



DECISION ON ADMISSIBILITY

Cases nos. CH/99/1922 and CH/99/1926

Milorad TOMIĆ and Zoran MANDIĆ

against

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. 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicants are citizens of Bosnia and Herzegovina of Serb descent. In September 1995, while serving in the Bosnian Serb army, they were detained by armed forces of the Federation of Bosnia and Herzegovina as prisoners of war. The first applicant, Mr. Tomić, was detained until 6 April 1996 and the second applicant, Mr. Mandić, was detained until 27 January 1996. Neither of them was brought before a court or other judicial authority during their detention. They claim that they were physically maltreated during their detention and have provided documentation from the relevant organ of the Republika Srpska.

2. On 20 May 1999 they initiated proceedings before the Court of First Instance II in Sarajevo against the Ministries of Justice, Defence and Internal Affairs of the Federation. In these proceedings they claim compensation for damage suffered during their detention.

3. In the case of the first applicant, Mr. Tomić, on 12 July 1999 the court requested him to specify the amount of compensation he seeks. On 30 July 1999 he duly did so. In the case of the second applicant, Mr. Mandić, on 7 June 1999 he was requested to supply certain further information concerning his claim, which he duly did on 18 June 1999. According to the information available to the Chamber, there have been no other developments in either of the applicant's proceedings to date.

II. COMPLAINTS

4. The applicants complain that their rights as guaranteed by Articles 3, 4 and 5 of the European Convention on Human Rights have been violated. They also complain of violations of their rights to an effective remedy against violations of those rights and of discrimination in the enjoyment of those rights, as guaranteed by Articles 13 and 14 of the Convention respectively.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The applications were introduced on 12 and 20 May 1999, respectively, and registered on 20 May 1999. On 8 February 2000 the Chamber joined the applications.

IV. OPINION OF THE CHAMBER

6. Before considering the merits of the cases the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall take into account, amongst other things, whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In accordance with Rule 34 of the Chamber's Rules of Procedure, the Chamber decides to join the applications.

7. The Chamber notes that the applicants have initiated proceedings against various organs of the Federation of Bosnia and Herzegovina before the courts of that entity. These proceedings have been pending for approximately nine months. The conduct of these proceedings to date does not appear to have been contrary to the applicants' rights as guaranteed by the Agreement. The applicants claim that this remedy is ineffective, without providing any evidence to support this claim. Nor can the Chamber of its own motion find that this is the case. Thus, the applicants cannot be relieved of the obligation to exhaust them.

8. Accordingly, the Chamber decides not to accept the applications as the applicants have not demonstrated that they have exhausted the domestic remedies available to them or that they are ineffective, as required by Article VIII(2)(a) of the Agreement.

V. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel