



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/603

R.T.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 February 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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 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. FACTS AND COMPLAINTS

1. The applicant's child was killed by shell fragments from a hand grenade accidentally activated by a soldier of the 3rd Corps of the Army of the Republic of Bosnia and Herzegovina in 1993. In 1996, the applicant initiated a civil proceeding before the First Instance Court of Zenica (now the Municipal Court in Zenica). On 18 February 1997, the First Instance Court issued its judgement, awarding the applicant compensation for both pecuniary and non-pecuniary damages. As summarized by the First Panel in paragraph 11 of its decision, the judgment

“ordered “the State of the Republic of Bosnia and Herzegovina – the 3rd Corps of the Army of Bosnia and Herzegovina, represented by the military attorney of the Federation of Bosnia and Herzegovina” to pay the following compensation to the applicant:

a) Compensation for non-pecuniary damages:

For suffering caused to the relatives of the victim by the death of their loved one. The applicant and her husband were awarded 1,300 *Deutsche Marks* (“DEM”) each, and the applicant's daughter was awarded 1,100 DEM. The payments could be made in the equivalent amounts in Dinars, plus legal interest commencing from the day of the decision.

b) Compensation for pecuniary damages:

- 483 DEM for funeral expenses and 1,284 DEM for the tombstone. The payments could be made in the equivalent amounts in Dinars, plus legal interest commencing from 20 August 1994 until the day of payment.

- 1,000 DEM for usual expenses related to the death, including expenses realised within the first seven days after the death in the amount of 600 DEM, plus legal interest commencing from 28 August 1993 until the day of payment; within the first forty days after the death in the amount of 200 DEM, plus legal interest commencing from 1 October 1993 until the day of payment; and within the first 6 months after the death in the amount of 200 DEM, plus legal interest commencing from 1 March 1993 until the day of payment.”

2. The military attorney of the Federation of Bosnia and Herzegovina appealed against this judgement, but only in the part relating to non-pecuniary damages, so that the decision on pecuniary damages became final and enforceable. On 19 May 1997, the applicant submitted a request for execution and thereby initiated the executive proceeding before the court. However, as of today no compensation has been paid and proceedings are still ongoing. The issues disputed in these five-and-a-half years before the courts of the Federation are the determination of the correct defendant and enforcer, and the calculation of the interest due on the amount awarded as compensation for pecuniary damages.

3. The applicant complains that Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina have violated her right to a fair trial within reasonable time and to peaceful enjoyment of possessions.

ii. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. On 4 November 2002 the First Panel delivered its decision on admissibility and merits in this case. The First Panel found that Bosnia and Herzegovina bears no responsibility for the proceedings complained of before the Zenica Municipal and Cantonal Courts. It therefore declared the application inadmissible against that respondent Party with respect to the complaint of unreasonable length of proceedings. The First Panel rejected the Federation's objections to admissibility under Article VIII(2)(a) of the Agreement. As to the requirement to exhaust domestic remedies, it noted that “the fact that the proceedings are still pending does not preclude the Chamber from examining on the merits whether their duration to date has been unreasonably long in violation of Article 6 of the Convention” (paragraph 44). With regard to the six-months rule, the First Panel noted that the applicant is “complaining of the fact that she is unable to obtain from the Federation judiciary a “final decision” and its enforcement”. It thus concluded that the application was not inadmissible in respect of the six-months rule either (paragraph 44).

5. As to the merits, the First Panel found that, by failing to enforce the judgement in the

applicant's favour, the Federation violated the applicant's rights as guaranteed by Article 6 paragraph 1 of the Convention. The First Panel decided that it was not necessary separately to examine the application under Article 1 of Protocol No. 1 to the Convention.

6. As a remedy, the First Panel "order[ed] the respondent Party to pay to the applicant, within one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, compensation for pecuniary damages and interest, as awarded by the First Instance Court in its decision of 18 February 1997 (as described in paragraph 11 above)"

7. On 9 December 2002 the respondent Party submitted a request for review of the decision. In accordance with Rule 64(1) the request was considered by the Second Panel on 7 February 2003. In accordance with Rule 64(2), on the same day the Plenary Chamber considered the request for review and the recommendation of the Second Panel.

III. THE REQUEST FOR REVIEW

8. The Federation requests review of the finding that the application is admissible, of the finding of a violation of Article 6 of the Convention and of the remedial order "to pay to the applicant compensation for pecuniary damages and interest, as awarded by the First Instance Court in its decision of 18 February 1997".

9. In support of its request for review, the Federation argues that:

- (i) the application was premature and therefore either inadmissible under Article VIII(2)(a) or ill-founded on the merits;
- (ii) that the applicant significantly contributed to the delay in the proceedings;
- (iii) that the Federation authorities placed "the debt amounting to 2,768.40 KM", for which execution was allowed under the decision of the Municipal Court of 9 April 1998 at the disposal of the applicant at the cash office of the Payment System Institute, where the applicant failed to withdraw the funds, so that on 29 November 2000 they were returned to the debtor;
- (iv) that the calculation of the interest due on this debt is still contentious;
- (v) that on 17 October 2002 the Federation instructed its bank to pay the principal debt plus interest to the applicant, whereupon the bank calculated this interest to be 400,000 (four hundred thousand) KM, a sum the respondent Party considers not acceptable;
- (vi) that on 31 May 1998 a financial court expert, Mr. A.S., established that the applicant is entitled to interest in the amount of 2,453.26 KM.

10. The Federation submits that the objections it makes raise serious questions affecting the interpretation or application of the Agreement or a serious issue of general importance, and that the whole circumstances justify reviewing the decision.

IV. OPINION OF THE SECOND PANEL

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

12. Concerning the arguments made by the Federation in relation to the finding of the First Panel that the application is admissible under Article VIII(2)(a) and that there has been a violation of Article 6 of the Convention, the Second Panel is of the opinion that they fall short of raising any "serious question affecting the interpretation or application of the Agreement or a serious issue of general importance".

13. Concerning the Federation's request to review the order "to pay to the applicant compensation for pecuniary damages and interest, as awarded by the First Instance Court in its decision of 18 February 1997", the Second Panel notes that it is true that the amount of interest due is still

disputed in the domestic proceedings between the plaintiff (the applicant) and the defendant. However, this is due to the inability of the authorities of the respondent Party to determine, within five years of the decision of 18 February 1997, the interest due, under their own laws, on a principal debt of 2,768.40 KM. In the opinion of the Second Panel, such inability does not raise any “serious question affecting the interpretation or application of the Agreement or a serious issue of general importance” that would justify reviewing the decision of the First Panel.

14. As the request for review fails to meet the first of the two requirements set forth in Rule 64(2), the Second Panel unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

15. 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 requests pursuant to Rule 64(2).

VI. CONCLUSION

16. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber