



DECISION ON REQUEST FOR REVIEW

Case no. CH/02/9842

Eslam DURMO

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 March 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. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Andrew GROTRIAN

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

Having considered the request for a review of the decision of the Second Panel of the Chamber on the admissibility and merits of the aforementioned case filed by the Federation of Bosnia and Herzegovina;

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 application was submitted on 3 April 2002 by Ajla Durmo, the applicant's wife, on behalf of her husband. The applicant, who is of Egyptian origin, was granted citizenship of Bosnia and Herzegovina on 10 February 1995. On 19 July 2001 he was arrested and taken into custody on suspicion of having committed the criminal act of certifying untrue matters. On 5 October 2001, the applicant's release from pre-trial detention was ordered. However, instead of being released, he was immediately taken into custody by the Ministry of Interior of the Federation of Bosnia and Herzegovina. The applicant was handed over to the authorities of the Arabic Republic of Egypt and transferred to Egypt on 6 October 2001. On the same day a decision of the Ministry of Interior of the Federation of Bosnia and Herzegovina revoking his citizenship was delivered to him.

II. PROCEEDINGS BEFORE THE CHAMBER

2. On 10 January 2003 the Second Panel delivered its decision on admissibility and merits in this case. The Second Panel found that the application was inadmissible *ratione personae* in so far as it was directed against Bosnia and Herzegovina. The Second Panel declared the application admissible against the Federation of Bosnia and Herzegovina, with the exceptions of the allegations in relation to the right to life, the issue of discrimination and the allegations of a violation of the presumption of innocence, which it declared manifestly ill-founded.

3. The Second Panel established that the applicant was a national of Bosnia and Herzegovina at the time of his expulsion and found that therefore the Federation of Bosnia and Herzegovina violated Article 3 of Protocol No. 4 to the Convention with respect to the expulsion of the applicant. It also found that the Federation of Bosnia and Herzegovina violated the rights of the applicant protected by Article 5, paragraph 1, of the Convention for the time period after he was ordered to be released from pre-trial detention until his hand-over to the Egyptian authorities, as he was held in detention without any legal basis. The Second Panel further found that substantial grounds have been shown that the applicant, by being expelled to the Arabic Republic of Egypt, faces a real risk of being subjected to treatment contrary to Article 3 of the Convention. The Federation of Bosnia and Herzegovina was therefore under an obligation not to expel the applicant to the Arabic Republic of Egypt. The Chamber, accordingly, found a violation of Article 3 of the Convention. Since the applicant was not enabled to challenge his detention and expulsion, it also found a violation of Article 13 of the Convention in conjunction with the violations found.

4. In order to remedy the violations found, the Federation of Bosnia and Herzegovina was ordered to carry out an inquiry into the circumstances surrounding the expulsion of the applicant to the Arabic Republic of Egypt, with the aim to take appropriate action with regard to the persons responsible for this expulsion. The Federation of Bosnia and Herzegovina was further ordered to compensate the applicant in the amount of 10,000 KM for his suffering arising from the violations found and to compensate the applicant in the amount of 2,531.10 KM for legal costs.

5. On 10 January 2003 the Second Panel's decision was delivered at a public hearing in pursuance of Rule 60(2) of the Chamber's Rules of Procedure. On 10 February 2003 the Federation of Bosnia and Herzegovina submitted its request for review.

6. In accordance with Rule 64(1) the request for review was considered by the First Panel on 3 March 2003. In accordance with Rule 64(2), on 7 March 2003 the Plenary Chamber considered the request for review and recommendation of the First Panel.

III. THE REQUEST FOR REVIEW

7. In the request for review, the Federation of Bosnia and Herzegovina challenges the Second Panel's decision on two grounds.

8. Firstly, the Federation of Bosnia and Herzegovina is of the opinion that the Second Panel incorrectly established the fact that the applicant was still a citizen of Bosnia and Herzegovina at the

time of his expulsion. In particular, it claims that the decision on revocation of citizenship was delivered to the applicant before he was handed over to the Egyptian authorities. The Federation of Bosnia and Herzegovina disagrees with the argumentation of the Second Panel in its decision of 10 of January 2003 which reads as follows:

“84. The Federation argues that the applicant lost his citizenship at the time of the delivery to him of the decision on revocation on 5 October 2001. This opinion is in accordance with Article 24 of the State Law on Citizenship, providing that citizenship is lost on the day of notification of the decision to the person concerned.

85. However, although having explicitly been requested to do so, the Federation failed to provide evidence that the decision on revocation was delivered to the applicant before he was handed over to the authorities of the Arabic Republic of Egypt. The Chamber notes that the Federation provided the delivery slip. However, since it cannot be concluded from this delivery slip at what time exactly, that is to say before or after the applicant was handed over, and by whom this decision was delivered to the applicant, the Chamber considers that it cannot be determined that the decision on revocation of his citizenship was delivered to the applicant before he was handed over to the Egyptian authorities.

86. The Chamber therefore establishes that, regardless of the question whether the requirements for withdrawal of citizenship were met, since it cannot be seen that the decision was delivered before the expulsion, the applicant, according to Article 24 of the Law on Citizenship of Bosnia and Herzegovina, had not lost his citizenship of Bosnia and Herzegovina at the moment he was expelled to the Arabic Republic of Egypt.”

9. In the request for review the Federation of Bosnia and Herzegovina repeats that it submitted a delivery slip and argues that the fact that the delivery slip was signed on the same day on which the expulsion took place is not a valid argument to consider the applicant to still be a citizen of Bosnia and Herzegovina. Moreover, the Federation of Bosnia and Herzegovina claims that the decision on revocation of citizenship had been delivered to the applicant before his expulsion. The respondent Party concludes that there was no violation of Article 3 of Protocol No. 4 to the Convention.

10. Secondly, the Federation of Bosnia and Herzegovina claims in its request for review that the compensation of KM 10,000 KM for non pecuniary damages and of 2,531.10 KM for legal costs ordered in the case are disproportionately high and not in accordance with the Chamber’s practise.

IV. OPINION OF THE FIRST PANEL

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

12. 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”.

13. The First Panel notes that the respondent Party, in its request for review, again pointed at the fact that the applicant signed a delivery slip on the day of his expulsion. However, the First Panel notes that the Second Panel has already examined this argument and found in paragraph 85 of the decision of 10 January 2003 that “although having explicitly been requested to do so, the Federation failed to provide evidence that the decision on revocation was delivered to the applicant before he was handed over to the authorities of the Arabic Republic of Egypt.” The First Panel agrees with the the Second Panel that it was up to the respondent Party to establish that the delivery of the decision on revocation of citizenship took place before the applicant’s expulsion.

14. Moreover, the First Panel also notes that the Second Panel based its findings that the applicant had not lost his citizenship prior to his expulsion and, thus, its finding of a violation of

Article 3 of Protocol No. 4 to the Convention on additional, valid arguments. The Second Panel in its decision of 10 January 2003 in particular reasoned that

“87. Furthermore, the Laws on Citizenship of both Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina require that the decision revoking the applicant’s citizenship is submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina (Article 31 of the State law and Article 33 of the Federation law). According to a literal reading of the law, the decision does not become effective until two months after this submission and under the condition that this Ministry concludes that the conditions of, in this case, Article 23 of the State law and Article 24 of the Federation law, have been fulfilled.

88. The Chamber notes that, despite the fact that the Ministry of Interior of the Federation of Bosnia and Herzegovina on 8 October 2001 transmitted the procedural decision of revocation of citizenship, there was no consent, as required in Article 31 paragraph 2 of the Law on Citizenship of Bosnia and Herzegovina, of the Ministry for Civil Affairs and Communications of Bosnia and Herzegovina to this procedural decision. The absence of this consent at the time of expulsion also results in establishing that the applicant had not lost his citizenship of Bosnia and Herzegovina at the time he was expelled.

89. The Chamber notes that the laws of the State and the laws of the Federation regarding the issue of citizenship are not harmonised since they provide for different requirements. However, according to both the State Law and the Federation Law, the applicant had not lost his citizenship of Bosnia and Herzegovina at the time of expulsion. The Chamber therefore establishes that the applicant was a national of Bosnia and Herzegovina at the time he was expelled. Article 3 of Protocol No. 4 is therefore applicable.”

15. In light of the fact that the Second Panel’s decision was based on these further arguments which indisputably establish that the applicant had not lost his citizenship at the time of his expulsion, the First Panel does not consider that “the whole circumstances justify reviewing the decision” as required by Rule 64(2)(b).

16. With regard to the respondent Party’s second claim, that the compensation awarded is not proportionate, the First 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 *Rizvanović*, decision on request for review of 13 November 1998, paragraph 17, Decisions and Reports 1998).

17. Moreover, the Second Panel’s decision of 10 January 2003 is based on the finding of serious violations. In particular the Federation of Bosnia and Herzegovina was found to have violated its obligation under Article 3 of the Convention not to extradite the applicant to the Arabic Republic of Egypt in light of the fact that there were substantial grounds to suppose that the applicant, by being expelled, faces a real risk of being subjected to treatment contrary to Article 3 of the Convention. Therefore the compensation awarded seems justified.

18. Being of the opinion that the request for review does not meet the two 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

19. 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

20. 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