



DECISION ON ADMISSIBILITY

Case no. CH/99/1646

Budimir ŠKILJEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 December 1999 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant is of Serb origin. He lived with his wife in the Municipality Živinice at a time when persons of Serb origin were a minority in that municipality. The applicant reports that he was harassed because of his national origin on several occasions. On 6 February 1994, at about 11 p.m., three persons entered into his yard and attempted to steal something. According to the applicant, those persons were armed and fired on him and his house when he gave them an oral warning. The applicant fired back with his hunting rifle for which he had a permit as a member of a hunters' group. He killed two persons.

2. On 2 February 1995 the applicant was convicted for premeditated (first degree) murder by the High Court in Tuzla and sentenced to 14 years' imprisonment.

II. COMPLAINTS

3. The applicant alleges a violation of his right to a hearing before an independent and impartial tribunal as the court has not taken into consideration the extenuating circumstances in his case (persons entered on his property after curfew, he was afraid being a member of the minority group in the area, they shot at him and his property first, he fired back in legitimate self-defense, he had a right to carry and use fire-arms). The application might further be understood as alleging discrimination in the right to a fair trial.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted on 26 February 1999 and registered on the following day.

IV. OPINION OF THE CHAMBER

5. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

6. The Chamber notes that the court proceedings and the judgment complained of precede the entry into force of the Agreement on 14 December 1995. In accordance with accepted principles of law, the Agreement cannot be applied retroactively. Therefore, the Chamber is not competent to consider events that took place prior to 14 December 1995.

7. Accordingly, the Chamber decides not to accept the application, it being incompatible *ratione temporis* with the Agreement within the meaning of Article VIII(2)(c) thereof.

V. CONCLUSION

8. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel