



DECISION ON ADMISSIBILITY

Case no. CH/99/1872

Cvjetko STJEPANOVIĆ

against

THE REPUBLIKA SRPSKA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 February 2000 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) and (3) 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 Serb origin. On 17 August 1991 he caused the death of another person. On 31 January 1992 he was convicted of murder by the (former) Regional Court in Tuzla and sentenced to twelve years imprisonment. He appealed against this decision to the Supreme Court of Bosnia and Herzegovina. On 17 March 1992 he was transferred to prison in Srbinje/Foča.

2. On 14 September 1992 the Supreme Court of Bosnia and Herzegovina refused his appeal and thus confirmed the applicant's conviction. The applicant was not informed of this decision until November 1998. The reason for this was that after the entry into force of the General Framework Agreement for Peace, a mechanism for co-operation between the legal authorities of the two entities of Bosnia and Herzegovina was not established until 1998.

3. In the course of 1993 the applicant was released from prison and mobilised into the Bosnian Serb army. Upon his demobilisation in March 1996, he was told by the police to report to the prison in Bijeljina. When he did so he was detained and sent to prison in Srbinje/Foča, where he is still detained.

4. On 25 August 1997 the applicant applied to the Regional Court in Bijeljina for a pardon. On 29 January 1999 this request was refused on the ground that the judgment of the Regional Court in Tuzla of 31 January 1992 was not final. The applicant did not appeal against this decision, although he is entitled to do so under the law of the Republika Srpska.

5. On 8 July 1999 the applicant applied to the Cantonal Court in Tuzla for a pardon. On 15 October 1999 this request was refused.

II. COMPLAINTS

6. The applicant complains of the refusal by the Regional Court in Bijeljina on 29 January 1999 of his request for a pardon. In addition, he complains of his mobilisation by the Bosnian Serb army in 1993.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 4 March 1999 and registered on 16 March 1999. On 20 May 1999 the application was transmitted to the respondent Parties for their observations on admissibility and merits. The observations of the Federation were received on 20 July 1999 and those of the Republika Srpska on 27 July 1999. These observations were sent to the applicant whose further observations and claim for compensation were received on 23 August 1999. In these observations he stated that he did not wish to proceed with his application against the Federation of Bosnia and Herzegovina. Further observations were made by the Federation on 27 September 1999 and by the Republika Srpska on 12 January 2000.

IV. OPINION OF THE CHAMBER

A. The part of the application relating to the Federation of Bosnia and Herzegovina

8. According to Article VIII(3) of the Agreement, the Chamber may decide to strike out an application if, *inter alia*, the applicant does not intend to pursue it. Such a decision, however, must be consistent with the objective of respect for human rights.

9. The Chamber notes that the applicant, during the proceedings before the Chamber, stated that he did not wish to proceed with his application against the Federation of Bosnia and Herzegovina. The reason he gave was that, as the relevant organs of that entity had decided upon his

appeal against his conviction by the Regional Court in Tuzla of 31 January 1992, he considered that they had acted in accordance with his rights. Concerning the delay in sending the decision of the Supreme Court of 14 September 1992 to him (see paragraph 2 above), the applicant stated that he accepted that this was due to circumstances beyond the control of the relevant authorities.

10. The Chamber therefore concludes that the applicant does not intend to pursue his application against the Federation. In these circumstances it is no longer justified to continue the examination of the case. Moreover, such an outcome is not inconsistent with the objective of respect for human rights.

B. The part of the application relating to the Republika Srpska

11. Before considering the merits of this part of the application, 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)(c), the Chamber shall dismiss any application which it considers to be incompatible with the Agreement.

12. The applicant complains of his mobilisation by the Bosnian Serb army in 1993. As the Chamber has previously held, it is not competent to consider events that took place prior to 14 December 1995, the date of entry into force of the Agreement (see case no. CH/96/1, *Matanović*, decision on admissibility of 13 September 1996, Decisions on Admissibility and Merits 1996-1997). Accordingly, this complaint is incompatible with the Agreement *ratione temporis* within the meaning of Article VIII(2)(c) thereof.

13. The applicant also complains that his request for a pardon was refused by the Regional Court in Bijeljina on 29 January 1999. However, the Agreement does not afford convicted individuals a right to a pardon. Therefore, this complaint is incompatible with the Agreement *ratione materiae* within the meaning of Article VIII(2)(c) thereof.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

STRIKES OUT THE PART OF THE APPLICATION DIRECTED AGAINST THE FEDERATION OF BOSNIA AND HERZEGOVINA; AND

DECLARES THE PART OF THE APPLICATION DIRECTED AGAINST THE REPUBLIKA SRPSKA INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel