



DECISION ON ADMISSIBILITY

Case No. CH/01/8362

Husein BULJUBAŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 April 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. On 16 March 1993 the applicant was convicted of the criminal act of murder under to Article 36 paragraph 1 of the applicable Criminal Code of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina nos. 16/77, 19/77 (ispr.), 32/84, 19/86, 40/87, 41/87 (ispr.), 33/89, 2/90, 24/91, 16/92 (ispr.), 21/92, 13/94, 28/94, 33/94, hereinafter the "Old Criminal Code") and sentenced to ten years imprisonment by the decision of the then Higher Court in Bihać. The applicant subsequently brought an appeal of this judgement before the Supreme Court of Bosnia and Herzegovina, and on 30 September 1993 his appeal was denied and the Supreme Court confirmed the judgement of First Instance.

2. The applicant is imprisoned in the Correctional Institution in Zenica serving his sentence. He primarily complains of the fact that he has not been pardoned or amnestied, although he asserts that all persons who were members of the armed forces were pardoned or amnestied. The applicant states that he was formerly a member of the Army of Bosnia and Herzegovina.

3. The applicant further considers that the law previously in force under which he was sentenced to ten years of imprisonment is more severe than the law currently in force. He considers that he should be re-sentenced under the new law to a less severe sentence. The previous law allowed for the death penalty, but the new law has abolished this. However, the minimum prison sentence for the offence of murder remains at fifteen days and the maximum at fifteen years.

4. The applicant submitted a request for a pardon on 26 February 2001 and again on 17 September 2001. Both these requests were rejected.

5. On 27 September 2001, the applicant submitted a request to the Cantonal Court in Bihać for the renewal of proceedings.

II. COMPLAINTS

6. The applicant alleges his rights guaranteed under Articles 6 and 8 of the European Convention of Human Rights (hereinafter the "Convention") to have been violated.

7. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to determine his request for renewal of proceedings that he submitted on 27 September 2001, as a matter of urgency. The applicant further requests a decision as to his right to amnesty or a pardon and a determination as to whether he was supposed to have been sentenced under the new less severe law. The applicant seeks compensation for non-pecuniary loss that has arisen as a result of his inability to spend time with his family and he seeks compensation to the amount of 10,000 KM for procedural costs.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was introduced to the Chamber and registered on 2 November 2001.

9. On 6 December 2001, the Chamber decided not to order the provisional measure requested.

10. On 5 March 2002 the Chamber further deliberated on the case and adopted the present decision on 8 April 2002.

IV. OPINION OF THE CHAMBER

11. 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 to petition.”

12. The applicant was convicted of the criminal act of murder on 16 March 1993 by the then Higher Court in Bihać. The Supreme Court of Bosnia and Herzegovina subsequently dismissed his appeal on 30 September 1993. Accordingly, the Chamber finds that the facts complained of relate to a period prior to 14 December 1995, which is the date on which the Agreement entered into force. The Agreement only governs facts subsequent to its entry into force. It follows that the application is partly incompatible *ratione temporis* with the provisions of the Agreement, within the meaning of Article VIII(2)(c), insofar as the applicant complains about the fairness of his trial. The Chamber therefore decides to declare the application inadmissible in this respect.

13. The Chamber further notes that the applicant complains that there has been an interference with his right to be pardoned. However, this is not a right that is included among the rights and freedoms guaranteed by the Agreement (see case no. CH/01/8334 Škulj, decision on admissibility and merit of 6 February 2002, paragraph 9). It follows that the application is partly incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible in this respect.

14. The applicant complains that his right to amnesty has also been violated. However, Article 1 of the Law on Amnesty (Official Gazette of the Federation of Bosnia and Herzegovina 98/99) provides that a person charged with the crime of murder under to Article 36 of the Criminal Code of the Republic of Bosnia and Herzegovina has no right to amnesty.

15. The applicant further complains that his right to a fair trial under Article 6 of the Convention and his right to respect for his private and family life under Article 8 of the Convention have been violated. The Chamber notes that the Supreme Court issued its final judgement on 30 September 1993 confirming the decision of first instance of 16 March 1993, by which this decision then became valid. The new law did not come into force until 28 November 1998, and all courts in the Federation could not apply any law other than the one that was in force at the relevant time. As mentioned in paragraph 3 the only amendment was the abolition of the death penalty and this is inapplicable to the applicant's complaints. The range of sentence available to the courts is between fifteen days and fifteen years and the applicant was sentenced to ten years. Accordingly, the issues complained of in the application do not give rise to any violations of Article 6 or Article 8 of the Convention. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement in this respect as well. The Chamber therefore decides to declare this part of the application inadmissible.

V. CONCLUSION

16. 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