to respect for private and family life), and 13 (right to an effective remedy) of the European Convention on Human Rights (the "Convention").

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. Pursuant to Rule 60 of the Chamber's Rules of Procedure, on 9 November 2001, the Second Panel delivered its decision on admissibility and merits in this case (adopted on 10 October 2001). In the decision on admissibility and merits, the Second Panel found "that the apprehension, distress, and sorrow caused to the applicant as a result of the respondent Party failing to investigate and pursue the fate of the Golubović family in a timely manner constitutes inhuman and degrading treatment of the applicant in violation of his right protected by Article 3 of the Convention". The Second Panel declared the applicant's claim under Article 6 of the Convention inadmissible and found it unnecessary to separately examine the case under Articles 8 and 13 of the Convention. The Second Panel ordered the respondent Party to pay to the applicant 10,000 KM by way of compensation for non-pecuniary damage for his mental suffering.

4. On 10 December 2001, the respondent Party submitted its request for review of the decision on admissibility and merits.

5. In accordance with Rule 64(1) of the Chamber's Rules of Procedure, the First Panel considered the request for review on 9 January 2002. In accordance with Rule 64(2), the plenary Chamber considered the request for review and the recommendation of the First Panel on 10 January 2002.

III. THE REQUEST FOR REVIEW

6. In its request for review, the Federation of Bosnia and Herzegovina challenges the decision on admissibility and merits with respect to the conclusion on admissibility, the finding of a violation, and the award of compensation for non-pecuniary damages. The respondent Party's primary challenge to the decision appears to be that it is "unmanageable" and unfair.

7. With respect to the facts, the respondent Party argues that the applicant made few, if any, efforts to obtain information about the fate and whereabouts of his daughter and her family. The respondent Party did not know of the existence of the applicant, but when, on 5 May 1999, he applied to be recognised as an injured party by the Cantonal Court in Mostar, his application was immediately accepted. Through the trial successfully conducted by the respondent Party against the men who murdered the Golubović family, the applicant was offered the possibility to learn the whereabouts and fate of the Golubović family. With respect to the claim for non-pecuniary compensation, the respondent Party claims that the applicant has failed to exhaust his domestic remedies. The respondent Party further contends that the application should be inadmissible as

outside the competence of the Chamber *ratione temporis*. Taking into consideration the fact that the respondent Party prosecuted and sentenced the murderers of the Golubović family, it submits that it did not show the requisite minimum level of cruelty toward the applicant in order to be found responsible for a violation of Article 3 of the Convention.

8. In conclusion, the respondent Party proposes that the Chamber accept its request for review and change the decision to declare the application inadmissible under Articles 3, 8, and 13 of the Convention.

IV. OPINION OF THE FIRST PANEL

9. The First Panel notes that the respondent Party's request for review was filed within the time limit set out in Rule 63(3)(a) of the Chamber's Rules of Procedure.

10. In accordance with Rule 64(2), the Chamber "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."

11. The First Panel considers that the request for review raises significant issues concerning the admissibility of the application and the application of the emerging body of international caselaw that recognizes the claims of family members under Article 3 of the Convention to be free from inhuman treatment as a result of their inability to obtain information from competent authorities about the whereabouts and fate of a loved one who disappeared under life-threatening circumstances. This is an issue affecting many citizens of Bosnia and Herzegovina.

12. Being of the opinion that the request for review meets the conditions set out in Rule 64(2), the First Panel by 6 votes to 1, recommends that the plenary Chamber accept the respondent Party's request for review.

V. OPINION OF THE PLENARY CHAMBER

13. The plenary Chamber agrees with the First Panel, for the reasons stated above, 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). The Chamber therefore will review the decision of the Second Panel in its entirety.

VI. CONCLUSION

14. For these reasons, the Chamber, by 11 votes to 3, decides to accept the respondent Party's request for review.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber