



## DECISION ON THE ADMISSIBILITY

of

**CASE No. CH/96/15**

**Ratko GRGIĆ**

against

**Republika Srpska**

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 5 February 1997 with the following members present:

Peter GERMER, President  
Jakob MÖLLER, Vice-President  
Dietrich RAUSCHNING  
Adam ZIELINSKI  
Hasan BALIĆ  
Rona AYBAY  
Vlatko MARKOTIĆ  
Želimir JUKA  
Mehmed DEKOVIĆ  
Giovanni GRASSO  
Manfred NOWAK  
Michèle PICARD

Andrew GROTRIAN, Registrar  
Olga KAPIĆ, Deputy Registrar

**Having considered** the application submitted on 18 June 1996 under Article VIII paragraph 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina by the German Section of the International Society for Human Rights ("the IGFM") acting on behalf of Ratko GRGIĆ and registered on 15 October 1996 under Case No. CH/96/15;

**Takes the following Decision** on the Admissibility of the application under Article VIII paragraph 2 of Annex 6 to the General Framework Agreement.

## **I. THE FACTS**

The facts of the case, as presented by the IGFM on behalf of Father Grgić may be summarised as follows:

The IGFM is a non-governmental organisation dedicated to the support of human rights. Its German section is incorporated under German law as a private law association. It presents this application on behalf of Father Ratko Grgić, a Roman Catholic priest of Nova Topola. Father Grgić has allegedly been missing since 16 June 1992.

It is alleged by the IGFM that Father Grgić was arrested at 01.30 hours on 16 June 1992 at his service flat in Nova Topola. The arrest was carried out by several persons wearing military uniforms and emblems of the "White Eagles" militia, which, according to the IGFM, was an armed organisation integrated into the forces of the Republika Srpska and under effective control of the Republika Srpska. After his arrest Father Grgić was driven away to an unknown destination. According to the IGFM "It seems that local police... tried to establish the whereabouts of Mr Grgić later on the same day, but no results have been given." The IGFM state that information made available to them suggests that three named individuals in Bosanska Gradiska "are informed about the...case and should be questioned on the matter".

The IGFM allege that Father Grgić "is still held incommunicado by organs or agents of the Republika Srpska or elements under their control". They submit in this respect that it is justifiable to assume that Father Grgić was taken into custody by military elements under effective control of the Republika Srpska and that it must then be assumed that he is still held incommunicado by such elements until the Republica Srpska has given a sufficiently substantiated explanation as to when and how the custody was terminated and identifies the personnel involved. Substantiation of the initial detention results in a shifting of the burden of proof onto the Republika Srpska to show that Father Grgić was no longer in their custody on the entry into force of the Dayton Agreement. They refer in this respect to the Report of the European Commission of Human Rights in Application No. 8007/77, *Cyprus v. Turkey*.

## **II. COMPLAINTS**

The IGFM allege that the following rights of Father Grgić under the Agreement on Human Rights ("the Agreement") contained in Annex 6 to the General Framework Agreement have been violated:

- right to liberty and security of person, (Article I, paragraph 4)
- right to a fair hearing in criminal matters, (Article I, paragraph 5)
- right to private life and home, (Article I, paragraph 6)
- right to freedom of thought, conscience and religion, (Article I, paragraph 7)

## **III. PROCEEDINGS BEFORE THE CHAMBER**

The application was initially submitted on 18 June 1996. In response to a request from the Registrar, further information and legal submissions were submitted on 15 October 1996. The application was then registered on the same day. On 17 October 1996 the Chamber decided in accordance with Rule 1 of its Provisional Rules of Procedure to transmit the case to the respondent Party and invite them to submit written observations on the admissibility of the application under Article VIII paragraph 2 (a) - (d) of the Agreement and also on the merits of the case in as far as it was alleged that Father Grgić had continued to be held in detention by authorities of the Republika Srpska since 14 December 1995. The Chamber fixed a time limit expiring on 22 November 1996 for submission of these observations. No response to this invitation has been received from the respondent Party.

## **IV. THE LAW**

This application is presented under Article VIII paragraph 1 of the Agreement by a non-governmental organisation (the IGM) acting on behalf of an individual (Father Ratko GRGIĆ) who is allegedly missing. It is alleged that Father Grgić is the victim of a violation of human rights protected by the Agreement in respect that he was arrested by members of an armed organisation integrated into the military forces of the Republika Srpska and under effective control of the Republika Srpska. The arrest is alleged to have occurred on 16 October 1992 and it is further alleged that Father Grgić “is still held incommunicado by organs or agents of the Republika Srpska or elements under their control”. It is alleged that the rights of Father Grgić to liberty and security of person, to a fair hearing in criminal matters, to private life and home, and to freedom of thought, conscience and religion under Article I paragraphs 4 - 7 of the Agreement have been violated.

The Chamber first observes that in accordance with general principles of law the Agreement cannot be applied retroactively. The Agreement entered into force on 14 December 1995 and the Chamber therefore has no competence to consider whether violations of human rights have occurred before that date, (see *Case No. CH/96/1 Matanović v. Republika Srpska*, Decision on Admissibility of 13 September 1996). In the present case the Chamber therefore has no competence *ratione temporis* to rule on the question whether the alleged arrest and any period of detention prior to 14 December 1995 involved a violation of Father Grgić’s rights.

IGFM submit, however, that they have sufficiently substantiated the fact of Father Grgić’s initial arrest and that in these circumstances there is an onus on the respondent Party to show that he was no longer in their custody when the Agreement came into force. They refer in this respect to the Report of the European Commission of Human Rights in Application No. 8007/77, *Cyprus v. Turkey*.

The Chamber finds it unnecessary at the present stage of proceedings to rule on the question whether or not the fact of the applicant’s arrest would give rise to any presumption that he remained in custody after the Agreement came into force. It observes, however, that evidence of arrest or detention prior to the entry into force of the Agreement may well be relevant to the question whether the person concerned has been in custody since. In the present case the respondent Party was invited to submit observations on the admissibility and merits of the case. It has not responded to that invitation. In particular it has not contested any of the factual allegations made on behalf of Father Grgić, including the allegations that he is still detained incommunicado. Nor has it suggested that any ground exists under Article VIII paragraph 2 of the Agreement for declaring the application inadmissible.

In the Chamber’s view the failure of the respondent Party to respond to serious allegations such as are at issue in this case increases the weight to be attached to them for the purpose of deciding whether a sufficient *prima facie* case has been made out. In the absence of such response the Chamber does not consider that the allegation that Father Grgić has been in custody since 14 December 1995 should be declared manifestly ill-founded on the ground that it is unsubstantiated. This allegation raises a serious issue as to whether Father Grgić has been the victim of a violation of his right to liberty and security of person as guaranteed by Article I paragraph (4) of the Agreement and Article 5 of the European Convention on Human Rights. No other ground of inadmissibility appears and for these reasons the Chamber, without prejudging the merits, accordingly decides by a majority:

### **TO DECLARE THE APPLICATION ADMISSIBLE**

in so far as it relates to the allegation that Father Grgić has been detained since 14 December 1995.

(signed) Andrew GROTRIAN  
Registrar of the Chamber

(signed) Peter GERMER  
President of the Chamber