



DECISION ON ADMISSIBILITY

Case no. CH/00/4371

Ismet GRAČANIN

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 November 2001 with the following members present:

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

Mr. 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 and maltreated while in detention 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") and Article 4 of Protocol No. 7 to the Convention. This case along with other similar cases before the Chamber raises a particular issue of the fairness of the proceedings because of the fact that only the supporters of Mr. Fikret Abdić were convicted for serious violations of international humanitarian law committed during war hostilities between the armed forces of the Autonomous Province of Western Bosnia ("the Autonomy") and the Army of the Republic of Bosnia and Herzegovina.

II. FACTS

3. On 23 April 1993 the Military Court in Bihać issued a decision convicting the applicant of assaulting Stevica Jazić, which assault then led to his death. The applicant was sentenced to one year imprisonment.

4. Since the applicant had already spent more than one year in pre-trial detention, the Military Court in Bihać issued a decision on 23 April 1993, ordering his release.

5. On 27 September 1993 Mr. Fikret Abdić proclaimed the Autonomy on the territory of the Velika Kladuša and Cazin municipalities. It appears that the applicant joined the armed forces of the Autonomy in 1993.

6. The applicant was arrested on 21 December 1995.

7. The applicant alleges that he was beaten and maltreated after his arrest and throughout his pre-trial detention in the District Prison in Bihać. He claims that he was hospitalised at the end of 1996 because he was critically injured. He was allegedly treated by Dr. Jure Paunović who established that the applicant had a blood clot and that he had lost a great amount of blood. The applicant claims that he tried, but did not succeed in obtaining any documents concerning this hospitalisation, because he was detained.

8. On 10 October 1996 an indictment was issued against the applicant on three counts of ordinary murder, one of them concerning the victim Stevica Jazić.

9. On 9 December 1997 the Cantonal Court of Bihać issued a decision convicting the applicant of ordinary murder on three counts and sentencing him to 15 years of imprisonment.

10. The applicant's defence counsel lodged an appeal against the Court's decision of 9 December 1997.

11. On 4 June 1998 the Supreme Court of the Federation of Bosnia and Herzegovina quashed the decision of the Cantonal Court and returned the case for reconsideration.

12. On 10 March 1999 the Cantonal Court issued a decision convicting the applicant of ordinary murder on three counts and sentencing him to 15 years of imprisonment. He was firstly found guilty of having beaten to death Stevica Jazić in January 1993, secondly of having beaten to death Ibrahim Okanović in a prison in Velika Kladuša in January 1994 and finally of shooting to death Šefik Jašić because he had refused to join the army of Mr. Fikret Abdić.

13. On 26 April 1999 the applicant's defence counsel appealed against the decision of the Cantonal Court of 10 March 1999. The defence claimed that there is evidence that at least one witness was forced by the authorities to testify against the applicant and that requests to have witnesses heard on behalf of the applicant were rejected.

14. The applicant claims that one of the judges of the Cantonal Court in Bihać told him after the issuance of their decision, that she knew he was not guilty of committing the crimes for which he was convicted. However, she convicted him because she had been threatened that if she did not do so, she and her son would be killed.

15. The Supreme Court rejected the appeal on 28 September 1999.

III PROCEEDINGS BEFORE THE CHAMBER

16. The application was introduced on 20 March 2000.

17. On 27 March 2001 the Chamber requested the applicant to further substantiate the allegations made in the application and where possible to provide the Chamber with the relevant documents.

18. On 29 March 2001 the Chamber invited the applicant to submit a claim for compensation.

19. On 11 April 2001 the applicant submitted further information and documents. He informed the Chamber that a claim for compensation would follow.

20. The case was transmitted to the respondent Party on 12 April 2001 under Articles 3, 4, 5 and 6 of the Convention.

21. On 11 May 2001 the respondent Party submitted its observations on admissibility and merits. The respondent Party was of the opinion that the application was inadmissible because of non-exhaustion of domestic remedies. Furthermore, the respondent Party was of the opinion that Articles 3, 4, 5 and 6 of the Convention had not been violated.

22. On 27 June 2001 the Chamber invited the applicant to submit his observations on the respondent Party's observations of 11 May 2001.

23. The Chamber received the applicant's response on 20 July 2001. In this response the applicant also submitted a claim for compensation for the amount of 15,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") for unlawful arrest and detention and 7,000 KM for physical and psychological damage.

24. The Chamber retransmitted the case to the respondent Party on 22 October 2001 under Article 4 of Protocol 7 to the Convention.

25. On 5 November 2001 the respondent Party submitted its observations on the admissibility and merits of the case in so far as it concerns Article 4 of Protocol 7 to the Convention. It argued that the application revealed, finding no violation of this Article.

IV COMPLAINTS

26. The applicant alleges that he was badly beaten and maltreated while detained in the prison in Bihać (Article 3 of the Convention). The applicant further claims that he did not receive a fair trial (Article 6 of the Convention). Finally, the applicant claims that his detention was unlawful since he had already been tried and convicted and had served his sentence for one of the crimes that he was arrested for (Article 5 of the Convention and Article 4 of Protocol No. 7 to the Convention).

V OPINION OF THE CHAMBER

27. The Chamber firstly notes that initially the impression existed that the applicant complained of being held in slavery, therefore of a violation of Article 4 of the Convention. For this reason the case was transmitted to the respondent Party under this Article. However, since it has become clear that the applicant did not raise this issue and the Chamber has not been made aware of any facts concerning a possible violation of the human rights and freedoms protected by this Article, the Chamber will not further consider it.

28. 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.”

1. Bosnia and Herzegovina

29. The applicant directed his application against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement. These do not include matters relating to any of the complaints made by the applicant. Accordingly, the matters complained of are within the competence of the Entities. Furthermore, it does not appear that as a matter of fact the Institutions of Bosnia and Herzegovina were involved in this case. Consequently, the case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore the case is to be declared inadmissible *ratione personae* as against that respondent Party.

2. The Federation of Bosnia and Herzegovina

A. Whether the application should be rejected for non-exhaustion of domestic remedies

30. The respondent Party argues that the applicant did not exhaust all available domestic remedies, as he did not use the extraordinary remedies provided for by the national law.

31. The Chamber notes that extraordinary remedies need not be exhausted for the purposes of Article VIII(2)(a) of the Agreement (see case no. CH/98/1366 V.Č., decision on admissibility and merits of 9 March 2000, paragraph 59, Decisions January – July 2000). Consequently, the Chamber finds that the applicant has complied with the requirements of that provision.

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

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

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

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

D. The applicant's complaint that he was held in detention unlawfully

34. 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 applicant's complaint that he was tried and punished for the same crime twice

35. 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.

VI. CONCLUSION

36. For these reasons, the Chamber,

1. unanimously, declares the application against Bosnia and Herzegovina inadmissible,
and

2. unanimously, declares the applicant's complaints that he was beaten and maltreated while detained in the District Prison in Bihać (Article 3 of the European Convention on Human Rights), that he did not receive a fair trial (Article 6 of the Convention), that he was held in detention unlawfully (Article 5 of the Convention) and that he was tried and punished for the same crime twice (Article 4 of Protocol No. 7 to the Convention) admissible.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel