



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/1373

Aleksandar BAJRIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 July 2002 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. 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 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. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

1. The case was referred to the Chamber by the Ombudsperson for Bosnia and Herzegovina on 2 December 1998 at the applicant's request in accordance with paragraph 5 of Article V and paragraph 1 of Article VIII of Annex 6 to the Agreement. It was registered with the Chamber on 23 March 1999. It originated in an application lodged with the Ombudsperson on 11 December 1996 against the Federation of Bosnia and Herzegovina.

2. On 24 May 1999 the Chamber transmitted the application to the respondent Party for observations under Article 3, Article 5 paragraphs 1 and 5, Article 6 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention and Article II(2)(b) of the Agreement. On 16 January 2002 the Chamber re-transmitted the case to the respondent Party, this time asking for observations on Article 5, paragraphs 2 and 3 of the Convention. These observations were received on 18 February 2002 and sent to the applicant for his comments. The Chamber received the applicant's response on 19 March 2002.

3. On 9 April 2002 the First Panel adopted a decision in which it found that the maltreatment of the applicant during his custody gives rise to a violation of Article 3 of the Convention and in addition that the applicant has been discriminated against in the enjoyment of his rights under Article 3 of the Convention. The First Panel further found that the detention of the applicant from 21 August 1996 to 24 March 1997 was unlawful in violation of Article 5 paragraph 1 of the Convention. The First Panel found a violation of Article 5 paragraph 3 of the Convention because the applicant was not promptly brought before an investigative judge. As to remedies, the respondent Party was ordered to carry out an investigation into the conduct of the police and prison officials involved in the violation of the applicant's rights. The respondent Party was further ordered to pay to the applicant as compensation the sum of KM 30,000 based on the finding of a violation of Article 3 of the Convention due to severe maltreatment of the applicant and the fact that the applicant was held in illegal detention for 7 months and 3 days as the respondent Party failed to comply with the "Rules of the Road" (see CH/98/1373, *Barjić*, paragraph 121 of the decision of 9 April 2002).

4. The decision of the First Panel was publicly delivered on 10 May 2002. On 10 June 2002 the respondent Party submitted the request for review.

II. SUMMARY OF THE FACTS OF THE CASE

5. The applicant was arrested by the police of the Federation of Bosnia and Herzegovina for allegedly unlawfully possessing munitions after the car he was driving was stopped on 22 May 1996. On the same day, 22 May 1996, the Municipal Court in Sanski Most ordered that the applicant should be detained for 30 days for the purpose of investigating whether he had committed the criminal act of illegal possession of weapons and explosive materials as prohibited by Article 213 paragraphs 1 and 2 of the Criminal Law of the Republic of Bosnia and Herzegovina.

6. The respondent Party claims that the applicant was promptly brought before an investigative judge and that only one hour later, at 11 a.m., the decision on pre-trial detention was delivered to the applicant. In support the respondent Party submitted as an attachment to its observations of 18 February 2002, a copy of the minutes on the interrogation of the applicant before the investigative judge of the first instance court in Sanski Most, dated 10 a.m. on 22 May 1996 and signed by the investigative judge and "Aleksandar Bajrić". The applicant, in his reply to those observations claims that he was not heard by the investigative judge in regard to his pre-trial detention and that the minutes and his signature are falsified. He alleges that he was only arrested in the evening hours of 22 May 1996 after 4 p.m.. Therefore he could not possibly have been heard by the investigative judge at 10 a.m. and been delivered a decision on his arrest at 11 a.m.. The applicant further disputes that he was delivered the decision on pre-trial detention on 22 May 1996. He claims that he only saw and signed the decision on 6 June 1996.

7. In its decision of 9 April 2002 the First Panel did not make any reference to the minutes of the hearing before the investigative judge which purportedly took place on 22 May 2002. It stated in paragraph 103:

“Also in this respect the respondent Party, in spite of a specific request from the Chamber of 13 March 2002, provides no evidence to substantiate its bare denial of the applicant’s allegation that he was not brought before the competent investigative judge before 21 August 1996. The respondent Party fails to provide any documents to prove that the applicant was brought before the investigative judge, such as the minutes of the hearing before the investigative judge, or any written statement of the investigative judge himself or any other official with personal knowledge of the matter. The Chamber is hence persuaded of the truthfulness of the applicant’s allegation that he was not brought promptly before a judge.”

8. The applicant’s detention was extended several times at the request of the Municipal Prosecutor who allegedly was also investigating the applicant for war crimes. On 12 November 1996 the investigative judge of the Higher Court in Bihać sent the case file to the International Criminal Tribunal for the former Yugoslavia in The Hague to review the case in accordance with the “Rules of the Road”.

9. The applicant alleges that during the time of his detention he was subject to severe beatings on numerous occasions by police of Sanski Most and persons in civil outfit. The applicant claims that he obtained heavy injuries to his head and chest. As a result he suffered from headaches, a numb feeling in his face, problems with his left eye and impairment of his ability to hear with his left ear until the present day.

10. The applicant was finally released following an order of the Cantonal Court in Bihać of 24 March 1997 after the Municipal Prosecutor withdrew its charges of war crimes as against the applicant. The charges related to the possession of munitions were dropped by the Court of First Instance in Sanski Most on 27 September 2000 as the Municipal Prosecutor indicated that it would no longer pursue the case.

III. THE REQUEST FOR REVIEW

11. In the request for review, the respondent Party challenges the First Panel’s decision on the grounds

- (I) that the First Panel did not establish the facts correctly in respect to the question whether the applicant was brought promptly before an investigative judge and simply accepted the applicant’s allegations without considering the minutes on the interrogation of the applicant before the investigative judge made on 22 May 1996. The respondent Party concludes that there was no violation of Article 5 paragraph 3 of the Convention.
- (II) that the compensation of KM 30,000 ordered in the case is disproportionately high and that the findings of the violations should have been a sufficient satisfaction for the applicant as in the case of *Jasmin Šljivo* (CH/97/34, decision on admissibility and merits of 10 September 1998, Decisions and Reports 1998).

IV. OPINION OF THE SECOND PANEL

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

13. The Second Panel is of the opinion that the omission of the First Panel to discuss the relevance of the copy of the minutes of a hearing before the pre-trial judge of 22 May 1996 in respect

to the finding of a violation of Article 5 paragraph 3 of the Convention gives rise to a right to review of this aspect of the decision. The fact that in establishing the facts of the case in relation to Article 5, paragraph 3, the First Panel failed to consider an essential piece of evidence raises “a serious question affecting the ... application of the Agreement” as set out in Rule 64 paragraph 2 of the Rules of Procedure. The Second Panel also considers that the circumstances justify reviewing the decision. Accordingly, unanimously, the Second Panel is of the opinion that the finding of a violation of Article 5 paragraph 3 of the Convention should be reviewed.

14. With regard to the respondent Party’s claim that the compensation awarded is not proportionate, the Second Panel notes that 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” (see e.g. case no. CH/99/2805 *Sefić*, decision on request for review of 7 June 2002, and case no. CH/97/95 *Rizanović*, decision on request for review of 13 November 1998, paragraph 17, Decisions and Reports 1998).

15. Moreover, the Second Panel notes that the First Panel’s decision of 9 April 2002 is based on a violation of Articles 3 which resulted in a continuing damage of the applicant’s health and a violation of 5 paragraph 1 of the Convention as the applicant was held in illegal detention for seven months and three days. Any objection to the finding of a violation of Article 5 paragraph 3 can therefore not touch the award of compensation in a significant way.

16. The Second Panel is also of the opinion that the First Panel’s award of compensation is in accordance with the Chamber’s consistent case-law and is based on adequate grounds (see for example case no. CH/97/45, *Hermas*, decision on admissibility and merits of 18 February 1998, paragraphs 112-121, Decisions and Reports 1998).

17. Finally, the present case cannot be compared to the case of *Jasmin Šljivo* (CH/97/34) cited by the respondent Party. The nature and the extent of the violations found in these cases is significantly different, in particular, as in the present case there is a violation of Article 3 of the Convention.

18. Hence, the Second Panel unanimously is of the opinion that the respondent Party has failed to show that in respect to the compensation “the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”. Accordingly, the Second Panel is of the opinion that the request for review in this respect should be rejected.

V. OPINION OF THE PLENARY CHAMBER

19. The plenary Chamber agrees with the Second Panel that, for the reasons stated, the finding of a violation of Article 5 paragraph 3 of the Convention should be reviewed. The plenary Chamber further agrees with the Second Panel that the remainder of the request for review does not meet the first of the two conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

V. CONCLUSION

20. For these reasons, the Chamber, unanimously,

**ACCEPTS THE REQUEST FOR REVIEW IN RESPECT TO THE FINDING OF A VIOLATION OF
ARTICLE 5 PARAGRAPH 3 OF THE CONVENTION**

and

REJECTS THE REMAINDER OF THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber