



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/1925

Radovan PANIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 September 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the request of the applicant for review of the decision of the First Panel of the Chamber on the admissibility and merits of 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 applicant is a citizen of Bosnia and Herzegovina of Serb descent. On 20 September 1995, while serving with armed forces loyal to the Serbs in Bosnia and Herzegovina, he was detained by the armed forces of the Federation of Bosnia and Herzegovina in Jajce, which at that time came under the control of those forces. He was detained until 27 January 1996, without ever being brought before a court or other judicial authority.

2. On 20 May 1999 he initiated proceedings before the Court of First Instance II in Sarajevo against the Ministries of Justice, Defence and Internal Affairs of the Federation. In these proceedings he claims 30,000 Convertible Marks (*Konvertibilnih Maraka*) for damage he suffered during his detention. On 3 June 1999 the Court rejected the proceedings on the ground of incompetence. It held that the matter should be decided upon by the Commission on Human Rights under Annex 6 to the General Framework Agreement. On 25 June 1999 the applicant appealed against this decision to the Cantonal Court in Sarajevo which, on 13 December 1999, refused his appeal.

3. The applicant complains that his rights as guaranteed by Articles 3, 4 and 5 of the European Convention on Human Rights have been violated. He also complains of a violation of his right to an effective remedy against violations of those rights and of discrimination in the enjoyment of those rights, as guaranteed by Articles 13 and 14 of the Convention respectively.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted on 12 May 1999 and registered on 20 May 1999. On 3 November 1999 the First Panel considered the admissibility of the application and on 12 January 2000 adopted its decision on its admissibility. It declared the application inadmissible on the ground that the applicant had not exhausted the domestic remedies available to him nor had he shown that they were ineffective.

5. On 23 March 2000 this decision was delivered to the parties, in pursuance of Rule 52. On 4 March 2000 the applicant submitted a request for a review of the decision, which was received on 7 March 2000. In pursuance of Rule 64(1) the request was considered by the Second Panel which, on 4 September 2000, decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the Second Panel's recommendation on 8 September 2000.

III. REQUEST FOR REVIEW

6. The applicant states that on 13 December 1999 the Cantonal Court in Sarajevo refused his appeal. He claims that this shows that the domestic remedies available to him are ineffective and therefore the Chamber should consider his case.

IV. OPINION OF THE SECOND PANEL

7. The Second Panel notes that the request for review has been lodged within the time-limit prescribed by Rule 63(2). According to 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. Under Rule 64(2), 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 cases nos. CH/97/59 and CH/97/69, *Rizvanović* and *Herak*, decisions on requests for review of 13 November 1998, Decisions and Reports 1998).

8. The applicant claims that there are no effective remedies available to him.
9. The Second Panel notes that the First Panel, at the time of its decision on the admissibility of the application, was unaware of the decision of the Cantonal Court of 13 December 1999 refusing the appeal of the applicant.
10. The Second Panel considers that the decision of the First Panel was based on the information available to it at the time of taking its decision. On the basis of that information, a finding that the applicant had not exhausted the domestic remedies available to him was reasonable. The Second Panel does not consider that the fact that the Cantonal Court had, in the meantime, refused the appeal of the applicant, raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance. The request therefore does not satisfy the first condition set out in Rule 64(2).
11. Having found that the first condition set out in Rule 64(2) has not been satisfied, it is not necessary to consider whether the whole circumstances justify reviewing the decision. Consequently, as the request for review does not meet the two conditions set out in Rule 64(2), the Second Panel, unanimously, recommends that it 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.
13. The plenary Chamber agrees with the Second Panel, for the reasons stated above, 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)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber