



DECISION ON REVIEW
(delivered on 10 January 2003)

Case no. CH/98/1373

ALEKSANDAR BAJRIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on December 2002 with the following members present:

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Ms. Michèle PICARD, President
Mr. Hasan BALIĆ
Mr. Jakob MÖLLER
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

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

Having considered the respondent Party's request for review of the decision of the First Panel of the Chamber on the admissibility and merits of the aforementioned case;

Having regard to its decision of 7 July 2002 accepting in part the respondent Party's request for review;

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 Rule 65 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. On 10 May 2002 the Chamber delivered a decision on admissibility and merits in the case. In this decision the First Panel found that the respondent Party violated Article 3 of the European Convention on Human Rights (“the Convention”) by subjecting the applicant to inhuman and degrading treatment during his detention, and also by failing to conduct an investigation into the maltreatment although the applicant carried visible injuries. In addition the First Panel found that the detention of the applicant from 21 August 1996 to 24 March 1997 was in violation of Article 5 paragraph 1 of the Convention, as it was in breach of the “Rules of the Road”. The First Panel found that the respondent Party violated Article 5, paragraph 3 of the Convention failing to promptly bring the applicant before a judge after his arrest. Finally the Chamber found that the applicant had been discriminated against in the enjoyment of his rights as protected by Article 3 of the Convention; the First Panel was persuaded that the applicant’s maltreatment during his detention was at least partially based on his perceived ethnicity. The respondent Party filed a request for review, which was granted by the Plenary Chamber insofar as it concerned the finding of a violation of Article 5, paragraph 3 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

2. On 10 May 2002 the First Panel’s decision on admissibility and merits was delivered.
3. On 10 June 2002, the respondent Party submitted a request for review of the decision.
4. On 7 July 2002, the plenary Chamber issued a decision on request for review, accepting the respondent Party’s request for review in part insofar as it was directed against a finding of a violation of Article 5, paragraph 3 of the Convention.
5. The respondent Party submitted supplemental written observations in the review proceedings on 25 September 2002, and the applicant submitted supplementary written observations in the review proceedings on 10 October 2002 in reply to those observations.
6. The plenary Chamber deliberated on the decision for review on 8 November 2002 and on 7 December 2002. On 7 December 2002, the Chamber adopted the present decision on review.

III. FACTS

7. The matter before the Chamber in these review proceedings is limited to whether there has been a violation of the applicant’s rights protected under Article 5, paragraph 3 of the Convention.
8. The applicant was arrested by the police of the Federation of Bosnia and Herzegovina for allegedly unlawfully possessing munitions after the car he was driving was stopped on 22 May 1996. On the same day, 22 May 1996, the Municipal Court in Sanski Most ordered that the applicant should be detained for 30 days for the purpose of investigating whether he had committed the criminal act of illegal possession of weapons and explosive materials, which were discovered in his car, as prohibited by Article 213 paragraphs 1 and 2 of the Criminal Law of the Republic of Bosnia and Herzegovina.
9. The respondent Party claims that the applicant was promptly brought before an investigative judge and that only one hour later, at 11 a.m., the decision on pre-trial detention was delivered to the applicant. In support the respondent Party submitted as an attachment to its observations of 18 February 2002, a copy of the minutes on the interrogation of the applicant before the investigative judge of the first instance court in Sanski Most, dated 10 a.m. on 22 May 1996 and signed by the investigative judge and “Aleksandar Bajrić”.
10. In its decision of 10 May 2002 the First Panel did not make any reference to the minutes of the hearing before the investigative judge which purportedly took place on 22 May 1996, but believed

the applicant's allegation that he was not brought promptly before a judge, stating that the respondent Party failed to support its claim with documents.

11. Based on this reasoning, the First Panel found that the respondent Party violated Article 5, paragraph 3 of the Convention by failing to promptly bring the applicant before a judge after his arrest.

12. The Chamber in its decision on review found that the omission of the First Panel to discuss the relevance of the copy of the minutes of a hearing before the pre-trial judge of 22 May 1996 in respect to the finding of a violation of Article 5 paragraph 3 of the Convention gives rise to a right to review of this aspect of the decision. The Chamber rejected the remainder of the request for review.

IV. SUBMISSIONS OF THE PARTIES IN THE REVIEW PROCEEDINGS

a. The respondent Party

13. From a record submitted by the respondent Party it appears that on 22 May 1996 the applicant was arrested by two policemen, Mr. Velid Krupić and Mr. Zikret Zukić, who were carrying out a traffic control and stopped him because he had no number plates. The respondent Party submits that the arrest was based on the suspicion of illegal possession of weapons. There is no specification of the time of arrest.

14. According to the respondent Party, following the arrest, the applicant was taken to the Public Security Center in Sanski Most where he was informed of the reasons for his arrest and gave a statement. The respondent Party submitted the record of the applicant's statement dated 22 May 1996. In addition, the respondent Party submitted an official note about the detention of the applicant also of 22 May 1996 on the premises of the Public Security Center Sanski Most by the policemen Mr. Velid Krupić and Mr. Zikret Zukić. On neither document is the exact time at which the applicant was arrested or the time at which the document was signed noted.

15. The respondent Party claims that the applicant at 10 a.m. was brought before the investigative judge for a hearing. To support its claim the respondent Party submitted to the Chamber a record of the hearing signed "Aleksandar Bajrić". The respondent Party alleges that, had the applicant not signed the record, the court would have entered this refusal to sign into the record.

16. After the hearing the investigative judge issued a procedural decision ordering the applicant's detention. The respondent Party claims that the procedural decision was delivered to the applicant right after the hearing once it had been issued. The respondent Party in addition to the record of the hearing submitted a copy of the decision "received on 22 May 1996, (signed) Aleksandar Barjić at 11 a.m". The respondent Party claims that thereby the applicant confirmed to have received the procedural decision on the named date and time.

17. On the basis of these elements, the respondent Party argues that the applicant was brought before an investigative judge on 22 May 1996, the day of his arrest, and that there was no violation of Article 5, paragraph 3 of the Convention.

b. The applicant

18. The applicant alleges that on 22 May 1996 he left Prijedor at 3 p.m. and at 4 p.m. he was stopped just outside Sanski Most by two soldiers of the Army of the Federation ("the Army of FBiH").

19. He claims that he was then taken by the two soldiers to military barracks of the Army of FBiH in Tomina where his van was searched by soldiers who made comments about his "Chetnik number plate". The applicant was kept in the barracks until 8 p.m of 22 May 1996. From the military barracks he was taken to the Public Security Center in Sanski Most in the evening of 22 May 1996 where he stayed until 6 June 1996. During his detention he was seriously maltreated.

20. The applicant rejects the respondent Party's claim that he was arrested by the named two policemen, Mr. Velid Krupić and Mr. Zikret Zukić, and in addition points out that his van had number plates of the Republika Srpska. The applicant also claims that he met these two policemen later when he was eventually brought to the Public Security Center. He claims that Velid Krupić was one of the policemen most active in his beating at the Public Security Center. He further claims that the official note made by the two policemen (see paragraph 13 above) was fabricated by the respondent Party's authorities in order to portray the factual background in favour of the respondent Party. In addition the applicant claims that the date of the record is illegible.

21. The applicant argues further that only on 6 June 1996, when he was transferred to the prison in Bihać, he was delivered the procedural decision of 22 May 1996 ordering his custody, issued by judge Idriz Karabeg. The applicant claims that he was accompanied during this transfer by a policeman who had been involved in previous beatings of the applicant. He submits that the policeman drew a horizontal line on the backside of the document and by threatening the applicant to beat him up forced the applicant to sign the decision. The applicant claims that the addition next to his signature indicating the time, "u 11 h" (*at 11 a.m.*), was added later by someone else.

22. With respect to the minutes of the hearing before the investigative judge Idriz Karabeg, which according to the respondent Party took place on 22 May 1996 just prior to the issuance of the decision on detention, the applicant claims that his signature is falsified. To support this claim the applicant submits ten authentic signatures made by him for the Chamber to compare with the one on the document.

23. The applicant alleges that on 21 August 1996 he was for the first time brought before an investigative judge, Mr. Slobodan Petković, judge at the Higher Court in Bihać.

24. The applicant finally suggests to the Chamber to organise a public hearing in which he could confront judge Karabeg, the investigative judge who allegedly interrogated him on 22 May 1996 and then issued the procedural decision. The applicant also suggests to invite as witnesses all other persons involved in the criminal proceedings against him, including those persons who signed official documents and the investigative judge of the Higher Court in Bihać, Mr. Slobodan Petković, who undisputedly heard the applicant on 21 August 1996.

25. The applicant concludes from his account of the facts that there was a violation of Article 5, paragraph 3 of the Convention and that the respondent Party's request for review in this respect should be rejected as ill founded. He claims that already because of the chronology of events the submission of the respondent Party that the applicant was heard by the investigative judge at 10 a.m. on 22 May 1996 cannot be true.

V. THE CHAMBER'S DECISION ON REVIEW

26. As noted above the Chamber will confine its review of the First Panel's decision on admissibility and merits of the case, to the question of whether there was a violation with regard to Article 5, paragraph 3 of the Convention.

27. In the decision of 10 May 2002 the First Panel decided as follows:

"103. Also in this respect the respondent Party, in spite of a specific request from the Chamber of 13 March 2002, provides no evidence to substantiate its bare denial of the applicant's allegation that he was not brought before the competent investigative judge before 21 August 1996. The respondent Party fails to provide any documents to prove that the applicant was brought before the investigative judge, such as the minutes of the hearing before the investigative judge, or any written statement of the investigative judge himself or any other official with personal knowledge of the matter. The Chamber is hence persuaded of the truthfulness of the applicant's allegation that he was not brought promptly before a judge.

104. The Chamber notes that applicant should have been brought before the competent investigative judge or the investigative judge of the lower court in whose jurisdiction the crime was

committed, without delay (Article 195 paragraph 1 of the Law on Criminal Procedure). The failure to bring the applicant before the investigating judge within 24 hours required the enforcement authorities to provide specific justification for the delay (Article 195 paragraph 2 of the Law on Criminal Procedure), which was never done. Alternatively, if the law enforcement bodies had been acting in accordance with Article 4(a) of the Law on Application of the Law on Criminal Procedure, after a maximum of three days in detention, the applicant should have been brought without delay before the competent investigative judge of the lower court in whose jurisdiction the crime was committed.

105. The failure to appropriately bring the applicant before a judge in a timely fashion constitutes a violation of Article 5 paragraph 3 of the Convention.”

28. In order to establish whether there was a violation of Article 5, paragraph 3 of the Convention the Chamber has assessed the contradictory submissions of the Parties presented in the review proceedings as to the events on 22 May 1996. The Chamber has also examined the documents submitted by the respondent Party, the official note of the policemen V.K. and Z.Z. about the applicant’s arrest, the statement of the applicant recorded on 22 May 1996 at the Public Security Center at Sanski Most bearing his signature, the minutes of the hearing of the applicant before the pre-trial judge of 22 May 1996 signed “Aleksandar Bajrić”, and the decision of 22 May 1996 of the investigative judge ordering the applicant’s pre-trial detention signed by the applicant (with the addition “at 11 a.m.” next to the signature).

29. The Chamber notes that both the applicant and the respondent Party submitted to the Chamber a coherent account of the events of 22 May 1996. However, these two accounts are mutually exclusive.

30. The Chamber also notes that the respondent Party supported its submission with documents from which it appears that the applicant was brought before an investigative judge on 22 May 1996. In addition, the minutes of the hearing before the pre-trial judge and the decision ordering pre-trial detention appear to be signed by the applicant. The Chamber notes that as a general principle of law a public document is presumed to state the truth.

31. However, the applicant claims that his alleged signature on the minutes of the hearing before the pre-trial judge is forged and that he was forced to sign the decision ordering pre-trial detention on 6 June 1996. The Chamber is not in a position to assess the authenticity of the applicant’s signature on any document nor is it in a position to ascertain whether these documents were retroactively produced or falsified.

32. In light of the remaining uncertainty as to the events of 22 May 1996 the Chamber finds that a violation of Article 5, paragraph 3 of the Convention has not been established.

VI. CONCLUSIONS

33. For these reasons, the Chamber decides, by 10 votes to 1,

- that a violation of the applicant’s right as protected by Article 5, paragraph 3 of the Convention has not been established; and

- that the earlier finding of a violation of Article 5, paragraph 3 in the decision on admissibility and merits of 10 May 2002 is set aside.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber