



DECISION ON ADMISSIBILITY

Case no. CH/02/12027

James Rudolf SCHILLING

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 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application concerns the fact that the applicant was held in detention in Bosnia and Herzegovina from 3 July 2002 to 15 December 2002 on the basis of an INTERPOL warrant and a request for his extradition by the Republic of Slovenia. The applicant complains that the conditions for his detention are not met because he is a citizen of Bosnia and Herzegovina and therefore cannot be extradited in accordance with Article 507 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina ("the Code of Criminal Procedure"). The applicant concludes that his rights guaranteed by Articles 5 and 6 of the European Convention on Human Rights ("the Convention") have been violated.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced to the Chamber on 13 August 2002 and registered on the same date. The applicant is represented by Mušir Brkić, a lawyer practising in Sarajevo who also represents the applicant before domestic courts.

3. The applicant requested the Chamber in his application and then again in August, September, October and November 2002 to order, as provisional measure, the respondent Party to release him from custody and not to extradite him to Slovenia. All his requests for provisional measure were rejected, either by the President of the Chamber or by the Chamber.

4. On 11 October 2002 the Chamber decided to transmit the case to the respondent Party under Article 5(1)(f) of the Convention and Article 3 of Protocol No. 4 to the Convention and to request information regarding the legal basis for the applicant's detention. The case was transmitted on 15 October 2002.

5. On 22 October 2002 the respondent Party replied submitting the requested information. On 18 November 2002 the respondent Party submitted observations on admissibility and merits which were then transmitted to the applicant. On 3 December 2002 the applicant submitted his observations in reply.

6. The applicant addressed the Chamber numerous times in September, October, November and December 2002.

III. FACTS AND SUBMISSIONS

7. The applicant is of German origin and married to a Bosnian wife since 1987. He allegedly lives with his family in Bosnia and Herzegovina since 1993 and works on the economic reconstruction of Bosnia and Herzegovina.

8. On a date unknown to the Chamber, the applicant was issued a passport of Bosnia and Herzegovina. On 3 July 2002, when applying to renew his Bosnian passport at the Federal Ministry of Interior, the applicant was arrested and taken to the INTERPOL office of the Sarajevo Canton. There he was presented an international warrant of INTERPOL based on the reasonable suspicion of having committed the criminal offence of robbery in the Republic of Slovenia. The applicant was taken into detention with a view to an extradition to the Republic of Slovenia.

9. On 4 July 2002 the investigative judge of the Cantonal Court in Sarajevo issued a procedural decision ordering the applicant's detention for the time from 3 July 2002 until his extradition to Slovenia is carried out. On 5 July 2002 the applicant appealed against this procedural decision. On the same day the Panel of the Cantonal Court in Sarajevo rejected the appeal as ill founded.

10. The applicant submitted a request for the protection of legality with regard to the procedural decisions of 4 and 5 July 2002 to the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court"). On 31 July 2002 the request was rejected.

11. On 1 October 2002 the Republic of Slovenia officially submitted its extradition request to the authorities of Bosnia and Herzegovina.

12. On 2 October 2002 the Ministry of Interior, Sarajevo Police Administration, issued a procedural decision declaring null and void the registration of the applicant's residence, his identity papers and his citizen identification number.

13. On 23 October 2002 the Panel of the Cantonal Court in Sarajevo issued a procedural decision establishing that the legal requirements for the extradition of the applicant were met, in particular as the Court established that the applicant is not a citizen of Bosnia and Herzegovina. On 25 October 2002 the applicant appealed against this procedural decision to the Supreme Court of the Federation of Bosnia and Herzegovina. On 20 November 2002 the Supreme Court issued a decision confirming the decision of the Cantonal Court.

14. On 15 December 2002 the applicant was extradited to Slovenia. He was later released on bail by the Slovene authorities and on 26 December 2002 he returned to Bosnia and Herzegovina with a temporary travel document issued by the Slovene authorities.

15. The applicant claims to have been granted the citizenship of Bosnia and Herzegovina by naturalisation and as a result to have lost his German citizenship. The applicant could not provide the procedural decision granting the citizenship to substantiate his claim. He explained that the procedural decision on granting him the citizenship of Bosnia and Herzegovina was stolen from his apartment. However, the applicant claims that on 14 August 2000 the Sarajevo Center Police Administration issued a procedural decision registering him as a resident. This fact is undisputed by the respondent Party. In addition, to prove his citizenship of Bosnia and Herzegovina, he submitted a certificate of citizenship of Bosnia and Herzegovina issued by the Municipality Center Sarajevo of 14 August 2000. He also submitted an excerpt of the Register of Birth and the Bosnia and Herzegovina Register of Citizenship, into which he was entered on 14 August 2000 as if he were a naturalised citizen of Bosnia and Herzegovina and a copy of an identity card of Bosnia and Herzegovina issued in his name. The applicant considers that, being a citizen of Bosnia and Herzegovina, he cannot be extradited to Slovenia or be held in detention for that purpose. Article 507 of the Code of Criminal Procedure prohibits the extradition of citizens of Bosnia and Herzegovina.

16. The respondent Party submits that the applicant was never granted the citizenship of Bosnia and Herzegovina. Therefore no procedural decision on granting the applicant the citizenship exists. The respondent Party further submits that on 19 July 2002 the Cantonal Ministry of Interior issued a procedural decision and annulled the procedural decision of 14 August 2000 issued by the Sarajevo Center Police Administration and also annulled the registration in the Register of Birth and the Bosnia and Herzegovina Register of Citizenship of 14 August 2000.

17. The applicant on 20 September 2002 initiated an administrative dispute against the decision of the Cantonal Court of 19 July 2002 annulling his registration as a citizen of Bosnia and Herzegovina and his registration as a resident of Bosnia and Herzegovina. The proceedings are still pending.

IV. OPINION OF THE CHAMBER

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

19. The applicant complains that his detention is illegal. In addition, without substantiating the claim any further, the applicant claims that his right to a fair trial within reasonable time is violated.

20. With regard to the issue of detention the Chamber notes that Article 5 paragraph 1 (f) of the Convention allows detention with a view to extradition unless the detention is unlawful and arbitrary.

Therefore the deprivation of liberty under Article 5, paragraph 1 (f) is justified as long as extradition proceedings are conducted in accordance with the law and such proceedings are carried out with due diligence.

21. In the present case it is undisputed that the purpose of the applicant's detention was his extradition to the Republic of Slovenia, which took place on 15 December 2002.

22. The Chamber notes that the Cantonal Court and the Supreme Court of the Federation in their procedural decisions established that the general prerequisites for an extradition were met. The courts determined in particular that the extradition of the applicant was not barred by Article 507 of the Code of Criminal Procedure, because the applicant was not a citizen of Bosnia and Herzegovina at the time of extradition.

23. The Chamber cannot find any evidence that the proceedings before the domestic courts were irregular or arbitrary. The Chamber notes that the applicant has not provided any evidence to that effect. In addition, the Chamber finds that the time in which the proceedings were conducted, the Supreme Court issued the final decision less than five months after the applicant's arrest, seems reasonable in light of the factual background of the case.

24. The Chamber does not consider itself competent in the present case to substitute its own assessment of the facts and application of the law for that of the national courts. The Chamber recalls in this context the case law of the European Court according to which also the European Court in principle does not substitute its own assessment for that of the domestic courts with regard to the question of determining the lawfulness as required by Article 5, paragraph 1 (f) of the Convention. In the case *Quinn v. France*, judgment of 22 March 1995, A 311, paragraph 47, the European Court stated: "The national courts, which are in a better position than the Convention institutions to determine whether domestic law has been complied with, found that the contested detention was lawful in its initial stage and as regards its purpose."

25. The Chamber concludes that the detention with a view to extradition does not disclose any appearance of a violation of Article 5, paragraph 1 of the Convention and that there is no indication of a violation of the right to a fair trial as protected by Article 6 of the Convention.

26. As far as the extradition itself is concerned, the Chamber notes that the Convention does not contain a right to citizenship and also does not protect against an extradition carried out in accordance with the law unless there is a substantial risk of a violation of human rights in the country of destination.

27. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

28. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel