



DECISION ON ADMISSIBILITY

Case no. CH/98/1370

Sead HUSKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 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(2) 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, contests proceedings which led to his conviction for unlawful killing or wounding the enemy. Specifically, the applicant alleges that he was badly beaten in order to force a confession and that he did not receive a fair trial.

2. The case raises issues under Articles 3, 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention"). This case along with other similar cases before the Chamber raises a particular issue of the fairness of the proceedings because of the fact that only the supporters of Mr. Fikret Abdić were convicted for serious violations of international humanitarian law committed during war hostilities between the armed forces of the Autonomous Province of Western Bosnia ("the Autonomy") and the Army of the Republic of Bosnia and Herzegovina.

II. FACTS

3. On 27 September 1993 Mr. Fikret Abdić proclaimed the Autonomy on the territory of the Velika Kladuša and Cazin municipalities. It appears that the applicant had joined the armed forces of the Autonomy on or around 31 October 1993.

4. On 16 March 1996 the applicant was arrested in Velika Kladuša and brought to the police station. Thereafter he was allegedly taken from the police station to a restaurant in the city center handcuffed. On the same date the applicant was transferred to Bihać and detained in a holding cell in the police station. The applicant was held and interrogated together with two persons who eventually testified against him in court. The applicant alleges that he was badly beaten while he was detained in the police station in order to force a confession.

5. On 20 March 1996 the applicant was transferred to the District Prison in Bihać. The applicant states that he was not maltreated there.

6. On 21 March 1996 the applicant was interrogated by the investigative judge in the presence of his *ex officio* defense counsel appointed by the court. The applicant complained to the investigative judge that he had been badly beaten in the police station in order to force a confession. It seems that the investigative judge did not undertake any steps to investigate the applicant's complaint. On the same date the Higher Court in Bihać issued a procedural decision on the applicant's detention.

7. On 31 May 1996 the Higher Public Prosecutor Office in Bihać issued an indictment against the applicant for ordinary murder.

8. On 2 September 1996 the Higher Court in Bihać issued a judgment convicting the applicant of unlawful killing or wounding the enemy and sentenced him to 11 years' imprisonment. In particular, the applicant was found guilty of shooting Mr. R.O. who was already wounded. Two witnesses, who had been detained and interrogated with the applicant in the police station in Bihać, testified that they had seen the applicant shooting at Mr. R.O.

9. The case was never submitted to the International Criminal Tribunal for the former Yugoslavia ("the International Tribunal") for review under Article 5 of the Agreed Measures of 18 February 1996 ("the Rules of the Road").

10. The applicant appealed to the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court"). The applicant appealed only the length of his sentence. Namely, the applicant was of the opinion that the Higher Court in Bihać had not sufficiently taken into account the applicant's young age and cooperation during the proceedings. However, the Supreme Court was obligated to examine the judgment of 2 September 1996 regarding some other issues *ex officio* (see paragraph 14). For example, the Supreme Court was obligated to examine whether the necessary permission such as the legal opinion of the International Tribunal was obtained and whether the judgment was based on impermissible evidence such as forced confession.

11. On 15 May 1997 the Supreme Court upheld the judgment of 2 September 1996.
12. Eventually, the applicant was transferred to the Correctional Institution in Zenica.

III. RELEVANT DOMESTIC LAW

A. The Criminal Code (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90)

13. Article 146(1) reads as follows:

“Whoever in violation of the rules of international law in the time of war or armed conflict kills or wounds an enemy who has laid down arms or unconditionally surrendered or has no means for the defense shall be punished with a sentence of imprisonment for not less than one year.”

B. The Code of Criminal Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 26/86, 74/87, 57/89 and 3/90)

14. Article 376(1) reads as follows:

“The court in the second instance shall review the verdict insofar as it is contested by the appeal, but it must always review it automatically as to the following points: (1) as to whether there has been a violation of the provisions of criminal proceedings set forth in Article 364, paragraph 1, points 1, 5, 6 and 8 through 11 of this law and as to whether the main trial was held, contrary to the provisions of this law, in the absence of the accused or, in the case of mandatory defense, in the absence of the defense counsel of the accused and (2) as to whether the criminal code (Article 365) has been violated to the detriment of the accused.”

15. Article 364(1), as far as relevant, reads as follows:

“The following constitute an essential violation of the provisions of criminal procedure:

...

(5) if the court violated the rules of criminal procedure on the question of whether there existed a charge by an authorised prosecutor or permission of the competent agency;

...

(8) if the verdict is based on evidence which may not be used as the basis of a verdict under the provisions of this law, unless in view of the other evidence it is obvious that the same verdict would have been rendered even without that evidence;

...”

IV. PROCEEDINGS BEFORE THE CHAMBER

16. The application was introduced on 18 December 1998.
17. On 19 July 1999 the case was transmitted to the respondent Party for its observations under Article 5 of the European Convention.
18. On 20 September 1999 the respondent Party submitted its observations on admissibility and merits.

19. The respondent Party was of the opinion that the application was inadmissible because it was filed nearly 19 months after 15 May 1997 when the final decision in this case was taken. Furthermore, the respondent Party was of the opinion that Article 5 of the European Convention had not been violated.

20. On 27 September 1999 the case was retransmitted to the respondent Party for its observations under Articles 3, 5 and 6 of the European Convention. Further, the respondent Party was asked to inform the Chamber specifically about its compliance with the Rules of the Road. However, the respondent Party did not submit its observations this time.

21. On 7 October 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. The applicant did not set forth his compensation claim.

22. On 15 February 2001 the Chamber requested certain additional information from the applicant and the respondent Party. On 22 February 2001 the applicant submitted a letter repeating his allegation that he was badly beaten while detained in the police station. On 2 March 2001 and 27 April 2001 the respondent Party submitted additional documents.

V. COMPLAINTS

23. The applicant alleges that he was badly beaten while detained in the police station (Article 3 of the European Convention). Further, the applicant alleges that he did not receive a fair trial (Article 6 of the European Convention). Finally, the case also raises an issue of compliance by the respondent Party with the Rules of the Road (Article 5 of the European Convention).

VI. OPINION OF THE CHAMBER

24. 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)(a) of the Agreement which, as far as relevant, provides as follows:

“The Chamber will decide which applications to accept In so doing, the Chamber shall take into account the following criteria:

(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken.”

A. Whether the application should be rejected as out of time

25. The respondent Party argues that the application should be rejected because it was filed nearly 19 months after 15 May 1997 when the final decision in this case was taken.

26. The Chamber recalls that the applicant was in detention since 16 March 1996 and that the applicant was still in detention when he filed the application on 18 December 1998. Further, it appears that the applicant did not have any contact with his lawyer after the final domestic decision in this case was taken.

27. The Chamber therefore considers that it is likely that the applicant had limited access to information and was not aware of the Agreement before he filed the application.

28. For these reasons the Chamber considers that, in the specific circumstances of the present case, the application should not be rejected for failure to comply with the six-months rule.

B. The applicant's complaints about maltreatment in the District Prison in Bihać

29. The Chamber finds that these complaints raise issues of fact and of law that require an examination of the merits. No reason for declaring them inadmissible having been established, the Chamber will declare them admissible without prejudging the merits.

C. The applicant's complaints about the fairness of the proceedings

30. The Chamber finds that these complaints raise issues of fact and of law that require an examination of the merits. No reason for declaring them inadmissible having been established, the Chamber will declare them admissible without prejudging the merits.

D. The compliance by the respondent Party with the Rules of the Road

31. Although the applicant did not raise it, the Chamber notes that the application raises issues under Article 5 of the European Convention regarding the compliance by the respondent Party with the Rules of the Road. No reason for declaring them inadmissible having been established, the Chamber will declare them admissible without prejudging the merits.

32. The Chamber finds that there are no other grounds for declaring the application inadmissible. Accordingly, the application is to be declared admissible in its entirety.

VII. CONCLUSION

33. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION ADMISSIBLE.

(signed)
Olga Kapić
Deputy Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel