



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/02/11186

Z.K.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 February 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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)(c) and VIII(3)(b) of the Agreement as well as Rules 49 and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. By a valid judgment of the Municipal Court in Zenica of 24 May 2001, the applicant was sentenced to imprisonment for one year and six months. On 16 September 2001, the applicant started serving his sentence in the Correctional Institution in Zenica.
2. On 16 May 2002, Z.M., the applicant's sister, received a letter in which her brother informed her that conditions in prison had become unbearable for him and he requested that she visit him as a matter of urgency. On 20 May 2002, Z.M. visited her brother in prison. On that occasion, her brother complained to her about the inhuman treatment in the prison, and that he had been raped, and subject to on-going threats to rape him by other prison inmates. According to the applicant, such things happened with the "active or passive assistance of employed guards". He did not provide details as to date, time, or place of the alleged rape.
3. On 17 and 18 May 2002, the applicant cut his veins in his neck and stomach.
4. On 28 May 2002, the applicant was admitted to the psychiatry department of the Zenica Hospital.
5. As to his self-inflicted wounds, he stated that he did not intend to kill himself, but that he is afraid for his life since he "started talking". He requested to be examined by "impartial experts in the field of medicine" in order to determine the truth of his allegations of rape. This request was refused, but the prison did offer the applicant an opportunity to be examined by a prison doctor. The applicant initially refused such examination on 29 May 2002 without the presence of his sister, because he doubted the objectivity of a doctor who is an employee of the prison where he was raped. Although the prison officials would not allow him to be seen by an independent doctor, they allowed his sister to be present during the examination. Thus, on 16 June 2002, in the presence of his sister, he was examined by the doctor provided by the prison.
6. The applicant does not state on what day he notified the prison officials of the alleged rape, but in the application of 16 June 2002, his sister alleges that given the lack of co-operation on the part of the Administration of the Correctional Institution, she immediately informed the relevant institutions, that is the International Police Task Force (IPTF), the Ministry of Justice of the Federation of Bosnia and Herzegovina, the President of the Cantonal Court in Zenica, and the media, of all the above allegations.
7. The applicant was released from the psychiatry department of the Zenica Hospital on 18 June 2002.
8. On 26 June 2002, the applicant was transferred to the Correctional Institution in Tuzla.

II. PROCEEDINGS BEFORE THE CHAMBER

9. The application was introduced to the Chamber on 16 June 2002 and registered on 19 June 2002. The applicant is represented by Zlatan Ibrišimović, a lawyer. In the application, the applicant requested compensation for non-pecuniary damages due to pain, fear and humiliation in the amount of 50,000 KM, as well as compensation for legal expenses.
10. The applicant also requested the Chamber, as a provisional measure, to order the respondent Party to transfer him from the Correctional Institution in Zenica to the Correctional Institution in Tuzla. On 16 July 2002, the President of the Second Panel rejected the provisional measure requested.
11. On 12 September 2002, the Chamber transmitted the case to the respondent Party for its observations on the admissibility and merits under Article 3 of the European Convention on Human Rights (the "Convention").

12. On 24 September 2002, the Chamber sent a letter to the IPTF, requesting information on whether the applicant's complaints had been reported to them, and if so, whether they had taken any action. The Chamber received no response from the IPTF.

13. On 14 October 2002, the respondent Party submitted its written observations on the admissibility and merits of the application, which were forwarded to the applicant.

14. On 11 November 2002, the applicant submitted his observations in response to the respondent Party's observations.

III. ALLEGED OR APPARENT VIOLATIONS

15. The applicant alleges a violation of his right to be free from inhuman and degrading treatment under Article 3 of the Convention.

IV. SUBMISSIONS OF THE PARTIES

1. The Federation of Bosnia and Herzegovina

16. In relation to the facts, the respondent Party provided the following information. Upon the commencement of his prison sentence, the applicant requested that he be separated from the other convicts. On 17 and 18 May 2002, the applicant inflicted injury on himself. Following both self-injuries, he received medical treatment. On 28 May 2002, the applicant was taken to the psychiatry department of the Zenica Hospital. On 29 May 2002, the applicant refused to be examined by a specialist in surgery – a proctologist. He requested that he be examined by an independent specialist from Sarajevo. On 31 May 2002, during the doctor's rounds, the applicant claimed that he would be anaesthetised and executed. On 6 June 2002, the proctologist's examination was performed, in the presence of the applicant's sister, and thereby it was established that he had no sign of injuries. While in the hospital, the applicant was visited by a representative of the Commission for the Protection of Persons with Mental Disturbances, who determined that his treatment was satisfactory. The Commission also noted that the applicant displayed signs of paranoia related to his stay in the Correctional Institution. The applicant was discharged from the hospital on 18 June 2002. On 26 June 2002, he was transferred from the Correctional Institution Zenica to the Correctional Institution Tuzla.

17. As to the merits, the respondent Party points out that there has been no violation of Article 3 and that the applicant has not substantiated the alleged violations of the rights guaranteed under Article 3 of the Convention. The respondent Party emphasises that the applicant demonstrated paranoid behaviour, of which the allegation of the rape is just one manifestation. The respondent Party asserts that the findings of the expert proctologist confirm that the applicant had not been raped. The respondent Party also notes that the prison administration took all steps possible to ensure the health and well-being of the applicant, for example by isolating him from the other inmates upon his request when he arrived at the prison, and by transferring him to the Zenica Hospital for treatment.

18. For all the above stated reasons, the respondent Party considers the application inadmissible as manifestly ill-founded and the compensation claim unsubstantiated.

2. The applicant

19. The applicant's lawyer, in response to the respondent Party's observations, confirmed that the applicant had requested to be detained alone in the Correctional Institution. The lawyer submits that the applicant was never thoroughly examined in light of his rape claim, specifically, as no rectoscopy was performed, the findings of the proctologist are not complete. The lawyer also takes issue with the impartiality of the mental health experts employed by the Correctional Institution, in particular the findings of one neuro-psychiatrist, Dr. E.E. The lawyer requests that the Chamber

select appropriate experts from Sarajevo to give their opinion about the applicant's health condition, and whether the applicant has been adequately treated.

V. OPINION OF THE CHAMBER

A. With respect to inhuman treatment

20. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

21. The Chamber notes that the applicant complains about inhuman treatment in prison, including that he was raped with the active or passive assistance of prison guards. Article 3 of the Convention requires States to protect the physical integrity of persons who have been deprived of their liberty, including providing appropriate medical assistance. The Chamber recalls that there is no requirement that prison inmates be provided with medical services from an independent doctor, although the failure to provide adequate care may raise a violation of Article 3 of the Convention. The respondent Party alleges that the prison officials took all appropriate measures to ensure the well-being of the applicant.

22. The Chamber was not provided with details as to the full response to the applicant's rape claim, such as when the prison officials were informed of the rape allegation, and what steps they took in response. The Chamber notes that on 29 May 2002 (at least 9 days after the alleged rape) the applicant was first offered to be examined by a medical professional in response to his claim. As the applicant has not specifically established when the rape took place, the Chamber cannot rule on whether this response was adequate. The applicant was finally examined on 6 June 2002 by a surgeon-proctologist related to the alleged rape. It appears from the case file that the delay in examining the applicant between 29 May and 6 June resulted from the applicant's request to be examined in the presence of his sister. The surgeon-proctologist concluded that the applicant had not been raped. The Chamber is aware that the applicant doubts the objectivity of the doctor who performed the examination, as that doctor works at both the Correctional Institution Zenica and the Hospital in Zenica; however, the Chamber considers that this fact alone does not establish any bias on the part of the doctor. The applicant also claims that the mental health professionals did not treat him in an impartial manner; however, again, the Chamber does consider the fact that the mental health professionals were employed by the prison to necessarily establish their partiality.

23. The Chamber also notes that the applicant inflicted injuries on himself a few days after he urgently requested his sister to visit him, and that such behaviour might be the result of sexual trauma. However, absent medical evidence, there is nothing in the case file before the Chamber to substantiate the applicant's allegations of maltreatment and rape. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

B. With respect to the request for a transfer

24. In accordance with Article VIII(3) of the Agreement, "the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that ... (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights."

25. The Chamber notes that the applicant requested to be transferred from the Correctional Institution in Zenica to the Correctional Institution in Tuzla. On 26 June 2002, that transfer occurred. Accordingly, the Chamber finds that this matter has been resolved. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of the

application to be continued. The Chamber therefore decides to strike out this part of the application.

VI. CONCLUSION

26. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE IN PART and
STRIKES OUT THE REMAINDER OF THE APPLICATION.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel