



DECISION ON ADMISSIBILITY

Case no. CH/99/2805

Ahmet SEFIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 October 2001 with the following members present:

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

Mr. Ulrich GARMS, 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) 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 ordinary murder. 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 European Convention on Human Rights ("the Convention").

II. FACTS

3. The applicant was detained in the Serb run concentration camp "Sana Keran" in Donji Kamengrad, Municipality of Sanski Most, from around 26 September 1995. On 30 October 1995 he was released. However, on the same day he was arrested and brought to the Ministry of Internal Affairs in Bihać, presumably by authorities of the Federation of Bosnia and Herzegovina.
4. The applicant alleges that during his stay in Bihać he was kept in a cellar for 17 days without water, fresh air, toilet or medical treatment. He claims he was beaten, maltreated, blackmailed and forced to confess to killing women and children, which confession was filmed without his approval and broadcast on television and radio. He also claims that newspaper reports were published about him and that he was mentioned in schoolbooks as a war criminal. He also alleges that he was not allowed to contact his parents and that his watch and wedding ring were taken from him during his pre-trial detention in the Bihać prison.
5. On 17 November 1995 the applicant was brought before the investigative judge.
6. On 16 May 1996 the Bihać Public Prosecutor issued an indictment against the applicant for war crimes against civilians. There is no further information about procedural decisions in the criminal proceedings ever being delivered to the applicant.
7. On 9 December 1996 the Higher Court of Bihać issued a decision convicting the applicant of ordinary murder of nine people, committed during his stay in the "Sana Keran" concentration camp on 11 October 1995, and sentencing him to 15 years of imprisonment. The Court did not qualify the crime committed to be a war crime, since the applicant did not serve in any military force, nor was he "serving on duty of the aggressor". The applicant was found guilty of lining the people up and shooting them with the automatic gun of a guard, who had ordered him to do so. The court found that he had acted under the threat of his father and brother being killed if he did not do as the guard ordered, however, since the father and brother of the applicant were not present at the scene of the crime, the court did not consider the threat to be immediate.
8. According to documents received from the Organisation for Security and Co-operation in Europe (OSCE), the applicant's defence counsel during the trial requested an expert's opinion on the injuries that the applicant suffered in order to prove that the applicant was violently forced to carry out the guard's orders to commit the crime of which he was suspected. This request was rejected.
9. Several witness statements were read out in trial and one witness, who was heard in court, testified that the applicant's situation was even worse than that of the other prisoners, because the applicant was beaten and verbally abused.
10. The Court also rejected the defence's request to obtain a more detailed expert's opinion of the applicant's mental state at the time of the alleged offence, as the neuro-psychiatric expertise the Court took into consideration was allegedly very vague. The defence's request for re-examination of a number of witnesses, as their testimonies were presumably contradictory on some accounts, was also rejected.

11. The applicant's defence counsel lodged an appeal against the Court's decision on 28 December 1996 on the grounds that the applicant was indicted for war crimes and convicted of and sentenced for ordinary murder without the indictment having been changed. The defence claimed that the Court did not take the applicant's motive to shoot his fellow prisoners into account. Furthermore, the applicant's defence counsel complained of the fact that the Court took a neuro-psychiatric expertise into consideration that was vague on the issue of the applicant's mental condition at the time of the shooting.

12. The applicant also lodged an appeal of his own accord based on the same reasoning as the appeal his defence counsel lodged, added with the complaints that witnesses proposed by the defence were not heard by the Court and that the Court did not take into consideration the fact that the applicant suffered mental damage due to the fact that his mother was allegedly raped before his eyes by three men of Serb descent.

13. In January 1997 the case was transmitted 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"). On 10 March 1997 the Prosecutor for the International Tribunal stated that the submitted evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant committed a serious violation of international law.

14. On 2 May 1997 the Supreme Court of the Federation of Bosnia and Herzegovina rejected both appeals and the decision of the Cantonal Court of 9 December 1996 was confirmed.

15. The applicant was informed on 20 July 2000 that the request for pardon that he had submitted was rejected by the President of the Federation of Bosnia and Herzegovina on 12 July 2000.

III PROCEEDINGS BEFORE THE CHAMBER

16. The application was introduced on 26 August 1999.

17. The case was transmitted to the respondent Party on 27 September 1999 under Articles 3, 5 and 6 of the Convention. Further, the respondent Party was asked to inform the Chamber specifically about its compliance with the Rules of the Road.

18. On 27 September 1999 the Chamber requested the applicant to explain why he had not complied with the six-month rule.

19. On 11 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.

20. On 27 November 1999 the respondent Party submitted its observations on admissibility and merits. The respondent Party was of the opinion that the application was inadmissible because it was filed 26 months after 2 May 1997, when the final decision in this case was taken. Furthermore, the respondent Party was of the opinion that Articles 3, 5 and 6 of the Convention had not been violated.

21. On 14 December 1999 the Chamber invited the applicant to submit a claim for compensation.

22. On 29 December 1999 the applicant submitted his compensation claim, requesting compensation for the unfair criminal proceedings, medical treatment, defamation of character and physical and psychological suffering, in the amount of 8,500 Convertible Marks (*Konvertibilnih Maraka*, "KM").

23. On 10 January 2000 the Chamber invited the respondent Party to submit its observations on the applicant's claim for compensation, which it did on 10 February 2000, suggesting the Chamber should reject the claim as not specified.

24. On 15 February, 21 February and 27 March 2001 the Chamber requested certain additional information from the respondent Party. On 22 February, 2 March and 27 April 2001 the respondent Party submitted the relevant documents it had available.

25. On 16 February 2001 the Chamber requested additional information from the applicant. His response was received on 22 February 2001.

IV COMPLAINTS

26. The applicant alleges that he was badly beaten and maltreated while detained in Bihać (Article 3 of the Convention). The applicant also claims that the respondent Party failed to follow its own laws, to promptly inform him of the reasons for his arrest and to promptly bring him before a judge or other officer (Article 5 of the Convention). Further, the applicant alleges that he did not receive a fair trial (Article 6 of the Convention). Finally, the case also raises an issue of compliance by the respondent Party with the Rules of the Road (Article 5 of the Convention).

V OPINION OF THE CHAMBER

27. 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) and (c) of the Agreement which, so far as relevant, provides as follows:

“The Chamber will decide which applications to accept (...). In doing so, 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.

(...)

(c) The Chamber shall also dismiss any application which it considers incompatible with the Agreement, manifestly ill-founded, or an abuse of the right of petition.”

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

28. The respondent Party argues that the application should be rejected because it was filed 26 months after 2 May 1997 when the final decision in this case was taken.

29. The Chamber recalls that the applicant was in detention since 30 October 1995 and that the applicant was still in detention when he filed the application on 26 August 1999. Further, it appears that the applicant did not have any contact with his lawyer after the final domestic decision in this case was taken.

30. 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.

31. 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-month rule.

B. The applicant's complaints about maltreatment while detained in Bihać

32. The applicant complains that he was badly beaten and maltreated while detained in Bihać in November 1995. He also complains that he was denied contact with his parents and that his watch and wedding ring were taken from him while in pre-trial detention.

33. The Chamber recalls that, according to the generally accepted principles of international law and to its own case-law, it is outside of its competence to decide whether events occurring before the Agreement came into force on 14 December 1995 involve violations of human rights (see case no. CH/96/1, *Matanović*, decision on the merits of 11 July 1997, paragraph 32, Decisions on Admissibility and Merits March 1996-December 1997).

34. The Chamber therefore concludes that the applicant's complaints that he was badly beaten and maltreated while detained in Bihać, that he was not allowed contact with his parents and that his watch and wedding ring were taken from him do not fall within its competence *ratione temporis*.

C. The applicant's complaints about the violation of his right to liberty

35. The applicant complains that the respondent Party failed to follow its own laws, to promptly inform him of the reasons for his arrest and to promptly bring him before a judge or other officer.

36. As mentioned above in paragraph 33, according to the generally accepted principles of international law and to the Chamber's own case-law, it is outside of the Chamber's competence to decide whether events occurring before the Agreement came into force on 14 December 1995 involve violations of human rights.

37. The Chamber therefore concludes that the applicant's complaints that the respondent Party did not comply with its own law, failed to promptly inform him of the reasons for his arrest and to promptly bring him before a judge or other officer do not fall within its competence *ratione temporis*.

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

38. 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.

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

39. Although the applicant did not raise it, the Chamber notes that the application raises issues under Article 5 of the 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.

VI. CONCLUSION

40. For these reasons, the Chamber,

1. unanimously, declares the applicant's complaints that he was badly beaten and maltreated while detained in Bihać and that he was denied contact with his parents and that his watch and wedding ring were taken from him while in pre-trial detention (Article 3 of the European Convention on Human Rights) inadmissible;

2. unanimously, declares the applicant's complaints that the respondent Party failed to follow its own laws, to promptly inform him of the reasons for his arrest and to promptly bring him before a judge or other officer (Article 5 of the Convention) inadmissible,

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and;

3. unanimously, declares the applicant's complaints that he did not receive a fair trial (Article 6 of the Convention) and the issue of compliance by the respondent Party with Article 5 of the Rules of the Road (Article 5 of the Convention) admissible.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel