



DECISION ON THE ADMISSIBILITY

in

CASE No. CH/97/74

Džemal BALIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 10 September 1998 in a Panel composed of the following Members:

Manfred NOWAK, President of the Panel
Giovanni GRASSO, Vice-President of the Panel
Vlatko MARKOTIĆ
Jacob MÖLLER
Mehmed DEKOVIĆ
Vitomir POPOVIĆ
Viktor MASENKO-MAVI

Leif BERG, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application submitted on behalf of Džemal Balić on 4 November 1997 under Article VIII (1) of the Human Rights Agreement (“Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered on 25 November 1997 as Case No. CH/97/74;

Adopts the following Decision on the admissibility of the application under Article VIII (2) of the Agreement and Rule 52 of its Rules of Procedure.

I. THE FACTS

1. The facts of the case, as they appear from the application and other documents in the case-file, may be summarised as follows:

2. Mr. Balić was allegedly arrested by three Bosnian Serb police officers on 10 May 1992 and taken to the KP Dom prison facility in Foča. Mr. Balić's wife, Mrs. Ismeta Balić, identifies these officers as Milutin Majdov, Slaviša Jojić and Zoran Vuković (who is currently under indictment by the International Criminal Tribunal for the Former Yugoslavia for crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws or customs of war). Mrs. Balić claims that she appealed for help to a number of local Serbian Democratic Party (SDS) functionaries who had been friends of her family before the war, including Petko Čančar, who was the mayor of Foča during the war and is now the Minister of Justice for the Republika Srpska (he was appointed to this position in January 1998). Mrs. Balić claims that "Mr. Petko Čančar, President of the Municipality, was informed of the fact that my husband had been taken to a camp; he knew my husband well and his children had ours for friends, but he did not want to do anything in favour of my husband in spite of his being a lawyer".

3. On 18 September 1992 Mr. Balić was allegedly removed from the KP Dom and his whereabouts since that date are unknown. Mrs. Balić states that she approached the State Commission for the Exchange of War Prisoners and Missing Persons ("State Commission") for information. On 8 July 1996 the State Commission issued a document noting that it was informed by the Republika Srpska that Mr. Balić had been taken to be exchanged somewhere in the direction of FRY. Mrs. Balić also states that a photograph of Mr. Balić having his blood pressure taken in a prison appeared on 31 August 1992 in the Belgrade newspaper "Politika Ekspres". In addition, Mrs. Balić alleges that her husband was witnessed in a camp in Serbia in 1993. Finally, she claims that there has been information through the public media that detainees, including some from KP Dom, are still working in various locations in Serbia, Montenegro and the Republika Srpska.

II. PROCEEDINGS BEFORE THE CHAMBER

4. Although the application was brought before the Chamber by Mr. Balić's wife, the Chamber will refer to Mr. Balić as "the applicant" in accordance with Article VIII (1) of the Agreement, which provides in relevant part, that "The Chamber shall receive...from any person...acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights..."

5. Mrs. Balić applied to the Chamber on 4 November 1997. The Chamber registered the application on 25 November 1997. The application included a request for a provisional order requiring the respondent Party to take steps to find and release the applicant immediately or otherwise inform his wife of his fate.

6. The Chamber first considered the case on 1 December 1997 and decided to request more information from the applicant's wife and the respondent Party. The Chamber requested that the applicant's wife submit a copy of the press report and photograph of the applicant having his blood pressure taken as well as the date and the location of the photograph. The Chamber requested that the respondent Party submit any information about the case available to the State Commission for the Exchange of War Prisoners and Missing Persons, in particular regarding the applicant's alleged disappearance and the date on which the possible exchange of war prisoners referred to in the application may have occurred. The Chamber set a time limit for 9 January 1998.

7. The applicant's wife responded to this request on 18 December 1997. She provided a copy of an undated International Committee of the Red Cross (ICRC) message from the applicant's daughter to the applicant's brother, stating that UNPROFOR had informed the applicant's wife on 30 August 1992 that the applicant's name was on their list of prisoners. A copy of the "Politika Ekspres" photograph was attached to the message. The applicant's wife also named a refugee in

Germany from whom she had heard rumours about prisoners working on construction sites or in private prisons in the Republika Srpska and Crna Gora (Montenegro). The Chamber transmitted these submissions to the respondent Party on 26 March 1998 with a request for observations by 26 April 1998. No response was received to this request.

8. By letter dated 20 January 1998 the respondent Party submitted a response to the Chamber's earlier request for further information. The respondent Party observed that the application was admissible only insofar as it related to the applicant's alleged detention after 14 December 1995. However, the respondent Party stated that the application did not provide any evidence that the applicant was detained after that date. The respondent Party also noted that the information provided by the State Commission on 8 July 1996 could not be considered as evidence, but did not explain why it could not be so considered. The Chamber submitted these observations to the applicant's wife on 26 March 1998 with a request for observations by 26 April 1998.

9. In response to this request, the applicant's wife submitted a letter dated 18 April 1998, emphasising the fact that the applicant never returned home after his alleged detention in the KP Dom in Foča, nor had the applicant's wife received any information about his death, as evidence of the respondent Party's continuing responsibility after 14 December 1995. The applicant's wife also provided the names of two potential witnesses (Mr. Čančar and Mr. Milorad Krnojelac, director of the KP Dom at the time of the applicant's arrest).

10. The Chamber considered the case again on 15 May 1998 and decided to request further information from the respondent Party. In particular, the Chamber requested that the respondent Party submit, by 26 June 1998, any evidence that the applicant has been in detention after 14 December 1995, or any information relating to the applicant's arrest and detention before 14 December 1995 insofar as it may be relevant to events after that date. The Chamber requested the same information from the ICRC and the United Nations Mission in Bosnia and Herzegovina (UNMIBH).

11. On 17 June 1998 Mr. Eric Grand d'Hauteville, Detention Co-ordinator of the ICRC, informed the Chamber that the applicant was never registered or visited by the ICRC, although the ICRC has made several representations to authorities, seeking to gather information about the applicant and other missing detainees from the KP Dom in Foča. On 26 June 1998 Mr. Claudio Cordone, Chief of the UNMIBH Human Rights Office, responded that his office was unable to provide any evidence regarding the applicant's detention before or after 14 December 1995.

12. On 16 July 1998, Mr. Asela Dassanayake, Acting Head of Mission of the Sarajevo Field Office of the International Criminal Tribunal for the Former Yugoslavia (ICTY), informed the Chamber that the ICTY investigative team in The Hague confirmed that the applicant was detained at the KP Dom in Foča and disappeared from the KP Dom sometime between July and September 1992. ICTY was unable to provide any further information concerning the applicant's fate *per se*. However, on 7 August 1998 the ICTY field office in Sarajevo informed the Chamber that Mr. Krnojelac (see para. 9 above) was indicted for crimes against humanity and is currently in custody in the Hague, and that he might possibly in the future be able to provide some information regarding the applicant's fate. ICTY was unable, however, to provide any concrete assurances that such information would be forthcoming.

13. On 8 September 1998, the applicant's wife submitted a letter to the Chamber stating that her husband had been witnessed in Serbia in 1993 and that Mr. Krnojelac (see para. 9 above) had been arrested and taken to the ICTY in July 1998. In addition, the applicant's wife appended a news article from "Oslobodenje" dated 27 February 1998 which reported that a number of persons from Srebrenica are allegedly imprisoned in Serbia.

III. COMPLAINTS

14. Mrs. Balić claims that “by keeping Džemal Balić in detention after the entry into force of the Dayton Agreement or by depriving him of the right to liberty of movement, the Republika Srpska violated the provisions set out under Article 5 of the European Convention on Human Rights ...” Mrs. Balić argues that the Republika Srpska should find and release her husband, or otherwise inform her of his fate.

IV. OPINION OF THE CHAMBER

15. Following its Decision on the Merits in the case of Ratko Grgić v. Republika Srpska (Case No. CH/96/15, Grgić v. Republika Srpska, Decision on Merits of 3 September 1997), the Chamber finds that the respondent Party cannot be held responsible under the Agreement for acts or omissions which occurred before it came into force. The Chamber could therefore find that the respondent Party had breached its obligations under the Agreement only if there were evidence before it demonstrating that the applicant had been unlawfully detained, or had suffered some other violation of his rights under the Agreement, after 14 December 1995.

16. The Chamber has held in the case of Matanović v. Republika Srpska that the obligation on the parties to the Annex 6 Agreement to ensure human rights “entails positive obligations to protect these rights” (Case No. CH/96/1, Matanović v. Republika Srpska, Decision on the Merits of 6 August 1997, para. 56). In the Chamber’s opinion, the Parties’ responsibility to ensure and protect human rights means that the Parties must provide not only the appropriate structures to guarantee the exercise of these rights, but also appropriate means for preventing and punishing violations. Regarding the forced disappearance of persons, the Inter-American Court of Human Rights has held that this responsibility encompasses the obligation “to carry out a serious investigation of violations within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation ...” (Inter-American Court of Human Rights, Velasquez Rodriguez v. Honduras, Judgment of 29 July 1988, para. 174).

17. As the Chamber has held in the Matanović and Grgić Decisions, evidence of detention prior to the Agreement’s entry into force may well be relevant to the question of whether the person concerned has remained in custody since that date. The weight attached to such evidence will vary according to the circumstances, including the length of time elapsed since the person concerned was last shown to be in custody, and any explanation or lack of explanation regarding the person’s fate. Normally, however, there must be some evidence (including circumstantial or presumptive evidence) indicating that the applicant’s detention continued after the Agreement entered into force before the Chamber can conclude that the Agreement has been violated.

18. In the present case, the applicant’s wife has presented evidence relating only to her husband’s arrest and detention in 1992, three years prior to the Agreement’s entry into force. There is therefore insufficient evidence that the applicant has remained in the detention of the respondent Party after 14 December 1995. Accordingly, the case does not fall within the Chamber’s competence *ratione temporis*. However, if new facts come to light which would support the claim of a violation of the applicant’s rights *after* 14 December 1995, a new application could be filed by the applicant or on his behalf before the Chamber.

V. CONCLUSIONS

19. For these reasons, the Chamber unanimously

DECIDES TO DECLARE THE APPLICATION INADMISSIBLE.

20. Within one month from today a party to the case or the Ombudsperson for Human Rights in Bosnia and Herzegovina may request the Chamber to review this decision in accordance with Article X (2) of the Agreement and Rule 63 of its Rules of Procedure.

(signed) Leif BERG
Registrar of the Chamber

(signed) Manfred NOWAK
President of the Panel