



DECISION ON ADMISSIBILITY

Case no. CH/01/8334

Faik ŠKULJ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 February 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. Vitimir 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a prisoner in the Correctional Institution Zenica, where he is serving his criminal sentence. By a valid judgment of 5 December 1996 the applicant was sentenced to 12 years' imprisonment for murder.

2. The applicant alleges that on 23 December 1997, the President of the Federation issued a decision on pardon for all convicted persons serving criminal sentences who had not been pardoned before that date. The pardon released them from one-third of the remaining part of their sentence.

3. The applicant further alleges that the Administration of the Correctional Institution Zenica imposed an additional criterion required for persons who had submitted a request for pardon. The additional criterion to establish the right to pardon was a request to participate in the Army of Bosnia and Herzegovina, Croatian Council of Defense (HVO), or Military Police Force during the war.

4. The decision on pardon of persons serving sentences in prison of 23 December 1997, published in the Official Gazette of the Federation of Bosnia and Herzegovina no. 32/97, lists individual persons who have been pardoned by the President of the Federation. The applicant is not listed in that decision. The decision does not include any mention of extra criteria.

II. ALLEGED HUMAN RIGHTS VIOLATIONS

5. The applicant claims he has been the victim of unlawful discrimination because the sentenced persons who had the right to pardon were put in an unequal position with other sentenced persons who were members of certain armed forces. Because of that membership they were put into a privileged position in relation to the others.

III. RELEVANT DOMESTIC LAWS

6. The Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette no. 43/98) provides at Article 128(1) as follows:

“By means of pardon, the specifically designated persons are released from prosecution, complete or partial release from the execution of punishment, substitution of the pronounced punishment by a less severe one, deletion of the conviction, or annulment or shortening the duration of the legal consequences incident to conviction or security measure.”

7. The Law on Pardon of the Federation of Bosnia and Herzegovina (Official Gazette no. 9/96, 14/97) describes the procedure on pardon. It states that a convicted person may submit a petition for pardon to the Court that issued the valid judgment through Management of the prison where he is serving his criminal sentence. The management of the prison then submits this petition to the court for its decision, along with information it considers to be relevant to the decision on pardon, especially about the personality of the convicted person and his rehabilitation during his criminal sentence. The court then submits the petition for pardon to the Ministry of Justice along with its opinion on whether there is a valid reason for the pardon. Next the Ministry of Justice considers the petition and offers its recommendation on the petition for pardon. Thereafter, based upon a review of the complete file on the petition, the President of the Federation, together with the Vice President, makes the final decision on pardon. However, in some very special circumstances, the President of the Federation may pardon a convicted person without following the above-described procedures.

IV. OPINION OF THE CHAMBER

8. 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.”

9. The Chamber notes that the applicant complains that he has suffered discrimination with respect to his right to be pardoned. He did not submit any evidence that he was discriminated against on any ground. The decision pardoning other convicted persons from the Zenica prison was not a general law; it was a decision with respect to named individual persons. The prerogative to grant pardon is exclusively within the discretion of the President of the Federation. Under domestic law, there is no general right to pardon, and the right to pardon is also not included among the rights and freedoms guaranteed under the Agreement or the instruments listed in the Annex to the Agreement. It follows that the application is incompatible *ratione materiae* within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare application inadmissible.

V. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel