



DECISION ON REQUEST FOR REVIEW

Cases nos. CH/99/1900 and CH/99/1901

D.Š. and N.Š.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 June 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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 a 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. INTRODUCTION

1. On 23 September 1995 the applicants, both officers of the armed forces of the Serbs in Bosnia and Herzegovina, the “Army of the Republika Srpska” (“VRS”), were arrested and then detained by members of the Army of the Republic of Bosnia and Herzegovina (“BH Army”). They were held in detention until their release on 4 August 1997.

2. On 16 April 2002, the First Panel of the Chamber delivered its decision on admissibility and merits in these cases, which was previously adopted on 12 April 2002. In that decision, the First Panel considered that the cases mainly raised issues under Article 5 paragraph 1 of the European Convention of Human Rights. The First Panel decided that the detention of the applicants from the beginning of March 1996 to 4 August 1997 constituted a violation of their right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention and thereby found the respondent Party to be in violation of Article 1 of the Agreement. The First Panel awarded each of the applicants 25,000 Convertible Marks (*Konvertibilnih Maraka*, “KM”) by way of compensation for non-pecuniary damages for these violations.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. On 16 April 2002 the First Panel’s decision on admissibility and merits of 12 April 2002 was delivered to the parties in pursuance of Rule 60 of the Chamber’s Rules of Procedure. On 13 May 2002 the respondent Party submitted a request for review of the decision.

4. In accordance with Rule 64(1) the request for review was considered by the Second Panel on 3 June 2002. In accordance with Rule 64(2), on 6 June 2002 the plenary Chamber considered the request for review and the recommendation of the Second Panel.

III. THE REQUEST FOR REVIEW

5. In the request for review, the respondent Party agrees with the findings of the Chamber that the rights of the applicants under Article 5 of the Convention have been violated. However, the respondent Party complains that the amount of compensation awarded for non-pecuniary damages is not proportional to the amount of compensation awarded in other similar decisions the Chamber has already issued. The respondent Party suggests that the finding of a violation of the rights of the applicants protected by Article 5 of the Convention would provide fair and sufficient satisfaction in relation to any non-pecuniary damages suffered by the applicants.

IV. OPINION OF THE SECOND PANEL

6. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b).

7. The Second Panel recalls that under 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”.

8. The Second 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) (see case no. CH/97/95, *Rizvanovic*, decision on requests for review of 13 November 1998, paragraph 17, Decisions and Reports 1998). In addition, the whole circumstances of the case do not justify reviewing the decision. Accordingly, the Second Panel takes the view that the request for review of the First Panel’s award of non-pecuniary compensation should be rejected.

9. Being of the opinion that the request for review does not meet the conditions set forth in Rule 64(2), the Second Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

10. The plenary Chamber agrees with the Second Panel that, for the reasons stated, 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

11. For these reasons, the Chamber unanimously

DECIDES TO REJECT THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber