



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/1714

Mladen VANOVAČ

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 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 to 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He was employed by the public company PTT (hereinafter “PTT”) at the Post Office at Dolac Malta in Sarajevo before the outbreak of the armed conflict. During the armed conflict, he was unable to report to work because his home and his place of work were controlled by armies on different sides of the armed conflict. After the end of the armed conflict he attempted to return to work. The applicant sought legal redress to regain his position and received a court judgement in his favour, but on appeal his court proceedings were suspended and his case referred to the Cantonal Commission for Implementation of Article 143 of the Labour Law (hereinafter “the Cantonal Commission”).

2. The applicant alleges a violation of his right to a fair hearing under Article 6 of the Convention. He further alleges that he has been discriminated against in the enjoyment of the right to work on the basis of his Serb origin and place of residence. The application raises issues with regard to the discrimination in the enjoyment of the right to work and related rights as guaranteed by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). The application also raises issues under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

II. PROCEEDINGS BEFORE THE CHAMBER

3. In its decision on admissibility and merits adopted on 4 November 2002, the Second Panel concluded that the applicant had been discriminated against in the enjoyment of his right to work as guaranteed by Articles 6 and 7 of the ICESCR and that the applicant’s rights to access to court and to a hearing within a reasonable time under Article 6(1) of the Convention had been violated. The Chamber ordered that the applicant be reinstated to a position commensurate with his skills and training, and that he be paid both pecuniary and non-pecuniary damages.

4. On 8 November 2002, the Second Panel’s decision was delivered pursuant to Rule 60 of the Chamber’s Rules of Procedure. On 9 December 2002, the respondent Party submitted a request for review of the decision.

5. In accordance with Rule 64(1) the request for review was considered by the First Panel on 10 January 2003 and 5 February 2003. In accordance with Rule 64(2), on 7 February 2003 the Plenary Chamber considered the request for review and recommendation of the First Panel.

III. THE REQUEST FOR REVIEW

6. In the request for review, the respondent Party complains that the Chamber neglected the fact that, on 1 October 2002, the Cantonal Commission issued a procedural decision rejecting the appeal of the applicant and ordering that the case be returned to the Municipal Court II in Sarajevo for continuation of proceedings on Mr. Vanovac’s complaint.

7. The Federation also challenges the finding of discrimination, arguing that the Chamber failed to adequately assess the issue of differential treatment in relation to others and whether there was some justification for the differential treatment. The Federation further argues that the Chamber failed to connect the discrimination to any substantive material provision of the European Convention on Human Rights and that the Chamber’s conclusions regarding the finding of discrimination are arbitrary. With regard to the factual findings in the case, the Federation asserts that the Chamber has infringed upon the domain of the domestic courts.

8. The Federation further argues that the application should be rejected as ill-founded or a misuse of the right of petition because the applicant withheld information from the Cantonal Commission. The Federation also argues that the Chamber should not award compensation in this case, citing case no. CH/98/1171, *Čuturić*, decision on admissibility and merits delivered 8 October 1999.

9. The Federation argues that all the circumstances justifying review under Rule 64 exist.

IV. OPINION OF THE FIRST PANEL

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

11. 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”.

12. The First Panel is of the opinion that the respondent Party’s arguments regarding the Cantonal Commission could have been invoked during the proceedings before the Second Panel, which considered the admissibility and merits of the case. Specifically, the respondent Party failed to apprise the Chamber, prior to its 4 November 2002 decision, of the 1 October 2002 procedural decision of the Cantonal Commission, on which the respondent Party now relies. The First Panel therefore does not consider that in this respect “the whole circumstances justify reviewing the decision” as required by Rule 64(2)(b).

13. The First Panel is further of the opinion that the other grounds upon which the respondent Party’s request for review is based were in essence already properly examined and rejected by the Second Panel when it considered the admissibility and merits of the case. The Second Panel correctly connected the discrimination to the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights. Further, the First Panel further considers that the Chamber’s decision regarding compensation in *Čuturić*, cited by the respondent Party, has no bearing on the issues in this case. The First Panel therefore considers that the request for review does not raise “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance” as required by Rule 64(2)(a).

14. Being of the opinion that the request for review does not meet the conditions set forth in Rule 64(2), the First Panel by 6 votes to 1, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

15. The plenary Chamber agrees with the First Panel that 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

16. For these reasons, the Chamber, by 11 votes to 2,

DECIDES TO REJECT THE REQUEST FOR REVIEW.

(Signed)
Ulrich GARMS
Registrar of the Chamber

(Signed)
Michèle PICARD
President of the Chamber