



DECISION ON ADMISSIBILITY

Case no. CH/99/2553

Asaf KASUMLARI

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 July 2000 with the following members present:

Mr. Andrew GROTRIAN, Acting President
Mr. Dietrich RAUSCHNING
Mr. Rona AYBAY
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

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 a citizen of Bosnia and Herzegovina of Bosniak origin. By a judgment of the Cantonal Court in Bihać of 2 December 1998 he was convicted of aggravated theft under Article 274 paragraph 3 of the Criminal Law of the Federation of Bosnia and Herzegovina and for attempted robbery under Article 277 paragraph 1 in connection with Article 20 of the same Law. He was sentenced to five years of imprisonment. The applicant appealed against that judgment to the Supreme Court of the Federation of Bosnia Herzegovina. On 7 September 1999 the Supreme Court issued a judgment by which his conviction was upheld. However, it reduced the prison sentence to four years and six months.

2. The conviction concerns two events which took place in June and August 1998. According to the judgments of the Cantonal and Supreme Courts, in June 1998 (the precise date is not known) the applicant agreed to a plan to break into the premises of the humanitarian organization "THW" in Mostar and to take the cash box. On 16 or 17 June 1998 some other persons executed the plan and brought the stolen cash box to the applicant's house. On 10 August 1998 other persons used a copied key to gain entrance to a private apartment, ambushing, beating up and blindfolding the person living there when he entered, and taking from him the key to the THW premises in Ključ. These persons had intended to go to the THW premises, steal money and take it to where the applicant was waiting in a car. This portion of the plan was not executed, however, as all persons involved, including the applicant, were apprehended by police.

3. The applicant proclaims his innocence, alleging that he had not agreed to any criminal plans with the other persons mentioned above. He further alleges he was in Switzerland for medical treatment when the first criminal act was committed. He thus claims to have been convicted and imprisoned without any reason. He also states that he was beaten and ill-treated by the police during the pre-trial investigation and forced to sign a false and self-incriminating statement. A policeman allegedly ordered him to tell the investigating judge to overtake this statement. When the applicant was brought before the investigating judge this policeman was present. The applicant therefore kept silent when the judge questioned him, and consequently his former statement was reiterated. The applicant raised this objection before both the Cantonal Court and the Supreme Court. His objection was dismissed as unsubstantiated, however, and the Supreme Court further found that the facts in the case had been correctly established by the Cantonal Court. The applicant alleges that his conviction could be due to the fact that the president of the relevant panel of the Cantonal Court was of Croat origin.

II. COMPLAINTS

4. The applicant appears to allege violations of his rights under Articles 3 (prohibition of torture and ill-treatment), 6 (right to a fair hearing by an independent and impartial court) and 14 (prohibition of discrimination) of the European Convention on Human Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 17 June 1999 and registered on 22 June 1999. The applicant is represented by Suada Kasum, a lawyer from Bihać.

IV. OPINION OF THE CHAMBER

6. Before considering the merits of the case 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 manifestly ill-founded.

7. The Chamber first recalls that the applicant claims that he was ill-treated by the police. However, the Chamber cannot find that this allegation has been substantiated. The applicant has not

presented to the Chamber any kind of medical documentation or other evidence in this respect. According to the judgment of the Cantonal Court it can rather be seen from the report of the District Correctional Institution that the applicant did not have any traces of injuries when he was admitted to this institution. Accordingly, the Chamber finds that the allegation of ill-treatment by the police, which would be in breach of Article 3 of the Convention, must be rejected.

8. As to the applicant's claim that he was forced to make false and self-incriminating statements during the pre-trial investigation and ordered to have them rewritten by the investigative judge, the Chamber finds that also this allegation lacks substantiation. Further, the applicant has offered no evidence indicating that the president of the Cantonal Court panel which decided his case was personally biased against him due to his national origin. Accordingly, also the complaints under Article 6 of the Convention regarding the fairness of the criminal proceedings against the applicant must be rejected.

9. Finally, the applicant has not shown that, in regard to any of the events that occurred in his case, he was treated differently from others in the same or relevantly similar situations. In particular, there is no indication that his conviction was influenced by his descent. Rather, the judgments against him appear to have been based on the facts of the case. Thus, the complaint of discrimination is unsubstantiated and must be rejected.

10. Accordingly, the Chamber decides not to accept the application, it be manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Mr. Andrew GROTRIAN
Acting President of the First Panel