



DECISION ON ADMISSIBILITY

CASE No. CH/01/6664

Jasmin ŠLJIVO

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 February 2001 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. Peter KEMPEES, 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 3 January 2001. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to postpone the execution of the remainder of his prison sentence. The Chamber rejected this request on 10 January 2001.
2. The applicant complains that the respondent Party have never respected the agreement made between the State Commission for Tracing Missing Persons and the Republika Srpska Commission for Exchange of Prisoners to grant him a pardon.

II. OPINION OF THE CHAMBER

3. The Chamber has examined the application and notes that the applicant complains that there has been an interference with his right to be pardoned. However, this is not a right which is included among the rights and freedoms guaranteed under the Agreement. It follows that the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII (2)(c), and must be rejected.

III. CONCLUSION

4. For these reasons, the Chamber, by 5 votes to 2,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

Annex: Dissenting opinion of Mr. Nowak
Dissenting opinion of Mr. Deković

ANNEX I

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Manfred NOWAK:

DISSENTING OPINION OF MR. MANFRED NOWAK IN CASE NO. CH/01/6664, JASMIN SLJIVO AGAINST REPUBLIKA SRPSKA

In its decision on admissibility and merits of 10 September 1998 concerning the same applicant (Case No. CH/97/34), the Chamber found a number of violations relating to the applicant's rights to personal liberty and fair trial. In particular, the Chamber established that Mr. Sljivo, a Bosniak who was just 20 years old when he had been arrested in March 1996 by the RS police near the Inter-Entity Boundary Line in Sarajevo, had seen his court-appointed lawyer only at the trial before the Court of First Instance and at the subsequent appeal before the District Court and that his lawyer "did not meet or otherwise communicate with him at any time in preparation for the trial or any other stage of proceedings" (para. 125). Mr. Sljivo had been found guilty of having committed acts of terrorism (although he had been arrested only on the grounds of "reasonable suspicion" that he had "attempted" to commit an act of terrorism) and of "associating for the purpose of performing enemy activities" and had been sentenced to 7 years of imprisonment (cf. paras. 11, 20, 22 and 23) in a trial which the Chamber found to have been unfair since he had not been provided with adequate facilities for the preparation of his defence (para. 125).

After having spent more than 16 months in police detention, prison and a psychiatric institution, he was temporarily released in order to obtain medical treatment for epilepsy (para. 28). In his second application dated 3 January 2001 he also alleges that he was released on the grounds of an agreement made between the BiH State Commission for Tracing Missing Persons and the RS Commission for Exchange of Prisoners in exchange for two Bosnian Serbs who had been held in a Federation prison. The existence of such an exchange agreement, which included the obligation of the Federation and the RS to grant amnesties to the released prisoners, was confirmed by the President of the BiH State Commission, Mr. Amor Masovic, in an article in the newspaper Dnevni Avaz of 12 December 2000.

In similar cases in which the Chamber has found serious violations of the right to a fair trial under Article 6 (1) and 6 (3) of the European Convention on Human Rights, it has ordered the respondent Party to grant a re-trial to the applicant (cf., e.g., the cases of Damjanovic and Garaplija against the Federation of BiH, Case Nos. CH/98/638 and 934). The main reason why it did not do so in the case of Sljivo was that the applicant had been released and that there seemed to be little risk that he would be called again by the RS authorities to finish his prison sentence.

After the First Instance Court in Sokolac ordered him in December 2000 to continue serving his sentence, he submitted a second application to the Chamber in which he alleges a violation of his right to liberty and security of person under Article 5 (1) of the European Convention. He complains that his deprivation of liberty would be unlawful since it contravenes a legal exchange agreement according to which the RS has undertaken the obligation to grant him amnesty. The Chamber has declared his application inadmissible without even transmitting it to the respondent Party and without clarifying the facts and the legal status of this exchange agreement. I strongly disagree with this course of action as well as with the legal reasoning of the majority. As I stated above, Mr. Sljivo did not allege a violation of his "right to be pardoned" but of his right to personal liberty under Article 5 of the European Convention. His allegation is, therefore, in my opinion not „incompatible *ratione materiae* with the provisions of the Agreement". Moreover, if somebody is forced to serve a prison sentence which is based on a trial that clearly violated minimum standards of a fair trial under Article 6 (1) and 6 (3) of the European Convention (as the Chamber has already established) and which possibly contravenes a legally valid exchange agreement (an allegation which has not been investigated by the Chamber), such a deprivation of liberty could in

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my opinion not be regarded as a „lawful detention” in accordance with a „procedure prescribed by law” as required by Article 5 (1) of the European Convention.

(signed)
Manfred NOWAK

ANNEX II

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Mehmed Deković

DISSENTING OPINION OF MR. MEHMED DEKOVIĆ

1. By decision of the Panel II in case no. 00/6664 Jasmin Šljivo against the Republika Srpska, a majority of members have decided that the application is inadmissible *ratione materie* and that the request for a provisional measure is ill-founded.

2. I disagree with the position of the majority of the Panel members who have decided that the application is inadmissible and the request for a provisional measure is ill-founded.

3. In the present case the applicant addressed the Chamber requesting it to establish that the Republika Srpska had violated his right to freedom and life by calling the applicant to serve the remainder of his prison sentence. I consider that the applicant's request is well-founded. Namely, in his application Mr. Šljivo points to the fact that he was exchanged for two Serb civilians. If this is so, that is if the exchange was made, then independently of the fact that the applicant has never been pardoned by competent bodies of the Republika Srpska, he can justifiably claim a violation of his rights guaranteed by the European Convention. This is all the more so because the competent bodies of the Federation of BiH pardoned the Serb civilians immediately after the exchange, thus acting in accordance with the agreement made on the occasion of the exchange and aimed at pardoning the exchanged persons. Because, if an agreement was made to pardon the exchanged persons there is no dilemma that the same ought to have been done by the competent bodies of the Republika Srpska. Failing to do so, the Republika Srpska has summoned Mr. Šljivo to continue to serve the remainder of his sentence. I am of the opinion that his rights to life and freedom have been severely violated, these being fundamental rights of any person that should be protected. Accordingly, during the consideration of Mr. Šljivo's application it would have been necessary to hear Mr. Amor Mašović, the President of the State Commission, who was allegedly present at the exchange when it was made, to ascertain whether the allegations were true. Only then would the conditions have been present for reaching a correct conclusion on the admissibility of the application and on his request for a provisional measure. This was not done. Consequently the decision of the majority of Panel that the application is inadmissible *ratione materiae* is based on wrongly and incompletely established facts, and as a result it appears incorrect.

(signed)
Mehmed Deković