



DECISION ON REQUEST FOR REVIEW

Case no. CH/00/3880

Momčilo MARJANOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 11 January 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the applicant'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. INTRODUCTION

1. On 18 July 1994 the applicant was arrested by members of the Municipality of Stari Grad Police Force for the murder of Mladen Radonja, committed on the territory of the Municipality of Stari Grad in the Republika Srpska. The applicant was held in police custody until 21 July 1994 whereupon criminal charges were filed against him by the Public Prosecutor. On 17 November 1994 an indictment was filed and on 18 July 1996 the applicant was convicted of premeditated murder under Article 36, paragraph 1 of the Criminal Code of the Republika Srpska “Special Part” (Official Gazette for the Republika Srpska, no. 21/92, hereinafter the “Criminal Code”). The Department of the Court of First Instance of Sokolac sitting in Rogatica (the “Court of First Instance in Sokolac”) sentenced him to 7 years imprisonment. Both the applicant and the Public Prosecutor filed appeals against the First Instance judgment and on 20 December 1996 the District Court of Second Instance in Bijeljina (the “Court of Second Instance in Bijeljina”) accepted the applicant’s appeal and ordered a re-trial. On 14 May 1998 the applicant’s retrial commenced before the Court of Second Instance in Bijeljina and on 31 August 1999 he was convicted of murder and sentenced to 7 years imprisonment. On 22 May 2000 the Supreme Court of the Republika Srpska accepted an appeal submitted by the Public Prosecutor and modified the applicant’s sentence to 8 years imprisonment. On 18 March 2002 he was released on conditional discharge.

2. On 8 November 2002, the Second Panel of the Chamber delivered its decision on admissibility and merits in this case. In that decision, the Second Panel considered that the case raised issues under Article 5, paragraphs 1, 3 and 4, Article 6, paragraphs 1 and 3(c) and Article 8 of the European Convention on Human Rights (the “Convention”). The Second Panel decided that the detention of the applicant from 20 February 1997 to 9 September 1997 and from 9 November 1997 to 23 July 1998 was not in accordance with a procedure prescribed by law within the meaning of Article 5 paragraph 1(c) of the Convention, that the detention of the applicant from 14 December 1995 until 22 May 2000 constituted a violation of his right to be tried within a reasonable time or released pending trial as guaranteed under Article 5 paragraph 3 of the Convention, that for the period from 20 February 1997 to 9 September 1997 and from 9 November 1997 to 23 July 1998 the applicant was prevented from taking proceedings by which the lawfulness of his detention could be determined, that the length of his trial from 14 December 1995 to 22 May 2000 exceeded the limits of reasonableness within the meaning of Article 6 paragraph 1 of the Convention and that the applicant was not provided with free legal assistance for a period of 7 months in violation of Article 6 paragraph 3(c). The Second Panel found that there had been no violation of the applicant’s right to private and family life on account of the applicant’s detention at a great distance from home. The Second Panel declared inadmissible the applicant’s complaint concerning discrimination as unsubstantiated. It further found no violation of the applicant’s complaint under Article 8 of the Convention. The Second Panel awarded the applicant 3,000 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 8 November 2002 the Second Panel’s decision on admissibility and merits was delivered to the parties at a public hearing in pursuance of Rule 60 of the Chamber’s Rules of Procedure. On 9 December 2002 the applicant submitted a request for review of the decision.

4. In accordance with Rule 64(1) the request for review was considered by the First Panel on 7 January 2003. In accordance with Rule 64(2), on 11 January 2003 the Plenary Chamber considered the request for review and the recommendation of the First Panel.

III. THE REQUEST FOR REVIEW

5. In the request for review, the applicant challenges the Second Panel’s decision on the following grounds:

- a. that the delegation of jurisdictional competence of the Court of First Instance in Srpsko Sarajevo to the Court of First Instance in Sokolac was not in accordance with law and the argument that there were insufficient judges at the Court of First Instance in Srpsko Sarajevo is false;
- b. that by transferring him to the Pre-trial Section of the District Prison in Bijeljina violated his right to respect for family life as guaranteed under Article 8 of the Convention was violated;
- c. that the Chamber failed to adequately consider his complaint concerning discrimination in that his complaint did not refer to his Serb origin, but the manner in which he was treated by the authorities of the Republika Srpska was in violation of domestic law and therefore amounted to discrimination; and
- d. that the compensation awarded by the Chamber is insufficient.

IV. OPINION OF THE FIRST PANEL

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

a. Delegation of Competence of the Court

7. The First Panel notes firstly that the delegation of competence occurred some time during the end of 1994 and therefore the complaint in this respect relates to a period prior to the entering into force of the Agreement on 14 December 1995. Accordingly, the First Panel takes the view that the request for review in this respect fails to raise a “serious issue of general importance” and should be rejected.

b. Right to respect for family life

8. The First Panel notes that the applicant’s complaints in this respect concern his inability to maintain any kind of family life during his detention as a result of being transferred from the Pre-trial Section of the District Prison in Srpsko Sarajevo to the Pre-trial Section of the District Prison in Bijeljina. The First Panel recalls that, in its decision of 11 October 2002, the Second Panel reviewed the reasons for the applicant’s transfer and held that:

“196. The Chamber observes that imprisonment by its very nature has a profound impact on a prisoner’s private and family life. The European Court has stated that whilst such conditions often invoke important consideration of the rights under Article 8, existing prison rules and procedures provide guidelines on family visits, prison association, correspondence and access to a telephone. Should such prison rules restrict the contact of a person with the outside world to an extent which is not necessary, in a democratic society, in the interests of public safety, for the prevention of disorder or crime or any other reason provided by paragraph 2 of Article 8, they may be deemed incompatible with the Convention. Whilst many applications by prisoners to the European Commission and Court of Human Rights under Article 8 have failed, the European Court has recognised that it is an essential part of both private and family life and the rehabilitation of prisoners that their contact with the outside world be maintained as far as is practicable, with a view to facilitating their rehabilitation and eventual release. However, meeting this obligation will only exceptionally require the transfer of a prisoner from one prison to another (see e.g., Eur. Commission HR, *Ouinan v. France*, no. 13756/88, decision of 12 March 1990, Decisions and Reports 65, p.265). The Strasbourg approach shows a consistent pattern of finding that such an interference is present, but going on to find that such an interference is justified under paragraph 2 of Article 8.

“197. The respondent Party submits in its written observations of 16 August and 30 September 2002 that the applicant was detained at the Pre-trial Section of the District Prison in Srpsko Sarajevo

from his arrest until 6 August 1996. He was subsequently transferred to the Srbinje Correctional Institution to serve his sentence imposed by the Court of First Instance in Sokolac. On 22 August 1997 he was returned to the Pre-trial Section of the District Prison in Srpsko Sarajevo as his conviction had been overturned by the Court of Second Instance in Bijeljina. On 21 July 1998 the applicant was transferred to the Pre-trial Section of the District Prison in Bijeljina as his case had been transferred to the Court of Second Instance in Bijeljina and on 18 October 2000 he commenced serving his sentence imposed by the Supreme Court. He was released on 20 March 2002.

“198. The respondent Party further maintains that the applicant was released on authorised leave from his detention at the District Prison in Bijeljina sixteen times, thus amounting to a total of 96 days and was visited on numerous occasions by members of his family. The respondent Party maintains that the prison records confirm this. Furthermore, the respondent Party notes that during the applicant’s detention at the District Prison Bijeljina he failed to submit any formal request to be transferred to a prison closer to his family.”

Accordingly, the First Panel takes the view that the applicant has not explained why his dissatisfaction with the Second Panel’s conclusion raises a “serious issue of general importance”. Accordingly, the request for review should be rejected also in this respect.

c. Discrimination

9. The First Panel notes that the applicant complains of having been discriminated against in the enjoyment of certain rights. He now maintains that he was not discriminated against due to his Serb origin or due to any religious or ethnical reason. He maintains that he was discriminated against due to the treatment he received and that such treatment was in violation of domestic law, thus amounting to discriminative treatment. The First Panel agrees with the finding of the Second Panel, that the applicant’s complaint is incomprehensible, and in any event unsubstantiated. The First Panel therefore finds that also in this respect the applicant’s request for review fails to raise a “serious issue of general importance” and should be rejected.

d. Compensation

10. The First 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, *Rizvanović*, decision on requests for review of 13 November 1998, paragraph 17, Decisions and Reports 1998). Accordingly, the First Panel takes the view that the request for review of the Second Panel’s award of non-pecuniary compensation fails to raise a “serious issue of general importance” and should be rejected.

e. Conclusion of the First Panel

11. Considering that none of the arguments on which the request for review is grounded 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), the request for review does not meet the conditions set out in Rule 64(2). Therefore, the First Panel unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

12. The Plenary Chamber agrees with the First 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

13. 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