



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 November 2002)

Case no. CH/00/3642

Zoran ALEKSIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 October 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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 XI of the Agreement and Rules 52 and 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He was born in 1975 and is currently in prison in Tunjice near Banja Luka, in the Republika Srpska.
2. On 20 January 1998 the applicant was arrested by members of the Republika Srpska Police Force and detained at Tunjice prison on the basis of an outstanding warrant of arrest issued by the Court of First Instance in Banja Luka for numerous offences of aggravated theft. On 21 and 22 January and 2 February 1998 the applicant was taken to the Police Security Centre in Banja Luka and interrogated by several members of the Republika Srpska Police Force. During these interrogations the applicant alleges that several officers, with the use of a rubber hose, baseball bat and their closed fists, physically beat him. Also on 2 February 1998 members of the United Nations International Police Task Force (the "IPTF") examined the applicant's injuries and on the following day questioned the officers who had interrogated the applicant. On 26 March 1998 the Banja Luka Public Security Centre Disciplinary Commission held a public hearing into the incident. The Commission found two of the responsible officers guilty of violations of the Rules of Procedure on Disciplinary Responsibility of Employees of the Republika Srpska Ministry of Internal Affairs, but cleared all officers of charges of assault and battery.
3. The case raises issues under Article 3 of the European Convention on Human Rights (the "Convention").

II. PROCEEDINGS BEFORE THE OMBUDSPERSON

4. The case was introduced by the applicant to the Human Rights Ombudsperson for Bosnia and Herzegovina on 9 February 1998 and registered on 26 February 1998.
5. By a decision of 26 March 1998 the Ombudsperson decided to open an investigation of the possible violation of Article 3 of the Convention, finding that the application raised issues of fact and law requiring an investigation and examination on the merits.
6. On 24 January 2000 the Ombudsperson referred the case to the Chamber pursuant to paragraph 5 of Article V and paragraph 1 of Article VIII of the Agreement.

III. PROCEEDINGS BEFORE THE CHAMBER

7. On 14 February 2000 the case was registered with the Chamber.
8. On 26 September 2000 the Chamber decided to transmit the case to the respondent Party for its observations on admissibility and merits under Rule 49(3)(b) of the Chamber's Rules of Procedure.
9. The respondent Party's observations were received on 1 November 2000 and transmitted to the applicant for his reply on 20 November 2000. In the same letter the applicant was reminded that any claim for compensation had to be submitted in written form within a month.
10. The applicant's reply was received on 20 December 2000 and forwarded to the respondent Party.
11. Additional written submissions of the respondent Party were received on 10 January 2001.
12. The Chamber deliberated on the admissibility and merits of the case on 9 September 2000, 6 September 2002 and 8 October 2002. On the latter date the Chamber adopted the present decision.

IV. FACTS

13. The applicant was born in 1975 and is a resident of Banja Luka of Serb origin. On 20 December 1995 the applicant was sentenced to 4 years and 6 months imprisonment on multiple counts of aggravated theft. On 13 March 1997 a procedural decision was issued by the Court of First Instance in Banja Luka ordering his arrest and immediate detention. He was arrested by members of the Republika Srpska Police Force stationed in Banja Luka on 20 January 1998 between the hours of 6.30 a.m. and 7.00 a.m. and taken into custody. He was detained at the Banja Luka Public Security Centre (the "Centre") whereupon the officers informed him that a court warrant had been issued for his arrest following his conviction by the Court of First Instance in Banja Luka for numerous offences of aggravated theft under Article 148 paragraph 3 of the Criminal Code of the Republika Srpska "Special Part" (Official Gazette of the Republika Srpska nos. 15/92, 4/93, 17/93, 26/93, 14/94, 3/96, hereinafter the "Criminal Code (Special Part)"). The applicant was duly informed that he had been sentenced to four years and six months imprisonment. The applicant maintained that he had never received a court summons and that on 20 December 1995 he had been released on bail after being detained for ten months in pre-trial detention. On examination of the first instance judgment the Chamber notes that the applicant was released by the same judgment, but the reasons for his release are not stated.

14. Between the hours of 4.00 p.m. and 5.00 p.m. the applicant was handed over by Police Officers Jovica Roguljić and Slobodan Ostojić to the Tunjice Correctional Institution to serve his sentence. The respondent Party states that upon his arrival, the applicant was fully examined by a prison doctor. The applicant disputes that he was seen by a prison doctor on his arrival, but confirms that on this first day of detention at Tunjice he was not maltreated in any way.

15. On 21 January 1998 the applicant was handcuffed and taken by two police officers to the Centre for interrogation. He was taken to office no. 40, where Police Officers Jovica Roguljić, Slobodan Ostojić and Ranko Karanović and two other officers interrogated him, allegedly beating him with their fists, a rubber hose and a small baseball bat whenever they were not satisfied with the applicant's answers. The applicant claims to have suffered injuries to his left hand, legs, neck, stomach, legs and back. During the interrogation the applicant confessed to taking part in several thefts with another person during 1996. The interrogation lasted from 9.00 a.m. to 6.00 p.m., at which point the applicant was returned to prison by Police Officer Slobodan Ostojić. At the prison the applicant complained of having been beaten, but did not report the incident formally out of fear of repercussion. The applicant requested to see a doctor, but due to the late hour was not visited until early the next morning. The applicant claims that the prison doctor examining him the following morning noted his bruises. The prison doctor denies this and states that the applicant was in good health at all times during this period.

16. The following morning, at 9.00 a.m., IPTF officers from the Banja Luka station visited the applicant, questioned him about the incident and took pictures of his injuries. Police Officers Slobodan Ostojić and Jovica Roguljić arrived at 10.00 a.m. the same morning to take the applicant from the prison to the Centre for further interrogation. The applicant alleges that he was beaten on his head, body and right hand with a baseball bat and a rubber hose by Police Officers Slobodan Ostojić and Ranko Karanović. When the applicant was brought back to prison at around 6.00 p.m. his body was again photographed by the IPTF officers.

17. On 2 February 1998 Police Officers Roguljić and Ostojić again took the applicant to the Centre for interrogation. The applicant was driven to sites of recent burglaries and questioned about them. At the Centre the applicant was questioned again. When he refused to answer certain questions the police officers allegedly struck his face, chest and back with fists and a baseball bat. Police Officer Karanović allegedly jumped on the applicant and hit him while the applicant was handcuffed with his hands behind his back.

18. Also on 2 February 1998, IPTF officials examined the applicant both in the morning, before he was taken to the Public Security Centre for interrogation, and in the afternoon, after he returned to prison. The Human Rights Co-ordinator of the United Nations Mission in Bosnia and Herzegovina described both of these examinations in his letter of 5 February 1998 to Major Sutilović of the Public

Security Centre. According to the letter, the IPTF officers only found "small bruises on the top of his knees" when examining the applicant in the morning. The afternoon examination, however, revealed new bruises:

"Numerous bruises were found on Aleksić's body, which had not been there in the morning when he was examined by the IPTF. He had a small bruise on his forehead, bruising on his wrists, a welt on his back and light bruising on his thighs ... Aleksić was walking with difficulty and it was clear that he was in a lot of pain."

19. On 3 February 1998 IPTF officials went to the Centre and discovered in room 40, where the applicant had been interrogated, a small wooden baseball bat on the window ledge, a length of rubber tubing on Police Officer Milovan Josipović's desk and scattered around the room four metal bars, rubber tubing, a long wooden baton, an antique pistol and a small sword. The room was identified as being occupied by Police Officers Milovan Josipović, Slobodan Ostojić and Milan Ninić. The IPTF officials questioned the officers about these objects and about the alleged ill-treatment of the applicant. The Police Officers insisted that the various items had been recovered items from a number of burglaries. However, they were unable to produce paperwork for the majority of these items. The officers further denied that any beating had occurred. The matter was subsequently reported to the IPTF Deputy Regional Commander. As a result of the investigation, the IPTF instructed the prison authorities not to release the applicant into the care of any police officers without IPTF attendance. Furthermore, the IPTF requested that photographs of the other officers suspected of assaulting the applicant be made available so that a formal photographic ID parade could be held and the Police Officers responsible formally identified by the applicant.

20. On 26 March 1998 the Banja Luka Public Security Centre Disciplinary Commission (the "Disciplinary Commission") held a public hearing for the disciplinary case against Police Officers Milovan Josipović, Slobodan Ostojić, Milan Ninić, Jovica Roguljić and Ranko Karanović. The Disciplinary Commission questioned the officers, as well as the applicant, about the beating incident.

21. The Disciplinary Prosecutor presented to the Commission, as evidence, 17 photographs taken by IPTF officers of the items found in office no. 40 and the applicant's injuries. The Commission subsequently heard from the IPTF officer who had examined the applicant. He informed the Disciplinary Commission that he had examined the applicant before and after the alleged ill-treatment on 2 February 1998 and he stated that it could be undoubtedly concluded that the officers in charge of the applicant caused the applicant's injuries.

22. The Disciplinary Commission noted that Police Officers Jovica Roguljić and Slobodan Ostojić removed the applicant from prison and took him to office no. 40 at the Centre for questioning. It further established that Police Officer Milovan Josipović, as the senior officer, was present most of the time during the interrogations and that he was aware of the items found by the IPTF in office no. 40. Police Officer Milovan Josipović further confirmed that the applicant had not, at any stage, resisted arrest. The officers denied any ill-treatment of the applicant.

23. In deciding whether actual ill-treatment or beating occurred, the Disciplinary Commission refused to consider as evidence the photographs of the applicant's bruises taken by the IPTF:

"Photographs of his body and injuries cannot be taken as valid evidence as it is neither known when the photographs were taken nor valid documentation was made in that context."

The Disciplinary Commission further noted that another inmate, who claimed to have been present during the alleged incident, denied that any ill-treatment took place. The Disciplinary Commission noted that there was no other valid medical proof of the applicant's injuries and found that the allegations of actual beating or ill-treatment were unsubstantiated.

24. The Disciplinary Commission found that Josipović failed to return to the depository several articles of evidence (i.e., baseball bat, rubber hose, four metal bars, antique pistol, small sword and four loaded magazines) found in office no. 40, where the applicant was interrogated. The Disciplinary Commission also found that Ostojić interrogated the applicant in a room where these objects were in

plain view thus causing the applicant fear. Josipović and Ostojić were subjected to a fine of 20% of their monthly salaries for violating subparagraphs 9 and 21, respectively, of Article 3 paragraph 1 of the Rules of Procedure on Disciplinary Responsibility of Employees of the Republika Srpska Ministry of Internal Affairs. Ninić, Roguljić and Karanović were cleared of disciplinary responsibility.

25. The applicant participated in the disciplinary proceedings as a witness, not as a party, and the decision of the Commission was not forwarded to him. It therefore appears that he had no opportunity to appeal the decision of the Commission.

V. RELEVANT DOMESTIC LAW

1. Criminal Code of the Republika Srpska (Official Gazette of the Republika Srpska nos. 22/00 and 37/01)

26. Article 53 of the Criminal Code of the Republika Srpska provides:

“Extraction of Statements by Duress.

“(1) An officer who in the discharge of his/her duty uses force, threats or other unauthorised ways or means to extract information or some other statement from an accused ... shall be punished by imprisonment for a term between three months and five years.

“(2) If the extraction of information or statements has been accompanied by grave violence, or if the accused suffered particularly grave consequences as a result of the statement made under duress, the perpetrator shall be punished by imprisonment for no less than a year.”

27. Article 54 of the Criminal Code of the Republika Srpska provides:

“Maltreatment in Discharge of Duty. An officer who in the discharge of his/her duty maltreats another person, inflicts grave physical or mental suffering on him/her, frightens him/her, insults him/her, or behaves in a way that violates his/her human dignity, shall be punished with imprisonment for a term between three months and three years.”

2. Code of Criminal Procedure of the Former Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 26/86, 74/87, 57/89, 3/90) adopted by the Republika Srpska (Official Gazette of the Republika Srpska nos. 26/93, 14/94):

28. Article 149 of the Code of Criminal Procedure provides:

“(1) Private citizens should report crimes that are automatically prosecuted in order to ensure social self-protection.

“(2) The law shall state in which cases failure to report a crime shall itself constitute a crime.”

29. Article 150 of the Code of Criminal Procedure provides:

“(1) An allegation shall be filed with the competent public prosecutor in writing or orally.

“(2) If the allegation is lodged orally, the accuser shall be warned of the consequences of a false accusation. A transcript shall be kept of the oral accusation and official notes shall be taken if the accusation is communicated by telephone.

“(3) Should the allegation be lodged with the court, a law enforcement agency or public prosecutor that does not have competent jurisdiction, that person or body shall accept the accusation and immediately deliver it to the competent public prosecutor.”

3. Law on Obligations (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85 and 45/89)

30. Articles 195 and 200 of the Law on Obligations provide for civil claims with pecuniary and non-pecuniary damages for bodily injury or impairment of health.

Article 195 of the Law on Obligations provides:

“(1) One who inflicts bodily injury or impairs a person’s health is under an obligation to reimburse the medical expenses to that person and other necessary costs and expenses in this regard as well as the income lost because of that person’s inability to work during the time of his or her medical treatment.

“(2) If the injured person, due to his or her complete or partial inability, to work loses income, or his necessities increase permanently, or the possibilities of his or her further development or advancement are ruined or reduced, the responsible person is under an obligation to pay to the injured person a fixed annuity as compensation for that damage.”

Article 200 of the Law on Obligations provides:

“(1) For sustained physical injury, for mental suffering because of reduced quality of life, disfigurement, damaged reputation, honour, freedom or rights of personality, death of a close person, as well as fear, the court shall, provided it finds that the circumstances of the case, especially the intensity of injury and fear and their duration, justify it, award fair pecuniary compensation, regardless of the compensation for physical damages as well as in its absence.

“(2) When deciding upon a compensation claim for non-pecuniary damages as well as the amount thereof, the court shall take into account the importance of the damaged asset and the purpose the compensation is aimed at, but also that it does not favour the aspirations incompatible with its nature and social purpose.”

4. Law on Enforcement of Criminal Sanctions (Official Gazette of the Republika Srpska nos. 27/93 and 16/95)

31. Article 113 provides:

“A convicted person is entitled to complain to the warden of the institution concerning any violations of his rights or about any other irregularities he was exposed to in the institution.

“The warden of the institution or any other person authorised by him is under an obligation to carefully examine whether such a complaint is well founded, decide about it and inform the convicted person about his decision.

“If the convicted person did not receive any response to the submitted complaint within fifteen days or is not satisfied with the decision taken, he is entitled to submit a written petition to the ministry.

“A convicted person is also entitled to complain of any violations of his rights as well as any irregularities within the institution to an official person of the ministry conducting an inspection at the institution even without the consent of the employees of that institution.”

VI. COMPLAINTS

32. The applicant complains that members of the Banja Luka Public Security Centre physically and mentally maltreated him on 21 and 22 January and 2 February 1998 (Article 3 of the Convention). He claims that he was arrested with no lawful warrant and therefore unlawfully detained

on 20 January 1998 (Article 5(1)(c) of the Convention) and that the disciplinary hearing by the Disciplinary Commission was not impartial (Article 6(1) of the Convention).

VII. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. Admissibility

33. In its written observations of 1 November 2000, the respondent Party argues that the applicant failed to exhaust the domestic remedies available to him. The respondent Party firstly outlines the previous criminal activities of the applicant in order to show that the applicant “represents the case of multi-recidivism in perpetrating criminal offences of aggravated theft to the detriment of Banja Luka and Laktaši”. The respondent Party observes that pursuant to Article 113 of the Law on Enforcement of Criminal Sanctions (see paragraph 31 above) the applicant may complain of a violation of his rights to the warden of the institution where he is detained. If the warden of the institution fails to examine the complaint, fails to submit a reply to the detainee within 15 days of the complaint, or if the detainee is unsatisfied with the warden’s decision, the detainee may submit an appeal in writing to the Ministry of Justice.

34. The respondent Party further notes that it was open to the applicant to bring criminal charges to the authorised prosecutor for the offence of extraction of statements made under duress pursuant to Article 53 of the Criminal Code. Had the allegations been correct and substantiated by evidence this would have been a substantial basis for bringing criminal charges. The respondent Party points out that it was also open to the applicant to initiate a civil action against the police officers who allegedly ill-treated him.

35. The respondent Party also notes that the Disciplinary Commission held a hearing and reviewed evidence in the present case. The Commission established that the applicant was not subject to any violence, ill-treatment or intimidation, but found that two of the interrogators violated their official duty under Article 3 paragraph 1 sub-paragraphs 9 and 21 of the Rules of Procedure on Disciplinary Responsibility of the Ministry of Interior. The respondent Party points out that the applicant could have appealed the procedural decision issued on 24 April 1998 within 8 days but failed to do so. The respondent Party contends that the applicant ignored all effective domestic remedies available to him and instead lodged an application with the Chamber.

36. In the alternative that the Chamber does not declare the application inadmissible for non-exhaustion of domestic remedies, the respondent Party proposes to the Chamber to declare the application inadmissible as manifestly ill-founded for non-substantiation, as held by the Disciplinary Commission.

2. Merits

37. As to the merits, the respondent Party states that the applicant was lawfully arrested and deprived of his liberty in accordance with the valid judgment of the Court of First Instance in Banja Luka of 20 December 1995. The applicant was promptly informed of the reasons for his arrest upon his arrival at the Centre.

38. The respondent Party denies the allegations of ill-treatment. It further claims that the applicant was examined by a prison doctor upon his arrival at the Tunjice Correctional Institution and this was recorded in the prison health data and verified by the applicant’s signature. The respondent Party maintains that the applicant has not presented any evidence to substantiate the allegations and never complained of the ill-treatment to any agent of the respondent Party.

B. The Applicant

39. In his written observations of 15 January 2001 the applicant confirms that he was sentenced to four years and six months imprisonment by a valid judgment of the Court of First Instance in Banja Luka on 20 December 1995. However, he maintains that he was released from detention by the same judgment in order to "defend his liberty". During the period from 20 December 1995 until his arrest on 20 January 1998 he maintains that he never received a court summons to report to the Tunjice Correctional Institution. He further disputes the respondent Party's allegations concerning his previous criminal history. He does not dispute having committed some of the crimes of which he was accused, but claims that the co-perpetrators of the crimes were released with all charges dropped due to the influence of their relatives. He admits that he was previously subject to an educational measure of the court, but denies any custodial sentence being passed on him prior to 20 December 1995.

40. The applicant claims that on 20 January 1998 he was arrested without a lawful warrant. He claims that his sister requested to see the arrest warrant and was told that it would be sent to the Centre the following day. The applicant maintains that he was therefore detained unlawfully on 20 January 1998. The applicant claims that the following day he was taken to the Centre and physically beaten by officers Slobodan Ostojić, Ranko Karanović, Jovica Roguljić, Milovan Josipović, Zoran Radoja, Milan Ninić, Saša Jovišić and Zoran Jerić. The applicant maintains that this treatment lasted from 9.00 a.m. until 6.00 p.m. whereupon he was returned to the Tunjice Correctional Institution in order to serve his sentence. The applicant describes his ill-treatment as humiliation and physical battery. He summarises the physical ill-treatment on 21 January 1998 as follows:

- He was handcuffed or his hands tied behind his back during the entire interrogation;
- Slobodan Ostojić repeatedly struck him in the facial area with closed fists and then struck him on the back, arms and legs with a baseball bat;
- Milovan Josipović repeatedly struck him in the facial area with closed fists and then struck him on the back, arms and legs with a rubber hose;
- Ranko Karanović repeatedly struck him in the abdomen and around his lungs with closed fists and a rubber hose, he then struck the applicant on the back, arms and legs with a rubber hose and when the applicant fell to the ground repeatedly kicked him in the abdomen;
- Jovica Roguljić repeatedly struck him all over his body with a baseball bat;
- Zoran Radoja repeatedly hit him with a rubber hose and when the applicant fell to the ground repeatedly kicked him.
- He was repeatedly threatened with further ill-treatment if he did not give a full and unequivocal confession to the charges put to him.

41. The applicant states that his mother and sister visited him that day. He pleaded with his sister to help him or he would have committed suicide. His sister contacted the IPTF Office in Banja Luka and the applicant was on the morning of 22 January 1998 examined by Dejan Milanović, an IPTF police officer. As a result of the IPTF's involvement, the applicant maintains that the beatings he received on 22 January 1998 were intensified. The applicant states that he was forced to wear a bullet proof vest to make sure that fewer bruises remained on his body as evidence of the beating. He also claims that he complained about the ill-treatment to the prison counsellor, requesting him to communicate that information to the prison warden, but made no further complaints for fear that the police officers would retaliate against him or his family.

42. On 2 February 1998 the applicant was once again removed from Tunjice Correctional Institution and taken to the Centre for further interrogation. The interrogation lasted from 9.00 a.m. until 6.00 p.m. and the applicant claims he was again handcuffed so that he could not defend

himself. He maintains that on this third occasion Slobodan Ostojić and Ranko Karanović repeatedly struck him on the head, back, arms and legs with their closed fists, a baseball bat and another large instrument he was unable to identify.

43. The applicant claims that he confessed to the charges against him, including those for crimes he did not commit, as a result of the beatings he was subjected to on 21 and 22 January and 2 February 1998.

44. The applicant mentions that, based on the photographs taken by the IPTF, the IPTF doctor concluded that the applicant had suffered internal injuries, such as a hematoma, while the prison doctor denied this conclusion. Lastly, the applicant complains that the disciplinary proceedings instituted against the police officers were inadequate, as the Disciplinary Commission declined to admit as evidence statements given to the IPTF and pictures of the applicant's injuries taken by the IPTF.

VIII. OPINION OF THE CHAMBER

A. Admissibility

45. 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) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...(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."

1. Exhaustion of domestic remedies

46. The respondent Party submits that the applicant has failed to exhaust the domestic remedies available to him. It states that the applicant had the right to submit a complaint to the warden of the institution in which he was being detained under Article 113 of the Law on Enforcement of Criminal Sanctions. The respondent Party then goes on to state that the findings of the Disciplinary Commission indicated that the applicant had not in fact been subject to any violence, physical ill-treatment or intimidation. The applicant had the right to file an objection against this procedural decision within 8 days and he failed to do so. The respondent Party also points out that the applicant could have initiated criminal proceedings against the police officers that allegedly maltreated him, pursuant to Article 54 of the Criminal Code, or alternatively, he could have brought a civil action against the officers for compensation.

47. The Chamber notes that the purpose of the exhaustion of domestic remedies rule is to afford the national authorities an opportunity to redress any violation within the domestic arena in accordance with general principles of international law (see e.g., Eur Court HR, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 November 1970, Series A no. 12, paragraph 50). However, this means that an applicant must make "normal" use of remedies likely to be "effective and adequate". Furthermore, the Chamber recalls that domestic remedies that, although available as a matter of legal theory, are not available as a matter of practice, are not required to be exhausted (see e.g., Eur. Court HR, *Vernillo v. France*, judgment of February 1991, Series A no. 198, paragraph 27).

48. The Chamber notes that it is incumbent on the respondent Party claiming non-exhaustion to establish that domestic remedies are accessible and capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success. With specific regard to complaints of a violation of Article 3 of the Convention, the European Court of Human Rights has held (Eur. Court HR, *Aydin v. Turkey*, judgment of 25 September 1997, Reports of Judgments and Decisions 1997-VI, paragraph 103) that:

"where an individual has an arguable claim that he or she has been tortured by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and

punishment of those responsible and including effective access for the complainant to the investigatory procedure”.

The Chamber notes that if there is a domestic remedy available to the applicant to stop continued or prevent further ill-treatment, then he is required to make full use of that remedy as well.

(a) Complaint to prison warden

49. Under Article 113 of the Law on Enforcement of Criminal Sanctions the applicant had the right to submit a complaint to the warden of the institution in which he was being detained. This remedy is relevant to the interruption or prevention of further ill-treatment. The Chamber recalls that on 21 January 1998 the applicant complained that he had been maltreated by police officers and further requested to see a prison doctor. The applicant subsequently complained of his treatment to the IPTF the following day. As a result of this complaint the applicant alleges to have been beaten more savagely on 22 January 1998, seemingly in retaliation for having complained of earlier ill-treatment to the IPTF. As the Chamber will find below, this allegation is reinforced by an IPTF report. The applicant states that he made no further complaints for fear of retaliation against himself or his family. The Chamber finds that, in light of this incident of 22 January 1998 and of the legitimate fears it gave rise to, the applicant could not be expected complain to the prison warden any further (see e.g. Eur. Commission HR, *Aksoy v. Turkey*, application no. 21987/93, decision of 19 October 1994, Decisions and Reports 79-A, p.60 at pp.71-71).

(b) Proceedings before the Disciplinary Commission

50. The proceedings before the Disciplinary Commission could satisfy the requirement that an investigation was carried out by the respondent Party for the purpose of exhausting domestic remedies. However, the Chamber notes that the disciplinary proceedings before the Disciplinary Commission appear to have been inadequate and possibly biased. The Disciplinary Commission declined to review evidence that was crucial to the establishment of ill-treatment of the applicant without offering a plausible justification. The Commission stated:

“Photographs of his body and injuries cannot be taken as valid evidence as it is neither known when the photographs were taken nor valid documentation was made in that context.”

The photographs referred to were taken by IPTF officials in the morning and in the afternoon of one of the days on which the beating allegedly occurred. In his letter of 5 February 1998 to Major Sutilović of the Public Security Centre, the Human Rights Co-ordinator of the United Nations Missions in Bosnia and Herzegovina described in detail both the circumstances and the times at which the photographs were taken. The letter also described the multiple new bruises that appeared on applicant’s body on 2 February 1998. The Chamber notes that the Commission unjustifiably excluded crucial evidence and focused on the officers’ failure to remove the baseball bat, the rubber hose and other potentially threatening objects from the room where the applicant was interrogated, not on the actual ill-treatment. In light of these observations, the Chamber finds that the disciplinary proceedings were inadequate and biased and afforded the applicant no effective remedy to his complaints.

51. The Chamber further notes that the applicant was called as a witness to the proceedings, but was denied the right to effectively participate in the proceedings as a party. Since the decision of the Commission does not appear to have ever been forwarded to the applicant and the appeal had to be filed within 8 days of receipt, it is unclear whether the applicant could have filed such an appeal on time. It also remains unclear whether the applicant, as a non-party to those proceedings, could have appealed the procedural decision at all. Therefore the Chamber will not declare the application inadmissible because the applicant failed to file an appeal against the Disciplinary Commission’s decision.

(c) Initiating criminal proceedings or a civil action against the police officers

52. The Chamber recalls that in the *Pržulj* case (see case no. CH/98/1374, *Pržulj*, decision on admissibility and merits of 13 January 2000, paragraph 119, Decisions January-June 2000) it held that:

“As regards the possibility to initiate civil proceedings against the perpetrators in order to obtain, in civil proceedings, compensation for the damages suffered, the Chamber does not consider this an adequate remedy in case of an alleged violation of Article 3. To sue private individuals for monetary compensation cannot be considered a remedy for violations of the applicant’s right not to be subjected to inhuman or degrading treatment, where these individuals have acted in their capacity as public officials...The same applies to the possibility to raise a claim for monetary compensation within criminal proceedings, which moreover presupposes that there is a reasonable prospect of obtaining a conviction of those individuals for misconduct in their capacity as such officials.”

53. The Chamber further recalls that an action for compensation for the purposes of Article 3 does not refer to initiating an action against the individual police officers, but an action against the government that is capable of providing redress in respect of the applicant’s complaints. Therefore, a civil action against the police officers is not a remedy the applicant was required to exhaust.

54. The Chamber therefore finds that initiating criminal or civil proceedings against the police officers for compensation are not sufficient remedies that the applicant was required to exhaust.

(d) Conclusion as to exhaustion of domestic remedies

55. The Chamber finds that the respondent Party has failed to satisfy the burden that the above-mentioned domestic remedies are accessible and capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success. Therefore its argument of failure to exhaust domestic remedies cannot be upheld.

2. Competence *ratione materiae*

56. The Chamber notes that the applicant complains that there has been an interference with his right to a fair trial by an independent and impartial tribunal as guaranteed under Article 6(1) of the Convention in relation to the Disciplinary Commission proceedings. The Chamber interprets the applicant’s claims to be that the respondent Party violated his right to have such proceedings resolved in a fair and thorough manner. The only Article under which this claim could fall is Article 6 of the Convention which protects the right of everyone to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” and guarantees to everyone charged with a criminal offence certain minimum rights. However, the Chamber recognises that the exact text of Article 6 does not indicate that the applicant, as the injured party to criminal proceedings, has a viable claim under the protections applicable to criminal proceedings contained in that Article. The applicant has not been charged with a criminal offence concerning the additional offences put to him during interrogation. The Chamber therefore finds that this is not a right which is included among the rights and freedoms guaranteed under the Agreement (see case no. CH/99/2150, *Unković*, decision on request for review of 6 May 2002, paragraphs 92-94, Decisions January-June 2002). It follows that the application in this respect is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

3. Article 5 of the Convention

57. The applicant alleges that when he was arrested on 20 January 1998 no reasons were given for his arrest and no arrest warrant was produced until 21 January 1998 in violation of his right to liberty and security of person as guaranteed under Article 5(1)(c) of the Convention. The Chamber recalls that the applicant was lawfully convicted and sentenced by the Court of First Instance on 20 December 1995. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application in this respect is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

4. Conclusion as to admissibility

58. The Chamber finds that no other ground for declaring the case inadmissible has been established. Accordingly, the Chamber declares the application under Article 3 of the Convention admissible, while it declares the remainder of the application inadmissible.

B. Merits

59. Under Article XI of the Agreement the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the Parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for in the Convention.

1. Article 3 of the Convention

60. Article 3 of the Convention provides as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

61. The applicant complains that he has been subjected to various degrees of ill-treatment. He complains that during the interrogations his hands were handcuffed or tied to a radiator or he was laid on the ground with his hands tied or handcuffed behind his back. He complains that he was repeatedly punched, beaten with a small baseball bat and rubber hose and was jumped on by officers whilst lying on the ground. The applicant submits that these attacks were aimed at extracting a confession from him for several offences of theft and burglary and that they occurred on three separate occasions lasting several hours at a time.

62. The respondent Party maintains that the officers under whose care he was placed never ill-treated the applicant in any way and that in any event he has failed to substantiate his allegations. During the proceedings before the Disciplinary Commission the defence lawyer of the police officers sought to establish that the injuries could have been caused by fellow inmates at the Tunjice Correctional Institution during 21 January and 2 February 1998.

63. The Chamber recalls that where an individual is taken into police custody in good health but is found to be injured at the time of release, the respondent Party bears the burden to provide a plausible explanation as to the cause of the injuries, failing which a clear issue arises under Article 3 of the Convention (see case no. CH/98/1374, *Pržulj*, decision on admissibility and merits of 13 January 2000, paragraph 146, Decisions January-June 2000 and Eur. Court HR, *Tomasi v. France* judgment of 27 August 1992, Series A no. 241, paragraphs 108-111). Additionally, the respondent Party has submitted that when the applicant arrived at the Tunjice Correctional Institution on 20 January 1998, he was examined by a prison doctor and determined to be in good health. However, on 22 January 1998 when the applicant was examined by the IPTF several bruises were noted on his body. The Chamber recalls that Police Officers Slobodan Ostojić and Jovica Roguljić signed the applicant out of the Tunjice Correctional Institution and he was therefore placed under their care on 21 and 22 January and 2 February 1998.

64. The Chamber notes that the statements by the police officers in the present case are contradicted by independent external evidence, and therefore cannot amount to a plausible explanation as to the applicant’s injuries.

65. On 20 January 1998, according to the submissions of the respondent Party, the applicant received a medical examination and was concluded to be in good health. Both parties concur that no ill-treatment of the applicant occurred on 20 January 1998.

66. At 9.00 a.m. the following day, the applicant was formally removed from prison by police officers Slobodan Ostojić and Jovica Roguljić. He was taken to office no. 40 at the Centre and interrogated intermittently until 6.00 p.m. The applicant was then returned to prison whereupon he complained that he had been beaten. The applicant was visited by his sister and mother upon his return, and it is at this stage that the applicant requested that his sister contact the IPTF in Banja Luka. He later requested to see a doctor, but was informed that he could not be seen until the following day. It is unclear as to whether a doctor in fact visited him the following day.

67. At 9.00 a.m. on 22 January 1998 the applicant was examined by the IPTF who noted minor bruising to the applicant's body. At 10.00 a.m. that same day the applicant was again taken to office no. 40 at the Centre. At some point during that day the IPTF returned to the prison, but were informed that the applicant was helping police officers Slobodan Ostojić and Jovica Roguljić with their investigations. The applicant was returned to the prison at approximately 6.00 p.m. and again examined by the IPTF. The IPTF recorded bruising over the applicant's body that had not been present during the morning's examination.

68. On 2 February 1998 the applicant was again removed from prison by police officers Slobodan Ostojić and Jovica Roguljić and interrogated. The IPTF had again examined the applicant early in the morning before he was removed and again upon his return. The IPTF found additional bruising all over the applicant's body that had not been present during the morning's examination. It was noted at this stage that the applicant had bruising on his forehead, wrists, back and thighs that had not been present during the morning's examination and that he was clearly in a great deal of pain.

69. On 3 February 1998 IPTF officers attended the Centre with a view to questioning police officers Slobodan Ostojić and Jovica Roguljić. They discovered numerous items in office no. 40 including a small baseball bat and rubber hosing. The officers claimed that these items had been recovered from previous investigations but were unable to provide any paperwork to substantiate this.

70. The Chamber therefore concludes that the applicant suffered injury whilst under the care of the responsible police officers. Furthermore, the Chamber must view the objects discovered in office no. 40 as additional evidence of the physical force exerted against the applicant.

71. In past decisions the Chamber has held that any recourse to physical force against a person held in police custody, which has not been made strictly necessary by the person's own conduct, diminishes human dignity and is, in principle, an infringement of Article 3 (see e.g. case no. CH/97/45, *Hermas*, decision on admissibility and merits of 18 February 1998, paragraph 29, Decisions and Reports 1998, see also Eur. Court HR, *Ribitsch v. Austria*, judgment of 4 December 1995 Series A no.336, paragraph 32).

72. According to his own statements, the applicant was handcuffed or tied to a radiator or laid on the ground with his hands tied or handcuffed behind his back whilst several police officers struck him in the face, hands, legs, stomach and lungs, and thus he could not protect himself from the ill-treatment. Whilst the police were understandably interested in obtaining information from the applicant, this is not a justification for the use of force and in fact a violation of the domestic law (see paragraphs 26 and 27 above). Furthermore, the Chamber recalls that police officer Milovan Josipović, the supervising officer in the applicant's interrogation, informed the IPTF that during the investigation the applicant had not, at any time during the arrest or interrogations, used any force or resistance, other than remaining non-communicative, whatsoever. The Chamber therefore concludes that the applicant was subjected to treatment contrary to Article 3 of the Convention.

73. Once it has been established that Article 3 has been violated, the Chamber must go on to consider whether such treatment amounts to inhuman or degrading treatment or if indeed it amounts to torture. In defining such a distinction the Chamber notes that Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides:

“(1) For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...”

74. Accordingly, ill-treatment amounts to torture only if the following four conditions have been met: (a) a positive act; (b) an act by a governmental official (or at least with the consent of); (c) an intentional act for one of the purposes explicitly listed in Article 1 above; and (d) infliction of severe pain or suffering. Since the Chamber has already established that the treatment inflicted upon the applicant was an intentional act by police officers aimed at extracting a confession, it is satisfied that the ill-treatment complained of meets the first three criteria as mentioned above.

75. Accordingly, the Chamber must go on to consider the severity of the treatment. The European Court noted in *Ireland v. United Kingdom* (Eur. Court HR, judgment of 18 January 1978, Series A no. 25) that the distinction between “inhuman and degrading treatment” and “torture” derives principally from a difference in the intensity of the suffering inflicted and that a special stigma is attached to deliberate inhuman treatment causing very serious and cruel suffering. Moreover, the European Court held that interrogation techniques used against detainees were held to be both inhuman and degrading, but a distinction had to be drawn between treatment that is “inhuman and degrading” and treatment that may amount to “torture”. In *Selmouni v. France* (Eur. Court HR, judgment of 28 July 1999, Reports of Judgments and Decisions 1999-V, paragraph 92), the European Court noted that such treatment inflicted by state officials was of such a serious and cruel nature that it could only be described as torture. In *Selmouni* the applicant was interrogated by five police officers. He was repeatedly humiliated by racial taunts from the officers, made to kneel during questioning and punched, kicked, stamped upon, repeatedly struck with a baseball bat and truncheon and threatened with burns if he did not give a confession. The European Court held that such treatment amounted to torture for a number of reasons. Firstly, the applicant had received a number of blows, and whatever a person’s state of health, such intensity of blows will cause significant pain. Secondly, the applicant was repeatedly humiliated and threatened with further ill-treatment and it was reasonable for the applicant to suspect that such threats would be carried out. Finally, the European Court noted that this ill-treatment lasted for several hours and was not confined to any one period, thus aggravating the applicant’s mental pain and suffering. Consequently, irrespective of the applicant’s state of health prior to interrogation, such ill-treatment would cause “severe” pain and suffering within the meaning of Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

76. In the present case the applicant was subjected to ill-treatment on a similar level of severity and as such it can only be described as “serious and cruel” suffering “severe” enough to amount to torture. The Chamber therefore finds that the police officers interrogating the applicant intended to cause injury, both physical and mental, for the sole purpose of extracting a confession. The Chamber further finds that although there was no official order to use such interrogation techniques, the police officers in command of the Centre at the relevant time could not have been ignorant of the acts complained of, especially considering that they took place on three separate occasions and each time lasting several hours at a time (see the above-mentioned *Ireland* decision, paragraph 118). Therefore, knowledge of the said acts may be inferred from the established facts.

77. The Chamber is therefore satisfied that the treatment the applicant endured on 21 and 22 January 1998 and 2 February 1998 amounted to treatment sufficiently serious and cruel enough to amount to torture within the meaning of Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and thus constitutes a violation of Article 3 of the Convention.

2. Conclusion as to the merits

78. The Chamber concludes that the applicant was subjected to treatment amounting to torture in violation of Article 3 of the Convention.

IX. REMEDIES

79. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the breaches of the Agreement, which it has found, "including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures".

80. The applicant requests compensation in the amount of 115,000 KM (Convertible Marks) for non-pecuniary damage and 1,000 KM for medical costs and expenses.

81. The Chamber notes that it has found a violation of the applicant's right not to be subjected to torture as guaranteed under Article 3 of the Convention. The Chamber notes that the protection of Article 3 is one of the most important rights enshrined in the Convention and therefore any deviation from such a rigorously protected right constitutes a flagrant violation of the respect for individual human rights and fundamental freedoms.

82. The Chamber takes into account the severity of the ill-treatment the applicant endured, the circumstances under which the ill-treatment took place and the amount of time the applicant was subjected to such ill-treatment. The Chamber further takes into account that the police officers in whose care the applicant was placed abused their position of authority in the most flagrant manner and have so far evaded punishment. In arriving at this conclusion the Chamber considers the proceedings before the Disciplinary Commission to have been fundamentally biased. The Chamber therefore considers it necessary to order the respondent Party to initiate a full criminal investigation into the conduct of the police officers involved in the torture of the applicant, and the police officers' superiors for condoning, acquiescing or participating in such activities with a view to bringing the perpetrators responsible for the torture of the applicant to justice in accordance with the law of the Republika Srpska.

83. The Chamber will now turn to the question of monetary relief. The applicant states that he has suffered physical and mental injuries as a result of his ill-treatment, and claims compensation for non-pecuniary damage as follows:

- (a) 20,000 KM compensation for physical pain and suffering;
- (b) 40,000 KM compensation for psychological pain and suffering;
- (c) 30,000 KM compensation for physical deformation;
- (d) 20,000 KM compensation for fear of violence; and
- (e) 5,000 KM compensation for humiliation.

84. The applicant has failed to substantiate that he has suffered any physical deformation as a result of being tortured and the Chamber must therefore dismiss this part of the claim as unsubstantiated.

85. The respondent Party has failed to comment on the applicant's claims for compensation, but has repeatedly refuted his allegations in their entirety.

86. The Chamber notes the difficulties inherent in the determination of an adequate monetary compensation for this violation. It also notes that the present decision in itself will in large part constitute recognition of the wrongs done to the applicant. Nevertheless, the Chamber considers it

appropriate to award the applicant financial compensation commensurate to the harm suffered. The Chamber recalls that in the past it has awarded compensation as a result of a violation of Article 3 of the Convention (see case no. CH/97/45, *Hermas*, decision on admissibility and merits of 16 January 1998, Decisions January-June 1998 and case no. CH/98/946, *H.R. and Momani*, decision on admissibility and merits of 6 October 1999, Decisions July-December 1999). However, the Chamber recalls that the levels of compensation awarded were based on the level of ill-treatment amounting to inhuman and degrading treatment. In the present case the Chamber has found that the ill-treatment amounted to torture and as the European Court stated in *Ireland v. United Kingdom* (see the above-mentioned *Ireland* decision, paragraph 167), with its distinction between “torture” and “inhuman or degrading treatment” it was the intention that the Convention should attach a special stigma to deliberate treatment causing very serious and cruel suffering. Considering that the Chamber has found the treatment of the applicant in the present case to amount to torture, it finds it appropriate to award compensation in the amount of 10,000 KM for physical and mental pain and suffering. The Chamber will order the respondent Party to pay this amount to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber’s Rules of Procedure. The Chamber dismisses the remainder of the applicant’s claims for compensation as unsubstantiated.

87. In relation to the applicant’s request for compensation for medical costs and expenses the Chamber notes that the applicant has failed to substantiate his claim in this respect. The Chamber recalls its jurisprudence that in the absence of specific evidence it cannot consider claims for compensation for expenses incurred. Therefore, the Chamber will not award any compensation to the applicant in the present case for medical costs and expenses.

88. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in paragraph 89 above for the implementation of the compensation award in full or any unpaid portion thereof until the date of settlement in full.

X. CONCLUSIONS

89. For the above reasons, the Chamber decides,

1. unanimously, to declare the application in relation to the complaint under Articles 5 and 6(1) of the European Convention on Human Rights inadmissible;
2. unanimously, to declare the application in relation to the complaint under Article 3 of the European Convention on Human Rights admissible;
3. unanimously, that the applicant’s ill-treatment constitutes a violation of his right not to be subjected to torture as guaranteed by Article 3 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, to order the Republika Srpska to carry out a full criminal investigation into the conduct of the police officers involved in the torture of the applicant, and the police officers’ superiors for condoning, acquiescing or participating in such activities, with a view to bringing the perpetrators to justice in accordance with the law of the Republika Srpska;
5. by 6 votes to 1, to order the Republika Srpska to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber’s Rules of Procedure, the sum of 10,000 KM (ten thousand Convertible Marks) by way of compensation for the physical and mental pain and suffering of the applicant; and
6. by 6 votes to 1, that simple interest at an annual rate of 10% (ten percent) will be payable on the sum awarded in conclusion 5 above from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision;

7. unanimously, to order the Republika Srpska to report to it within three months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

Annex

Dissenting opinion of Mr. Vitomir Popović

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Vitomir Popović.

DISSENTING OPINION OF MR. VITOMIR POPOVIĆ

I do not agree with paragraphs 5 and 6 of the Conclusions ordering the Republika Srpska to pay to the applicant within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 10,000 KM (ten thousand Convertible Marks) by way of compensation for physical and mental suffering of the applicant.

In paragraph 2 of the decision it has been mentioned that "on 20 January 1998 the applicant was arrested by members of the Republika Srpska Police Force and detained on the basis of a warrant of arrest issued by the Court of First Instance in Banja Luka for numerous offences of aggravated theft ...", which means that he is indirectly responsible for that event; thus in my opinion, finding a violation of Article 3 of the European Convention may represent sufficient satisfaction for the applicant.

As it may be seen from the decision, I do not have any other objection to the other conclusions.

Vitomir Popović