



## **DECISION ON REQUEST FOR REVIEW**

**CASE No. CH/97/74**

**Džemal BALIĆ**

**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. 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 KAPIĆ, Deputy Registrar

Having considered the applicant's request for a review of the decision of the Second Panel of the Chamber on the admissibility 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. FACTS AND COMPLAINTS**

1. Mr. Balić was allegedly arrested by three Bosnian Serb police officers on 10 May 1992 and taken to the KP Dom prison facility in Foča. Mrs. Balić claimed that she appealed for help to a number of local Serbian Democratic Party (SDS) functionaries who had been friends of her family before the war, including Petko Čančar, who was the mayor of Foča during the war and was Minister of Justice for the Republika Srpska during 1998. Mrs. Balić claimed that “Mr. Petko Čančar, President of the Municipality, was informed of the fact that my husband had been taken to a camp; he knew my husband well and his children had ours for friends, but he did not want to do anything in favour of my husband in spite of his being a lawyer.”

2. On 18 September 1992 Mr. Balić was allegedly removed from the KP Dom and his whereabouts since that date are unknown. Mrs. Balić stated that she approached the State Commission for the Exchange of War Prisoners and Missing Persons (“State Commission”) for information. On 8 July 1996 the State Commission issued a document noting that it was informed by the Republika Srpska that Mr. Balić had been taken to be exchanged somewhere in the direction of FRY. Mrs. Balić also stated that a photograph of Mr. Balić having his blood pressure taken in a prison appeared on 31 August 1992 in the Belgrade newspaper “Politika Ekspres.” In addition, Mrs. Balić alleged that her husband was witnessed in a camp in Serbia in 1993. Finally, she claimed that there has been information in media that detainees, including some from KP Dom, are still working in various locations in Serbia, Montenegro and the Republika Srpska.

## **II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER**

3. The application was introduced on 4 November 1997 and registered on 25 November 1997. The applicant is represented by his wife, Mrs. Ismeta Balić, resident in Sweden.

4. Although the application was brought before the Chamber by Mr. Balić’s wife, the Chamber refers to Mr. Balić as “the applicant” in accordance with Article VIII (1) of the Agreement, which provides in its relevant part: “The Chamber shall receive...from any person...acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights...”

5. The case was first considered by the Plenary Chamber. However, after the establishment of Panels in accordance with Article X(2) of the Agreement the case was assigned to the Second Panel.

6. On 10 September 1998 the Second Panel adopted its decision in the case, declaring it inadmissible as outside the Chamber’s competence *ratione temporis* pursuant to Article VIII(2) of the Agreement.

7. On 18 September 1998 the Second Panel’s decision was communicated to the parties in pursuance of Rule 52. On 9 October 1998 the applicant’s representative submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the First Panel on 9 February 1999. Under Rule 21(1)(a) of the Rules of Procedure, Mr. Hasan Balić excused himself from participation in the case as the applicant is his brother. On 14 April 1999 the First Panel decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the First Panel’s recommendation on 16 April 1999.

## **III. REQUEST FOR REVIEW**

8. In her request the applicant’s representative argues that in its decision the Second Panel did not establish important facts the consequence of which was a wrongful application of the law. The applicant’s representative also refers to paragraphs 16 and 17 of the decision and to a judgement of the Inter-American Court of Human Rights which she feels “goes in her favour.” She requests that the Chamber hold a public hearing in the case.

9. The applicant’s representative also challenges Mr. Popović as a judge in this case, stating that “taking into consideration the function held by Mr. Vitomir Popović at the time of the applicant’s

detention and his further fate, it is not moral that he takes part as a judge in the consideration of the case.”

#### **IV. OPINION OF THE FIRST PANEL**

10. The First Panel first notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). However, as regards the first ground of the request, namely that the Second Panel failed to establish important facts leading to a wrongful application of the law, the First Panel finds that the applicant’s request for review does not provide any new facts to substantiate this claim. As regards the second ground upon which the request is based, namely the participation of Mr. Popović in the deliberations on the case, the First Panel considers that the applicant could have opposed Mr. Popovic’s participation already at the outset of the proceedings before the Chamber. However, at no stage of the ordinary proceedings did the applicant submit any observations on this point. The First Panel therefore does not consider that “the whole circumstances justify reviewing the decision” as stipulated in Rule 64(2)(b). In addition, the case does not raise “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).

11. As the request for review does not meet the two conditions set out in Rule 64(2), the First Panel unanimously, recommends that the request be rejected.

#### **V. OPINION OF THE PLENARY CHAMBER**

12. 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, pp. 261 and 291, respectively).

13. The plenary Chamber agrees with the opinion of the First Panel and concludes 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**

14. For these reasons, the Chamber, unanimously,

**REJECTS THE REQUEST FOR REVIEW.**

(signed)  
Leif BERG  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the Chamber