



DECISION ON ADMISSIBILITY

Case no. CH/99/3330

Y.A.

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 June 2000 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(2)(a) and VIII(2)(c) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Algerian origin. He worked for an Algerian humanitarian organisation in Croatia and Bosnia and Herzegovina from 1992. By a decision issued by the Ministry of Internal Affairs of the Republic of Bosnia and Herzegovina of 1 July 1994 he was granted citizenship of Bosnia and Herzegovina.

2. On 23 September 1994 the applicant was travelling by car from Zenica to Sarajevo. In Kiseljak he was stopped and arrested by Bosnian Croat armed forces. According to the applicant's statements he was subsequently ill-treated and held in custody in various prisons in Croat-controlled areas of Bosnia and Herzegovina.

3. On 17 January 1996 the applicant was convicted by the Municipal Court in Kiseljak and sentenced to two years and four months of imprisonment for having "infringed the territorial sovereignty of the Croat Republic of Herzeg-Bosna". The conviction was based on the criminal law of the former Socialist Federal Republic of Yugoslavia and on Article 2 paragraph 4 of the Charter of the United Nations. The applicant's appeal was rejected by the High Court Travnik sitting in Vitez on 24 May 1996. On 7 August 1996 the applicant was released early from a prison in Mostar, apparently in exchange for other prisoners.

II. COMPLAINTS

4. The applicant complains that he was taken into custody for the sole purpose of exchanging him with other prisoners. He alleges that he was ill-treated and forced to admit the possession of firearms and that he could not choose his defense lawyer. The application thus raises issues under Articles 3, 5 and 6 of the European Convention on Human Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 10 December 1999 and registered on the same day. The applicant is represented by Mr. Esad Hrvačić, a lawyer practicing in Sarajevo.

6. On 7 April 2000 the case was transmitted to the Federation of Bosnia and Herzegovina for its observations on admissibility and merits. On the same day the applicant was requested to explain the delay in filing an application with the Chamber. The applicant replied on 3 May 2000. The observations of the Federation were received on 5 May 2000.

IV. SUBMISSIONS OF THE PARTIES

A. The respondent Party

7. The Federation asks the Chamber to declare the application inadmissible on the ground that the applicant has not exhausted the available domestic legal remedies. Also, the Federation argues that the application is inadmissible under Article VIII(2)(a) of the Agreement as it was lodged more than six months after the final decision in the applicant's case. It is further argued that the Chamber is not competent *ratione temporis* to examine the applicant's complaints relating to events before the entry into force of the Agreement. As to the merits, the respondent Party contests that any of the applicant's rights protected by the Agreement were violated.

B. The applicant

8. The applicant states that he is still suffering mentally and physically as a result of his detention. He claims that he was not aware of the possibility to file an application with the Chamber since neither the General Framework Agreement nor the Chamber's Rules of Procedure were officially published throughout the territory of Bosnia and Herzegovina and that therefore he could not be expected to comply with the time-limit in Article VIII(2)(a) of the Agreement. He further asserts that there were no other effective domestic remedies at his disposal.

V. OPINION OF THE CHAMBER

9. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall take into account whether the application has been filed within six months from the date of the final decision taken in the applicant's case. According to Article VIII(2)(c), the Chamber shall also dismiss any application which it considers incompatible with the Agreement.

10. The Chamber notes that the applicant has directed his application against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina as respondent Parties. Having regard to the responsibilities of the institutions of Bosnia and Herzegovina under Article 3 paragraph 1 of the Constitution of Bosnia and Herzegovina, the Chamber considers that the applicant's complaints, as far as they relate to events after the entry into force of the Agreement, cannot be attributed to Bosnia and Herzegovina. The application is therefore incompatible *ratione personae* insofar as it is directed against Bosnia and Herzegovina.

11. The Chamber further notes that the applicant filed his application more than three and a half years after the final decision in his case, the judgment of the High Court of 24 May 1996, and more than three years and four months after he was released from prison. The applicant has argued that, in the absence of an official publication of the General Framework Agreement in the languages spoken in Bosnia and Herzegovina, there could be no requirement to file an application with the Chamber within a certain period of time. However, the Chamber has previously held that it may be argued that the Federation has taken sufficient steps to fulfil its obligation "to give effective notice of the terms of this Agreement" under Article XV thereof (see cases nos. CH/98/904 *et al.*, *Durmiš and others*, decision on admissibility of 12 May 2000, paragraphs 13 and 21, to be published).

12. In applying the time-limit of six months pursuant to Article VIII(2)(a) of the Agreement, the Chamber enjoys a certain margin of appreciation depending on the particular circumstances of a case. In previous cases, the Chamber has rejected a strict application of the "six-months rule" and evaluated whether the applicant was prevented from complying with this rule. In the instant case, the Chamber finds that the arguments brought forward by the applicant do not excuse his failure to apply to the Chamber within the above time-limit.

13. Accordingly, the Chamber decides not to accept the application pursuant to Articles VIII(2)(a) and VIII(2)(c) of the Agreement, partly for having been lodged out of time and partly for being incompatible *ratione personae* with the Agreement.

V. CONCLUSION

14. For these reasons, the Chamber, by 5 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel

Annex Dissenting Opinion of Mr. Nowak

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Manfred Nowak.

DISSENTING OPINION OF MR. MANFRED NOWAK

1. By adding a dissenting opinion I wish to express my concern with the decision of the Second Panel to declare the present application inadmissible. Article VIII(2)(e) of the Human Rights Agreement (Annex 6) requests the Chamber "to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds". There can be no reasonable doubt that the present applicant, according to his well-founded allegations, is a victim of most severe discrimination, on the ground of his Algerian origin, and of other human rights violations which it is difficult to believe could still have occurred in 1996 in the presence of the international community. Apart from his allegations of arbitrary detention (for the sole purpose of being exchanged as in the cases of *Hermas, H.R.* and *Momani*, cases nos. CH/97/45 and CH/98/946, decisions on admissibility and merits delivered on 18 February 1998 and 5 November 1999, respectively in Decisions and Reports 1998 and Decisions August-December 1999) and ill-treatment, the applicant was sentenced by a Municipal Court and a High Court to two years and four months of imprisonment for nothing else but the "illegal entry" into the illegal so-called "Croat Republic of Herzeg-Bosna". The fact that these outraging judgments were not only based on the infringement of the "territorial sovereignty of the Croat Republic of Herzeg-Bosna" but even on the principle of the territorial integrity and political independence of States in Article 2 paragraph 4 of the United Nations Charter constitutes such a blatant obstruction of the basic principles of the Dayton Peace Agreement that the judges responsible for this provocation should immediately have been dismissed and brought to justice for gross misuse of their powers.

2. Bearing in mind that the Chamber enjoys a discretionary power in applying the six months rule in Article VIII(2)(a) of the Agreement (cf. e.g. case no. CH/99/1433, *Smajić*, decision on admissibility of 4 November 1999, Decisions August-December 1999; and case no. CH/98/896, *Čvokić*, decision on admissibility and merits delivered on 9 June 2000) and in balancing it with the other admissibility criteria listed in Article VIII(2) (cf. my dissenting opinion in case no. CH/99/1736, *Zimonjić*, decision on admissibility of 4 April 2000), I simply cannot understand how the Second Panel could give priority to the six-month rule over its obligation to accept applications which contain as serious allegations as the present one.

(signed)
Manfred Nowak