



DECISION ON ADMISSIBILITY

Cases nos. CH/99/3078, CH/00/4028, CH/00/4108 and CH/00/4488

Rahman RADENICA, Mevludin SALKIĆ, Abid RADENICA and Senad RADENICA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 July 2000 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting 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) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicants were arrested by police forces of the Ministry of Internal Affairs of Canton Tuzla, Abid Radenica on an unspecified date and the other three applicants on 27 January 1998. They were indicted on 20 February 1998. By a judgment of the Cantonal Court in Tuzla of 17 November 1998 Rahman and Abid Radenica were convicted of aggravated theft and of robbery under Article 151 paragraph 1 in connection with Article 22 of the Criminal Law of the Republic of Bosnia and Herzegovina. Mevludin Salkić and Senad Radenica were convicted of aggravated theft under Article 151 paragraph 1 in connection with Article 24 of the same Law. They were all sentenced to various terms of imprisonment. On 8 August 1999 the Supreme Court of the Federation of Bosnia and Herzegovina confirmed the applicants' convictions.

2. The convictions concern events that took place on 27 June 1997 and 23 August 1997. According to the judgments of the Cantonal and Supreme Courts, on 27 June 1997 Rahman and Abid Radenica entered the house of their first victim, tied her arms and legs and inflicted her grievous bodily injury. After repeated threats she indicated the place where she kept her money. The perpetrators stole 3,300 German marks (DEM), earrings and a watch. Further, on 23 August 1997 Rahman and Abid Radenica entered the house of their second victim, beat her and tied her up, demanding that she tell them where she kept her money. In this case, they took, *inter alia*, DEM 1200 and gold jewelry. Mevludin Salkić and Senad Radenica assisted them in executing the last criminal act.

3. However, the applicants proclaim their innocence. Moreover, after their arrest by the police, they were allegedly beaten and tortured in order to extort confessions. According to the applicants, each of them was forced to sign a false statement which was later used by the investigating judge. Further, Rahman Radenica states that the procedural decision on his arrest was given to him only the morning after he was arrested.

II. COMPLAINTS

4. The applicants complain of violations of Articles 3, 5 and 6 of the European Convention on Human Rights. Rahman Radenica requests that criminal proceedings be initiated against the judges who were involved in the proceedings against him.

III. PROCEEDINGS BEFORE THE CHAMBER

5. Rahman Radenica introduced his application to the Chamber on 28 October 1999. It was registered the following day. On 14 December 1999 the Chamber invited the Federation of Bosnia and Herzegovina to submit written observations on admissibility and merits. These observations were received by the Chamber on 14 February 2000 and subsequently transmitted to Rahman Radenica. On 20 March 2000 Rahman Radenica submitted observations in reply and a claim for compensation. On 21 April 2000 the Federation submitted additional observations on the compensation claim.

6. The applications of Mevludin Salkić and of Abid and Senad Radenica were received and registered by the Chamber on different dates in February and March 2000. They have not been transmitted to the respondent Party.

7. The Chamber deliberated on Rahman Radenica's application on 9 December 1999 and on all four applications on 7 June 2000. On the latter date it decided to join the applications. On 6 July the Chamber adopted the present decision.

IV. OPINION OF THE CHAMBER

8. Before considering the cases on the merits 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 must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In addition, according to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

9. In relation to Rahman Radenica, the Federation of Bosnia and Herzegovina claims that he has not exhausted existing effective remedies as he could request the reopening of the criminal proceedings under Articles 391-402 of the Law on Criminal Procedure or request protection of legality under Articles 403-411 of the same Law.

10. The Chamber recalls, however, that Rahman Radenica, as well as the other three applicants, appealed against the judgment of the Cantonal Court to the Supreme Court of the Federation which decided on their appeals on 8 August 1999. Consequently, they have exhausted the ordinary legal remedies available under domestic law. Reopening of proceedings and protection of legality are extraordinary remedies which the applicants did not have to exhaust in the present cases. Thus, the Chamber finds that the applications cannot be rejected for failure to exhaust domestic remedies.

11. The applicants claim that they have been beaten and tortured while detained by the police but the Chamber cannot find that this allegation has been substantiated. The applicants have not presented to the Chamber any kind of medical documentation or other evidence in this respect. It can be seen from the judgment of the Cantonal Court that Rahman and Abid Radenica did not complain of such ill-treatment during the domestic proceedings. As regards Mevludin Salkić and Senad Radenica, it also appears from the judgment that "their complaints of ill-treatment by the police were intended to exclude their criminal responsibility". The Chamber finds that the allegation of ill-treatment by the police is unsubstantiated and must therefore be rejected as manifestly ill-founded.

12. As to the applicants' claim that they were forced to sign false and self-incriminating statements during the pre-trial proceedings, the Chamber finds that also this allegation lacks substantiation. Further, it can be seen from the judgments of the Cantonal and Supreme Courts that both co-defendants and witnesses claimed that Rahman and Abid Radenica had committed the criminal act of 27 June 1997 and that these statements were compatible with each other. In relation to the criminal act of 23 August 1997, Mevludin Salkić and Senad Radenica gave a detailed description which incriminated themselves as well as Rahman and Abid Radenica. Consequently, the applications do not reveal any violation of the applicants' right to a fair hearing under Article 6 of the Convention. Also this complaint is therefore manifestly ill-founded.

13. Finally, Rahman Radenica complains that he was arrested on 27 January 1998 at 8 a.m. but was only given the procedural decision on his arrest the following morning. However, it appears from the file that he signed a decision that informed him of the reasons for his arrest already at 2 p.m. on the day of the arrest, i.e. six hours after he was arrested. In these circumstances, the Chamber finds that he was informed promptly of the reasons for his arrest, as required by Article 5 paragraph 2 of the Convention. Also this complaint is therefore manifestly ill-founded.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel