



DECISION ON ADMISSIBILITY

**Cases nos. CH/99/1904, CH/00/3695, CH/00/3696,
CH/00/3697, CH/00/3698 and CH/01/7052**

**Veljko KOČIĆ, Gorazd DEVENICA, Nikola ŠIPKA,
Živko PEŠUT, Radomir DUCANOVIĆ and Sekul MANDIĆ**

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 January 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants were held in detention on the territory of the Federation of Bosnia and Herzegovina during the armed conflict and all were released after 14 December 1995, the date the Agreement entered into force. However, all the applicants submitted their applications to the Chamber significantly more than six months after their release from detention. None of the applicants initiated a lawsuit before the domestic courts.

2. The applicants allege various violations of their human rights guaranteed under the European Convention on Human Rights (the "Convention") as a result of their ill-treatment and illegal detention and, in some cases, as a result of their inability to pursue their claims before the domestic courts. They all seek compensation for the alleged violations of their human rights.

II. STATEMENT OF FACTS AND PROCEEDINGS

A. CH/99/1904 Veljko KOČIĆ

3. The late Veljko Kočić, who was a member of the Republika Srpska Army ("RS Army"), was arrested in Divičani near Jajce on 16 September 1995. He was detained in prison in Mostar. Thereafter he was transferred to the central prison in Sarajevo, where he remained until his release. He was released on 21 April 1996 with the assistance of the International Committee of the Red Cross ("ICRC").

4. Veljko Kočić submitted his application to the Chamber on 19 April 1999. On 21 October 1999, the Chamber asked the applicant to explain why he had not filed his application within six months from the date of his release. On 9 November 1999, the applicant's wife, Zora Kočić, informed the Chamber that Veljko Kočić had died on 10 June 1999 and she wanted to pursue with her late husband's case. She did not otherwise respond to the Chamber's letter of 21 October 1999. On 9 May 2000, in response to additional inquiries from the Chamber, Zora Kočić explained that her husband had initiated a lawsuit to the Court of First Instance in Sarajevo seeking compensation for his ill-treatment and illegal detention, but that that lawsuit was rejected because the Court declared itself incompetent. However Zora Kočić did not submit any document relating to the proceedings allegedly initiated by her late husband. On 12 December 2000, the Chamber sought information from the respondent Party concerning the domestic proceedings. The respondent Party replied to the Chamber on 5 January 2001, stating that it had no information about the domestic proceedings.

5. Veljko Kočić claimed that he was physically and mentally abused, tortured, forced to work, and humiliated during his detention. As a result, prior to his death he was 60 % disabled. He alleged violations of Articles 3, 4, and 5 of the Convention in isolation and in connection with Articles 13 and 14 of the Convention. In addition, he alleged a violation of Annex 1-A to the General Framework Agreement (Agreement on the Military Aspects of the Peace Settlement) and a violation of Annex 4 to the General Framework Agreement (Constitution of Bosnia and Herzegovina).

B. CH/00/3695 Gorazd DEVENICA

6. The applicant, who was a member of the RS Army, was arrested in Potkraj near Travnik on 13 September 1995. He was detained as a prisoner of war in the prison Dolac near Travnik and later transferred to the work camp Sljemena near Dolac. He was released from detention on 27 January 1996 with the assistance of the ICRC. Before the Chamber, the applicant is represented by a lawyer, Vesna Rujević.

7. According to the applicant, he was beaten during his arrest, interrogation, and detention because he is the child of a mixed marriage—*i.e.*, his father is Bosniak and his mother is Slovenian. He claims that he was physically and mentally abused, forced to work, and humiliated during his detention. He alleges that he was also forced to exercise until he collapsed and that detainees were forced to beat each other. According to the applicant, he suffered such cruelty in detention because of his origin and religion, as shown by the abusive, insulting, and racist language used with him. As a

result of the maltreatment, the applicant's knees are permanently damaged and after his release he suffered a heart attack.

8. The applicant submitted his application to the Chamber on 15 March 2000. He alleges violations of Articles 3, 4, 5, 8(1) and 13 of the Convention, Article 14 in connection with Articles 3, 4 and 5 of the Convention. He states that he did not make use of domestic remedies because he feared arrest on the territory of the Federation of Bosnia and Herzegovina; thus, the domestic remedies were ineffective in practice.

C. CH/00/3696 Nikola ŠIPKA

9. The applicant, who was a member of the RS Army, was arrested in Karaula near Turbe on 17 September 1995. He was detained in the prison Dolac and then detained in the work camp Sljemena near Dolac. He was released from detention on 26 January 1996 with the assistance of the ICRC. Before the Chamber, the applicant is represented by a lawyer, Vesna Rujević.

10. The applicant claims that he was physically and mentally abused, forced to work, and humiliated during his detention. He was also abused during interrogation. He was forced to live in inhuman conditions and was denied medical care. He was also forced to exercise until he collapsed and detainees were forced to beat each other. According to the applicant, he suffered such cruelty in detention because of his origin and religion, as shown by the abusive, insulting, and racist language used with him.

11. The applicant submitted his application to the Chamber on 15 March 2000. He alleges violations of Articles 3, 4, 5, 8(1) and 13, and Article 14 in connection with Articles 3, 4, and 5 of the Convention. He states that he did not make use of domestic remedies because he feared arrest on the territory of the Federation of Bosnia and Herzegovina; thus, the domestic remedies were ineffective in practice.

D. CH/00/3697 Živko PEŠUT

12. The applicant, who was a member of the RS Army, was arrested in Jarecište on 14 September 1995. He was interrogated and detained in Bugojno. On 17 September 1995 he was transferred to the prison Dolac near Travnik and later transferred to the work camp Sljemena near Dolac. He was released from detention on 27 January 1996 with the assistance of the ICRC. Before the Chamber, the applicant is represented by a lawyer, Vesna Rujević.

13. The applicant claims that he was physically and mentally abused, forced to work, and humiliated during his detention. He was also forced to jump from the first floor of the building during his interrogation. He was forced to live in inhuman conditions and was denied medical care. He was also forced to exercise until he collapsed and detainees were forced to beat each other. According to the applicant, he suffered such cruelty in detention because of his origin and religion, as shown by the abusive, insulting, and racist language used with him.

14. The applicant submitted his application to the Chamber on 15 March 2000. He alleges violations of Articles 3, 4, 5, 8(1) and 13, and Article 14 in connection with Articles 3, 4, and 5 of the Convention. He states that he did not make use of domestic remedies because he feared arrest on the territory of the Federation of Bosnia and Herzegovina; thus, the domestic remedies were ineffective in practice.

E. CH/00/3698 Radomir DUCANOVIĆ

15. The applicant, who was a member of the RS Army, was arrested in Barice near Donji Vakuf on 14 September 1995. He was interrogated and detained in Bugojno. On 17 September 1995 he was transferred to the prison Dolac near Travnik, where he remained for approximately 30 days. He was later transferred to the work camp Sljemena near Dolac. He was released from detention on 27 January 1996 with the assistance of the ICRC. Before the Chamber, the applicant is represented by a lawyer, Vesna Rujević.

16. The applicant claims that he was physically and mentally abused, forced to work, and humiliated during his detention. He was forced to live in inhuman conditions and was denied medical care. He was also forced to exercise until he collapsed and detainees were forced to beat each other. According to the applicant, he suffered such cruelty in detention because of his origin and religion, as shown by the abusive, insulting, and racist language used with him.

17. The applicant submitted his application to the Chamber on 15 March 2000. He alleges violations of Articles 3, 4, 5, 8(1) and 13, and Article 14 in connection with Articles 3, 4, and 5 of the Convention. He states that he did not make use of domestic remedies because he feared arrest on the territory of the Federation of Bosnia and Herzegovina; thus, the domestic remedies were ineffective in practice.

F. CH/01/7052 Sekul MANDIĆ

18. The applicant, who was a civilian, was arrested while he was travelling from Trnovo to Sarajevo on 2 July 1996. He was detained in Semizovac and during the night, he was blindfolded and his arms and legs were strapped to the bed. He remained blindfolded for 105 days. During this time, he was transferred and after overhearing various conversations, he concluded he was detained in Sokolović Kolonija near Hrasnica. Thereafter he was transferred again to barracks in Semizovac, where he was detained for 8 days. While there, he was forced to sign a blank piece of paper. Afterwards it appeared that the document he signed contained criminal charges against him, including charges for war crimes. He claims he could not have committed those war crimes because he was in Sarajevo until 29 April 1995, which was under the control of the Federation, and thereafter, he was in territory under Bosnian Serb control. On 15 October 1996, the Public Prosecutor heard his case and notified him that the proceedings against him had been dropped. He was released from detention on 30 October 1996 with the assistance of the ICRC and the International Police Task Force. Before the Chamber, the applicant is represented by Gordana Vlačić, lawyer.

19. On 16 October 1996, the Higher Court in Sarajevo, acting as first instance court, issued two procedural decisions placing the applicant in pre-trial detention and initiating criminal proceedings against him. On 30 October 1996, the First Instance Court issued a procedural decision ceasing the criminal proceedings against the applicant and ordering his immediate release from pre-trial detention.

20. The applicant submitted his application to the Chamber on 26 January 2001. On 11 December 1997 the Human Rights Ombudsman for Bosnia and Herzegovina registered an application submitted by him. He alleges that he was illegally detained and maltreated, and as a result, he is now blind in his right eye. He alleges violations of Articles 3 and 5 of the Convention. He further alleges a violation of Articles 13 and 14 of the Convention in connection with Article 3 of the Convention.

III. OPINION OF THE CHAMBER

21. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken."

22. Concerning the application, CH/99/1904 Veljko Kočić, the Chamber notes that the applicant's surviving wife was not able to submit any document demonstrating her allegation that her late husband initiated a lawsuit before the Municipal Court in Sarajevo or any other proceedings before the Federation authorities. Furthermore the Chamber recalls the respondent Party statement that it has no information regarding the alleged court proceeding initiated by the applicant. Consequently, since the allegation of the applicant's wife cannot be proved, the Chamber considers that the applicant did not exhaust any domestic remedy.

23. The Chamber notes that none of the other applicants has initiated any proceedings before the Federation authorities to seek redress for the violations they allegedly suffered while in detention.

They claim that such proceedings, while they might exist on paper, would not have provided them with any remedy in practice.

24. The Chamber has repeatedly explained that in the absence of effective domestic remedies the six months' period runs from the act complained of in the application (see, *e.g.*, case nos. CH/98/905 and CH/98/906, *Jandrić and Vuleta*, decision on admissibility of 9 July 1999, paragraph 11, Decisions August–December 1999). In the present cases, the acts complained of took place until January, April and October 1996. The Chamber notes that the applications were lodged between 19 April 1999 and 26 January 2001, *i.e.* at least three years after the alleged violations came to an end. As stated above, the Chamber considers the date of the release from detention to be the date when the six-month rule begins to run. The respective dates the applicants were released from detention are significantly more than six months before the dates on which the respective applicants filed their applications with the Chamber. Accordingly, the applications do not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the applications inadmissible.

IV. CONCLUSION

25. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel