



DECISION ON THE CLAIM FOR COMPENSATION

Case no. CH/98/1374

Velimir PRŽULJ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 July 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the claim for compensation submitted by Velimir Pržulj against the Federation of Bosnia and Herzegovina following the Decision of the Human Rights Chamber of 10 January 2000 on the admissibility and merits of case no. CH/98/1374, between the same applicant and respondent Party,

Adopts the following Decision on the said claim under Article XI of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

I. INTRODUCTION

1. In January 1997 the applicant, a Republika Srpska policeman, was arrested by the Federation police in the vicinity of the Inter Entity Boundary Line at Vraca, Sarajevo, on charges of genocide and war crimes. In the course of his arrest and on the way to the police station, he was maltreated by his captors. The following day the investigation was terminated and the applicant released from detention.

2. The application raised issues under Articles 3 and 5 of the European Convention on Human Rights (the "Convention"). It also raised the question whether the applicant was discriminated against in the enjoyment of the rights guaranteed by these provisions.

3. On 13 January 2000 the Chamber delivered its decision on admissibility and merits, finding violations of Articles 3 and 5(1) of the Convention and awarding the applicant 3,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") by way of compensation for the fear and pain he suffered during the arrest and detention, as well as in the immediate aftermath of the release. The Chamber decided to reserve judgment on the applicant's claim for compensation for the medical expenses after 7 February 1997, for the reduced personal income due to the sick leave since September 1998, and on the claim for "reduced general ability" until such time as the applicant's medical condition could be professionally analysed. The purpose of this decision on the claim for compensation is exclusively to determine these reserved claims for compensation.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The case originated in an application lodged with the Chamber by the applicant on 21 December 1998 and registered on the same day.

5. On 9 February 1999, the Chamber deliberated on the admissibility and decided to transmit the application to the respondent Party under Articles 5 and 6 of the Convention.

6. The applicant's claim for financial compensation was received by the Chamber on 25 August 1999. The applicant claimed compensation for the fear and pain suffered, for the "reduced general ability", *i.e.* reduced working and general living ability, for the ruined reputation and honour and for medical expenses in the overall amount of KM 20,000. This was forwarded to the Agent of the respondent Party.

7. On 7 October 1999 the Chamber held a public hearing in the Sarajevo Cantonal Court whereupon the applicant submitted a new claim of compensation. The applicant claimed:

- (a) KM 10,000 for the damage done to his reputation and honour and additionally KM 5,000 on the ground that this damage was done through the media;
- (b) KM 8,000 for the pain and fear inflicted to him;
- (c) KM 5,000 for "the mental suffering of his mother and his sister who spent more than one day in fear for the life of their son and brother respectively";
- (d) KM 2,000 for the medical expenses which are not borne by his health insurance; and
- (e) KM 1,800 (*i.e.* KM 120 per month) for the reduced personal income due to the sick leave which he has allegedly been forced to take for 15 months as of the date of the hearing.

8. On 13 January 2000 the Chamber delivered its decision on the admissibility and merits of the case, which had previously been adopted on 10 January 2000. The conclusions of that decision read as follows:

"187. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible in relation to the complaints under Articles 3 and 5 of the European Convention on Human Rights, Article 2 of Protocol No. 4 to the Convention and of discrimination in the enjoyment of the rights guaranteed by these provisions;
2. unanimously, to declare inadmissible the applicant's complaint under Article 6 of the Convention;
3. unanimously, that the arrest and detention of the applicant by the police in Sarajevo on 26 and 27 January 1997 constituted a violation of the right of the applicant to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that the case does not reveal a violation of the applicant's right to be promptly informed of the reasons for his arrest and of any charges against him under Article 5 paragraph 2 of the Convention;
5. by 5 votes to 1, that the treatment to which the applicant was subjected by the police during his arrest and transport in the police van on 26 January 1997 constituted inhuman and degrading treatment and thus violated the applicant's rights under Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
6. unanimously, that it is not necessary to examine the complaint under Article 2 of Protocol No. 4 to the Convention;
7. by 5 votes to 1, that there is not sufficient evidence to conclude that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Article 5 of the Convention;
8. unanimously, that there is not sufficient evidence to conclude that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Article 3 of the Convention;
9. unanimously, to order the respondent Party to carry out an investigation into the conduct of Messrs. Fazlagić and Dizdarević, as well as of the other policemen involved in the applicant's arrest on 26 January 1997 at the Inter Entity Boundary Line at Vraca and in the applicant's transportation in the police van to the Novo Sarajevo police station, with a view to initiating criminal proceedings against them in accordance with the law of the Federation of Bosnia and Herzegovina;
10. by 5 votes to 1, to order the respondent Party to pay to the applicant, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 3,000 (three thousand) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for the fear and pain suffered during the arrest and detention, as well as in the immediate aftermath of the release;
11. by 4 votes to 2, to reserve its decision on the applicant's claim for compensation for the medical expenses after 7 February 1997, for the reduced personal income due to the sick leave since September 1998, and on the claim for "reduced general ability";
12. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, within three months from the day when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 640 (six hundred and forty) Convertible Marks (*Konvertibilnih Maraka*) by way of

compensation for the legal fees and expenses incurred in the proceedings before the Chamber and the Ombudsperson;

13. unanimously, that simple interest at an annual rate of 4% (four per cent) will be payable on the sums awarded in conclusions number 10 and 12 above from the expiry of the three-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

14. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders."

9. For the proceedings before the Chamber (deleted text) until 5 April 2000, when the request for review was decided, see the decision on admissibility and merits of 10 January 2000 and the decision on request for review of 5 April 2000 (Decisions January-June 2000).

10. In order to ascertain the applicant's condition, he was initially examined on 7 February 1997 by Dr. Zoran Kezunović, Neuro- psychiatrist at the Sokolac Psychiatric Hospital. Dr. Kezunović concluded that the applicant suffered psycho- and motoric-anxiety, was withdrawn and depressed, had the impression of hearing threatening voices behind him, and suicidal behaviour was present. He stated there was no sign of insanity. Dr. Kezunović diagnosed the condition as *psychosis reactiva* but could not confirm this state was directly attributable to the maltreatment he received by his captors.

11. Subsequently, on 23 October 1998 the applicant was seen by Dr. S. Đokić at the Sokolac Psychiatric Hospital who deemed it necessary for the applicant to be admitted to the hospital. He was admitted from 3 to 12 November 1998. Dr. Đokić ordered that upon his release, the outpatient clinic treatment should continue for one month. On 3 November 1998 the applicant was seen by Dr. M. Janković at the Sokolac Psychiatric Hospital who also diagnosed his condition as *psychosis reactiva*. He stated that he suffered from feeling fear, occasional stronger excitement, and insomnia and avoids contact with others. No conclusion as to the cause of the applicant's condition was given.

12. On 9 September 2000 the Chamber decided to engage an international psychologist with clinical experience as an expert witness in accordance with its authority under Rule 39. The Chamber noted that the expert should be instructed to examine the applicant and ascertain whether there was any causal link between the medical condition of the applicant and the treatment he received during his arrest in January 1997.

13. On 13 October 2000 the Chamber engaged Professor Richard Mollica of Harvard University as an expert for the examination of the applicant.

14. On 13 November 2000 the applicant was assessed by Professor Mollica at the Neuro-psychiatric Clinic at Sarajevo University. Also present were Professor Ismet Cerić, director of the Clinic, and two representatives of the Registry. Professor Mollica stated that the applicant was suffering from depression, but he was unable to determine the cause of it. Professor Mollica confirmed that the applicant was suffering from the symptoms typical of *psychosis reactiva*, but was unable to state that it was directly attributable to the maltreatment he received by his captors. As a result, Professor Mollica has indicated to the Chamber that he would therefore be unable to establish any chain of causation.

15. On 24 March 2002 the applicant wrote to the Chamber requesting that it finally resolve the reserved judgment on compensation.

16. On 9 April, 10 May, 3 June and 5 July 2002 the Chamber further deliberated on the claim for compensation. On the latter date, the Chamber adopted the present decision.

III. SUBMISSIONS OF THE PARTIES

A. The applicant

17. The applicant requests compensation for medical expenses in the amount of KM 2,000, for reduced personal income due to the sick leave since September 1998 in the amount of KM 1,800 and for "reduced general ability", an unspecified amount. He argues that these damages were directly caused by his mistreatment by the police of the Federation of Bosnia and Herzegovina in January 1997.

B. The respondent Party

18. The respondent Party maintains that it has, at all times, contested the admissibility and merits of the application and as such the claim for compensation should be refused in its entirety. The respondent Party states in its written observations that the claim for reduced general ability was ill-founded, as it was never established that the applicant was physically ill-treated, or if he was, it was not to the extent as to affect his general ability. The respondent Party further submits that with regards to the claim for medical expenses, the applicant had not submitted any evidence to substantiate this claim, and it must therefore be considered ill-founded.

19. The respondent Party further maintains its position that the application is ill-founded in its entirety.

IV. OPINION OF THE CHAMBER

20. The applicant claims that his present medical condition is a direct consequence of the mistreatment he received during his arrest and detention. The medical evidence supports the view that he suffers from *psychosis reactiva*. This is evidenced by the medical findings of Dr. M. Janković, Dr. Zoran Kezunović, and Dr. S. Đokić of the Sokolac Psychiatric Hospital, and Professor Richard Mollica, each of whom have treated or examined the applicant. However compelling this evidence is, it fails to establish that the applicant's condition of *psychosis reactiva* is undeniably connected to his mistreatment by the Federation police in January 1997. The medical findings suggest such a possibility, but they do not go any further than that.

21. In order for the applicant's reserved compensation claims to succeed, it must be shown that there is an unbroken chain of causation connecting the unlawful conduct of the Federation police in January 1997 to the injuries suffered by the applicant for which he claims compensation. The applicant has failed to establish this requisite chain of causation, and the Chamber is unable to determine on its own, with any certainty, that the applicant's medical condition is a direct result of the mistreatment he received during detention.

22. Therefore, the Chamber finds that it lacks sufficient evidence upon which it may make any additional award of compensation, for either pecuniary or non-pecuniary damages, to the applicant to remedy the established breaches of the Agreement which it found in the decision on admissibility and merits of 10 January 2000 (Decisions January-June 2000). The Chamber therefore rejects the applicant's remaining reserved claims for compensation in their entirety.

V. CONCLUSIONS

23. For these reasons, the Chamber, unanimously, decides
1. to reject the applicant's claim for compensation for the medical expenses after 7 February 1997;
 2. to reject the applicant's claim for compensation for the reduced personal income due to the sick leave since September 1998; and
 3. to reject the applicant's claim for compensation for reduced general ability.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel