



DECISION ON REQUEST FOR REVIEW

CASE No. CH/97/57

Ferid HALILOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 16 April 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOVIĆ
Mr. Želimir JUHA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Leif BERG, Registrar
Ms. Olga KAPIC, Deputy Registrar

Having considered the applicant's request for a review of the decision of the First Panel of the Chamber to strike out 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 application emanates from Ferid Halilović. On 18 October 1996, while travelling in an organised convoy towards Odžak to visit his property which was located there, the applicant was stopped in Gnonica by officers of the Republika Srpska ("RS") police. He was arrested on suspicion of having committed war crimes under Article 142(1) of the Criminal Law of the SFRY (which was later adopted by the RS). According to a report provided to the Chamber by Mr. Claudio Cordone, Chief of Human Rights at UNMIBH, the applicant was informed of the reason for his detention at the time of his arrest. He was detained in prison in Doboj. The applicant had been included in a list of persons indicted by the Ministry of Internal Affairs of the RS on 30 August 1996 on suspicion of having committed war crimes.

2. On 22 October 1996, he was brought before an investigative judge of the Court of First Instance in Doboj on the grounds that he had committed war crimes under the provisions quoted above. The judge ordered his detention in accordance with Article 191(1) of the Law on Criminal Proceedings. On 12 November 1997, the Prosecutor in Modriča submitted a request to the Court of First Instance in Modriča to initiate an investigation and requested that the applicant be detained pending this investigation. The detention of the applicant was reviewed and prolonged by the Court of First Instance on 22 November 1996 and 20 January 1997.

3. The applicant was formally charged with war crimes against the civilian population under Article 142(1) of the Criminal Law on 24 February 1997. His pre-trial detention was further prolonged at the request of the Prosecutor. On 25 February 1997, the indictment was referred to the Court of First Instance in Modriča. On 27 February 1997, the applicant's detention was prolonged by that Court.

4. The applicant's trial commenced on 21 April 1997 and continued, with various adjournments, until 23 October 1997. The evidence against the applicant consisted mainly of statements of witnesses. The applicant was found guilty of the charges brought against him and sentenced to 15 years in prison. The time already spent by the applicant in detention is to count as part of the sentence.

5. During the applicant's trial, his detention was reviewed and prolonged three times (on 12 May, 23 July and 30 September 1997). The applicant maintained his innocence throughout the trial.

6. On 9 May 1997, Mr. Graham Blewitt, Deputy Prosecutor of the International Tribunal for the Former Yugoslavia at the Hague wrote to the RS liaison officer for the Tribunal and expressed the opinion that the evidence submitted to the Tribunal was "sufficient by international standards to provide reasonable grounds for believing that Ferid Halilović had committed a serious violation of international humanitarian law".

7. In the criminal proceedings the applicant was represented by a lawyer from the Republika Srpska (originally Mr. Dragan Lazić, who was replaced by Mr. Dušan Panić) and a lawyer from the Federation of BiH, Mr. Zoran Rakić, who acted as an "assistant" to the RS lawyer.

8. The applicant alleged a violation of his rights as guaranteed by Article 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). He also claimed his right to liberty of movement and residence, as guaranteed by Article 2 of Protocol no. 4 to the Convention.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced on 19 August 1997 and registered on the same day.

10. The case was first considered by the plenary Chamber which transmitted the case to the respondent Party for its observations pursuant to Rule 49(3)(b). However, after the establishment of Panels in accordance with Article X(2) of the Agreement the case was assigned to the First Panel.

11. On receipt of the respondent Party's observations the Registry, by various means including letters of 17 June and 4 August 1998, invited the applicant to submit his comments. No reply was received to any of these letters sent to the applicant's prison.

12. On 15 October 1998 the First Panel adopted its decision in the case, striking it out pursuant to Article VIII(3)(a) of the Agreement, considering that the applicant no longer wished to pursue his application.

13. The First Panel's decision was sent to the applicant at the address of the prison in Doboj on 31 December 1998 but was returned to the Chamber on 21 January 1999 because the applicant had been transferred to a prison in Srbinje. The decision was again sent to the applicant's new address on 22 January 1999. On 18 February 1999 the applicant submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 14 April 1999, decided to recommend to the plenary Chamber that the request be accepted. The plenary Chamber considered the request and the Second Panel's recommendation on 16 April 1999.

III. REQUEST FOR REVIEW

14. In his request the applicant alleges that while he was in prison in Doboj he was prevented from responding to the Registry's letters of 17 June and 4 August 1998. Much of the original complaint regarding violations of Article 5 and 6 of the European Convention was restated in the request. However, the applicant raises new allegations of ill-treatment and torture, forced confession and interference with his right to respect for his correspondence while in detention.

IV. OPINION OF THE SECOND PANEL

15. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). It is essentially based on the allegation that while the applicant was in prison in Doboj he was prevented from responding to the Chamber's requests for observations.

16. In these particular circumstances the Second Panel finds that "the whole circumstances justify reviewing the decision" as stipulated in Rule 64(2)(b) and that the case raises "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as stipulated in Rule 64(2)(a). The Second Panel is therefore unanimously of the opinion that the request should be accepted.

V. OPINION OF THE PLENARY CHAMBER

17. The Chamber first recalls that under Article X(2) of the Agreement it shall normally sit in panels of seven members. When an application is decided by a Panel, the plenary Chamber may decide, upon motion of a party to the case or the Human Rights Ombudsperson to review the decision. Article XI(3) of the Agreement stipulates that subject to the aforementioned review the decisions of the Chamber shall be final and binding. Under Rule 63(2) of the Rules of Procedure any request for review shall be made within one month of the date on which the Panel's decision is communicated to the parties under Rule 52 or delivered under Rule 60. The request shall specify the grounds invoked in support of a review. Under Rule 64(1) the request shall be referred to the Panel which did not take the challenged decision, and that Panel shall make a recommendation to the plenary Chamber as to whether the decision should be reviewed. The plenary Chamber shall consider the request for review as well as the recommendation of the aforementioned Panel, and shall decide whether to accept the request. It 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 (see *Rizvanović and Herak v. The Federation of Bosnia and Herzegovina*, cases nos. CH/97/59 and CH/97/69, decisions on requests for review of 13 November 1998, Decisions and Reports 1998).

18. The Chamber noting that the request complies with the relevant procedural requirements set out in rule 63(2), agrees with the opinion of the Second Panel and concludes that the request for review must be accepted, without prejudice to the further procedure before the Chamber or its final

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decision.

VI. CONCLUSION

19. For these reasons, the Chamber

by 8 votes to 3,

ACCEPTS THE REQUEST FOR REVIEW;

unanimously,

REVOKES THE DECISION TO STRIKE OUT THE APPLICATION;

unanimously,

RESTORES THE APPLICATION TO THE CHAMBER'S LIST OF CASES FOR FURTHER CONSIDERATION.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber