



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/2805

Ahmet SEFIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 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. 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 applicant's request for a review of the decision of the First Panel of the Chamber on the admissibility and merits 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. In his application, filed on 26 August 1999 and further correspondence, the applicant alleges a violation of his rights as protected by Articles 3, 5 and 6 of the European Convention on Human Rights (“the Convention”).

2. The applicant, who is of Bosniak origin, was a prisoner in a Serb-run concentration camp, in the Municipality of Sanski Most from 16 May 1995 until 30 October 1995. On 11 October 1995 the applicant, following orders of a guard, killed several of his fellow prisoners. On the day of his release from the concentration camp, the applicant was arrested and brought to the police station in Bihać, presumably by authorities of the Federation of Bosnia and Herzegovina, on the suspicion of having committed ordinary murder. On 16 May 1996 the Bihać Public Prosecutor issued an indictment against the applicant for war crimes against civilians. On 9 December 1996 the Higher Court in Bihać issued a decision convicting the applicant of ordinary murder of nine people and sentencing him to 15 years of imprisonment. The applicant was found guilty of lining the people up and shooting them with the automatic gun of a guard, who had ordered him to do so. The court found that he had acted under the threat of his father and brother being killed if he did not do as the guard ordered. However, although the father and brother of the applicant were detained in the same concentration camp, as they were not present at the scene of the crime, the court did not consider the threat to be immediate. The applicant appealed against this decision on various grounds including that the court did not take into account the motive for which the applicant had shot the people and that the court did not hear the witnesses he proposed and rejected the defence’s request for a medical opinion on the mental state of the applicant. The Supreme Court in its decision of 2 May 1997 rejected the appeal and upheld the decision of 9 December 1996.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. On 5 March 2002 the First Panel adopted a decision finding that the detention of the applicant from 16 May to 9 December 1996 was illegal and constituted a violation of the applicant’s rights under Article 5 paragraph 1 of the Convention as the applicant had been indicted for war crimes but the respondent Party did not comply with the “Rules of the Road”. The Chamber after examining different aspects of Article 6 of the Convention raised by the applicant, namely the right to examine and call witnesses, the request for medical expertise, the issue of duress and the issue of conviction of an offence different from the one charged with, did not find a violation of Article 6 of the Convention. In light of the fact that the ICTY Prosecutor gave a positive opinion in the case, the First Panel considered that, although the positive opinion of the ICTY Prosecutor does not retrospectively cover the unlawfulness of the applicant’s detention, it does reveal that, if the respondent Party had complied with the Rules of the Road, this would not have changed the applicant’s factual situation. The First Panel considered that the finding of a violation of the applicant’s right to liberty is an appropriate remedy for the moral harm suffered by him. It did not order any other remedies.

4. On 8 March 2002 the First Panel’s decision on admissibility and merits in the applicant’s and four other related cases was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber’s Rules of Procedure (cases nos. CH/98/1335 *et al.*, *Rizvić et al.* partial decision on admissibility and decision on the merits of 5 March 2002).

5. On 15 March 2002 the applicant submitted a request for review of the decision. In accordance with Rule 64(1) the request for review was considered by the Second Panel on 7 May and 3 June 2002. In accordance with Rule 64(2), the plenary Chamber considered the request for review and the recommendation of the Second Panel on 7 June 2002.

III. THE REQUEST FOR REVIEW

6. In his request for review, the applicant challenges the First Panel's decision on the grounds
- (I) that the First Panel, in finding no violation of Article 6 of the Convention in respect to his case, had failed to consider the fact that the applicant did not have adequate time to prepare his defence after his indictment had been changed from charging him with war crimes to charging him with ordinary murder, which the applicant only learned on the day of the trial;
 - (II) that the First Panel, in finding no violation of Article 6 of the Convention in respect to his case, did not adequately consider his allegation that witnesses proposed by him were not heard; and
 - (III) that although in both his case and the case of the applicant Gračanin a violation of Article 5 paragraph 1 was found, and although the applicant was held in unlawful detention for almost seven months, the Chamber did not award the applicant Sefić any compensation, whereas it awarded the applicant Gračanin 2000 KM.

IV. OPINION OF THE SECOND PANEL

7. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2).

8. 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.

9. As the First Panel examined in its decision on the merits (cases nos. CH/98/1335 *et al.*, *Rizvić et al.* partial decision on admissibility and decision on the merits of 5 March 2002, paragraphs 273-285), the issues the applicant has raised in his application in regard to Article 6, and in particular the question whether there was a violation of the applicant's right to examine and call witnesses, the Second Panel is of the opinion that this complaint does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance".

10. With regard to the applicant's complaint that he did not have adequate time to prepare his defence after the indictment had been changed, the Second Panel finds that also this complaint does not raise a serious question affecting the interpretation or application of the Agreement, in particular as the crime of ordinary murder is a lesser crime than war crimes, the crime the applicant was originally accused of.

11. With regard to the applicant's third complaint, concerning the fact that he was not compensated for his illegal detention, the Second Panel notes that the First Panel has considered the question of compensation for the illegal detention in its decision (*ibid*, paragraph 309). The question of compensation generally does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance".

12. As the request for review fails to meet the conditions set forth in Rule 64(2), the Second Panel, by 4 votes to 3, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

13. 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

14. For these reasons, the Chamber, by 9 votes to 4,

DECIDES TO REJECT THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber