



DECISION ON REQUEST FOR REVIEW

CASE No. CH/98/522

Obrad ČABAK

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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 MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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. The facts of the case, as they appear from the application and other documents in the case file, may be summarised as set out below. The facts of the case are partially in dispute between the parties.

2. According to the applicant's father, the applicant was taken from his apartment by members of armed forces operating in the Sarajevo area. These are described in the application as the "Army of Canton Sarajevo" ("Vojska Kantona Sarajevo"). The applicant's parents saw the applicant later that day on a television broadcast. Together with a number of other persons of Serb origin, he was shown with Mr. Zoran Čegar, a policeman with the then Internal Affairs Service in Sarajevo (now the State Ministry of Internal Affairs). Mr. Čegar stated that the persons shown were persons of Serb origin from the other side of the "front-line". Mr. Čegar reportedly said that he was entitled to kill them, as they had threatened him for not joining the Bosnian Serb armed forces.

3. The applicant's father states that he has not seen his son since 18 June 1992. He states further that he immediately reported the broadcast referred to above to the Red Cross Sarajevo, the Department for Missing Persons and the State Commission for the Exchange of Prisoners of War and Missing Persons.

4. In its observations on the admissibility and merits of the application, the respondent Party contested a number of the factual allegations made in the application to the Chamber. It stated that the applicant could not have been abducted by members of the Army of Canton Sarajevo, as there has never been any such army. In addition, the Canton of Sarajevo did not exist at the time of the events complained of. The respondent Party also stated that Mr. Čegar never worked for the Internal Affairs Service.

5. The applicant's father complains of the abduction of his son by members of the armed forces of the then Republic of Bosnia and Herzegovina. He requested that Mr. Čegar be taken into custody and forced to disclose the fate of the applicant and the other persons who were arrested on 18 June 1992.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

6. On 15 October 1998 the Second Panel adopted its decision in the case, declaring it inadmissible pursuant to Article VIII(2)(c) of the Agreement, as it falls outside the Chamber's competence *ratione temporis*.

7. On 30 December 1998 the Second Panel's decision was communicated to the parties in pursuance of Rule 52. On 25 January 1999 the applicant's father submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the First Panel which, on 13 March 1999, 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 13 April 1999.

III. REQUEST FOR REVIEW

8. In his request the applicant's father argues that the television footage of his injured son Branislav Čabak should be submitted to the Chamber for inspection. The applicant's father again requested to be met "face to face" with Zoran Čegar because he knows what he had done with his son.

IV. OPINION OF THE FIRST PANEL

9. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). It is of the opinion, however, that the grounds upon which the applicant's father request for review is based were in essence already examined by the Second Panel which considered the admissibility of the case and the First Panel sees no reason to differ from its decision. 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). 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

10. 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. 255-261 and 281-285)

11. 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

12. 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