



DECISION TO STRIKE OUT

Case no. CH/99/1561

Ismet ŽERIĆ

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 5 June 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Peter KEMPEES, 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(3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant, who is of Bosniak origin, complains about proceedings which led to his conviction for war crimes against civilians.

II. FACTS

2. In May 1992 the applicant was captured by the Bosnian Serb Army and detained in the camp "Omarska". It seems that the applicant agreed to assist the guards of the camp in order to be treated better than other detained persons. The applicant was released from the camp "Omarska" in August 1992.

3. On 17 September 1994 the applicant was able to move to the territory controlled by the Government of the Republic of Bosnia and Herzegovina. It seems that the applicant was arrested and detained in a military prison in Travnik on the same date. On 23 September 1994 the Headquarters of the Seventh Corps of the Army of the RBiH issued criminal charges against the applicant for aiding the enemy and for war crimes against civilians. The applicant alleges that he was beaten very hard while he was detained in the military prison in order to force a confession.

4. On 14 October 1994 the applicant was examined by the investigative judge. On the same date the District Military Court in Travnik issued a procedural decision on the applicant's detention and the applicant was transferred to the Correctional Institution in Zenica.

5. On 24 March 1995 the Office of the Higher Public Prosecutor in Zenica issued an indictment against the applicant for war crimes against civilians. On 6 May 1995 the Higher Public Prosecutor in Zenica corrected the indictment of 24 March 1995. However, the essence of the indictment stayed the same.

6. On 29 March 1995 the Higher Court in Zenica issued a decision on extension of the applicant's detention. It seems that between 14 October 1994 and 29 March 1995 no decision regarding the applicant's detention was issued.

7. On 13 March 1996 the applicant was transferred to the District Prison in Bihać.

8. On 13 November 1996 the Higher Court in Bihać submitted the case to the International Criminal Tribunal for the former Yugoslavia ("the International Tribunal") for review under Article 5 of the "Rules of the Road". On 10 March 1997 the International Tribunal informed the Higher Court in Bihać that the evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law.

9. On 16 June 1997 the Office of the Cantonal Prosecutor in Bihać amended the indictment of 6 May 1995. The factual basis on which the applicant was charged was reduced. However, the applicant was still indicted for war crimes against civilians.

10. On 17 June 1997 the Cantonal Court in Bihać issued a decision convicting the applicant of war crimes against civilians and sentenced him to 9 years imprisonment. In particular, the applicant was convicted of the murder of Mr. R.M, of beating other detained persons and of stealing valuables from other detained persons in the camp "Omarska". The only witness who testified that the applicant had killed Mr. R.M. was Mr. S.M, the victim's brother. Mr. S.M's testimony had been given to an investigative judge on 28 December 1994 and read out at the public hearing on 17 June 1997, because Mr. S.M. had been killed on 27 July 1995.

11. On 28 June 1997 the applicant appealed to the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court"). The applicant was of the opinion that the Higher Court in Bihać did not take into consideration the fact that he had been a detained person in the camp "Omarska" and that he had acted under the threat of being killed by the guards.

12. On 16 October 1997 the Supreme Court reduced the sentence to 7 years and upheld the rest of the decision of 17 June 1997.

13. On 30 October 1997 the applicant informed the Office of the Ombudsmen of the Federation of Bosnia and Herzegovina in Bihać that none of his letters reached his family and that he was not allowed to visit his very sick father. Furthermore, the applicant claimed that Mr. A.M, the judge of the Cantonal Court in Bihać, insulted him and a few other detained persons by calling them "četniks". On 3 November 1997 the Cantonal Court in Bihać informed the Office of the Ombudsmen of the Federation of Bosnia and Herzegovina in Bihać that the applicant's claim regarding Mr. A.M. could not be true. The Cantonal Court in Bihać did not comment the applicant's other claims.

14. On 31 December 1997 the applicant was transferred to the Correctional Institution in Zenica.

15. On 9 April 2000 the applicant escaped from the Correctional Institution in Zenica. His present whereabouts are unknown to the Chamber.

III. COMPLAINTS

16. The applicant alleges that he was arrested on 17 September 1994 and detained in the military prison in Travnik without any decision and that he was beaten very hard while detained in the military prison in Travnik. Further, the applicant alleges that he was only brought before the investigative judge on 14 October 1994, nearly 1 month after he was detained. The applicant also alleges that he was deprived of all contact with his family while detained in the District Prison in Bihać and the Correctional Institution in Zenica and that Mr. A.M, the judge of the Cantonal Court in Bihać, insulted him by calling him a "četnik". Finally, the applicant alleges that he did not receive a fair trial within a reasonable time.

IV. PROCEEDINGS BEFORE THE CHAMBER

17. The application was introduced on 11 February 1999.

18. On 23 September 1999 the case was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina for their observations under Articles 3, 5 and 6 of the European Convention.

19. On 27 November 1999 the Federation of Bosnia and Herzegovina submitted its observations on admissibility and merits. The Federation of Bosnia and Herzegovina was of the opinion that the application was inadmissible because it was filed nearly 16 months after 16 October 1997 when the final decision in this case was taken. Furthermore, the Federation of Bosnia and Herzegovina was of the opinion that Articles 3, 5 and 6 of the European Convention had not been violated.

20. On 3 December 1999 Bosnia and Herzegovina submitted its observations on admissibility and merits. Bosnia and Herzegovina was of the opinion that the application was inadmissible because it was filed nearly 16 months after 16 October 1997 when the final decision in this case was taken.

21. On 16 December 1999 the applicant submitted his response, claiming that it was very difficult for him, as a detained person, to be aware of the possibility of applying to the Chamber since he had not had any contacts with his lawyer after he was convicted. The applicant did not specify his compensation claim.

22. On 15 February 2001 the Chamber requested certain additional information from the applicant and the Federation of Bosnia and Herzegovina. The applicant did not respond. On 2 March and 9 March 2001 the Federation of Bosnia and Herzegovina submitted the applicant's medical record from the Correctional Institution in Zenica and orders issued by the Higher Court in Bihać on 15 April and 18 April 1996 granting the applicant permission to meet his lawyer and his wife in the

District Prison in Bihać. Further, the Federation of Bosnia and Herzegovina informed the Chamber that the applicant had escaped from the Correctional Institution in Zenica on 9 April 2000.

23. On 27 March 2001 the case was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina for their observations under Articles 8 and 13 of the European Convention. On the same date the observations of the Federation of Bosnia and Herzegovina of 2 March and 9 March 2001 were sent to the applicant's last known address.

24. On 29 March 2001 the letter sent to the applicant on 27 March 2001 was returned to the Chamber because it could not be delivered.

25. On 27 April 2001 the Federation of Bosnia and Herzegovina submitted its observations on admissibility and merits regarding Articles 8 and 13 of the European Convention. The Federation of Bosnia and Herzegovina was of the opinion that the application was inadmissible regarding Articles 8 and 13 of the European Convention since the applicant's allegations were not substantiated.

V. OPINION OF THE CHAMBER

26. Having regard to Article VIII(3) of the Agreement, the Chamber finds that, since the applicant escaped from prison over 1 year ago, contact with the applicant has been lost. That being so it considers that it is not justified to continue examining the application. Furthermore, the Chamber finds no special circumstances regarding respect for human rights which require the examination of the application to be continued. It follows that the application may be struck out of the list.

VI. CONCLUSION

27. For these reasons, the Chamber, unanimously,

STRIKES THE APPLICATION OUT.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel