



DECISION ON ADMISSIBILITY

Case no. CH/01/8381

S.I.

against

**BOSNIA AND HERZEGOVINA,
THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA**

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

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Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. By a valid judgement of the Cantonal Court in Zenica of 22 November 2000, the applicant was convicted of the criminal offence of committing rape provided for by to Article 221, paragraph 2 in conjunction with paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98 hereinafter the "Criminal Code") and incest contrary to Article 239 of the same law upon his 14 year old daughter, E.I., on 3 July 1999. As a result of the rape the victim became pregnant and gave premature birth to a male child on 4 February 2000, which died nine hours after delivery. The Court pronounced for both criminal offences the compound punishment of imprisonment for a term of twelve years and ten months.

2. The applicant maintained during his trial that on the critical date he had not been at home where the offences were alleged to have been committed. Furthermore, he stated that he was not in good relations with his wife, who, probably motivated by vengeance, had persuaded her minor daughter to falsely charge the applicant with rape and incest.

3. In his application, the applicant contends that the premature delivery of his daughter's child was illegal and that the persons responsible for permitting or inducing it should be held accountable. The applicant maintains that he is wholly innocent of the criminal charges for which he was convicted and sentenced. He further alleges that during the criminal proceedings, his appointed defence counsel did nothing to pursue his requested line of defence.

4. The Chamber notes that neither the applicant nor his appointed defence counsel have filed an appeal against the judgement of 22 November 2000 before the Cantonal Court in Zenica. At the same time, in that judgement there are no indications that the applicant made any complaints that his appointed defence counsel performed his duties unprofessionally or inadequately, although he had the right to make such complaint in accordance with Article 68 of the Code of Criminal Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98 – hereinafter the "Code of Criminal Procedure").

II. COMPLAINTS

5. The application was introduced before the Chamber on 5 November 2001 and registered on the same day. The applicant filed the application on his own behalf and on behalf of E.I.

6. The applicant alleges a violation of Article 2 on behalf of E.I. and violations of Articles 5, 6(1), 6(3)(c), 9 and 10 of the Convention on his own behalf. The applicant further requests that the Chamber assigns him a new defence counsel and order a retrial before a court specified by the Chamber.

III. OPINION OF THE CHAMBER

7. 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."

8. The applicant has directed the application against the Federation of Bosnia and Herzegovina, Bosnia and Herzegovina and the Republika Srpska. The Chamber notes, however, that the authorities responsible for the decision complained of are those of the Federation of Bosnia and Herzegovina. Therefore, Bosnia and Herzegovina and the Republika Srpska cannot be held responsible for any possible human rights violations. That being so, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c) in so far as it is directed against Bosnia and Herzegovina and the Republika Srpska. The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina and the Republika Srpska.

9. 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 and that the application has been filed with the Commission within six months from such date on which the final decision was taken.”

10. With regard to alleged the violations of Article 6(1) and 6(3)(c), the Chamber notes that the application was lodged on 5 November 2001. It finds that the final decision for the purposes of Article VIII(2)(a) of the Agreement was issued by the Cantonal Court in Zenica on 22 November 2000 and became final on 22 December 2000. This date is more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible insofar as it relates to the criminal proceedings against the applicant.

11. With regard to the violation of Article 2 of the Convention, the Chamber notes that the applicant failed to request the initiation of criminal proceedings against the persons who, according to his allegations, performed the illegal abortion, for which the law gives him the opportunity under Article 176, paragraph 1 of the Criminal Code. The applicant has not shown that this remedy was ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare this part of the application inadmissible.

12. With regard to the violations of Article 5, Article 9 and Article 10, the Chamber finds that the applicant has failed to substantiate his statement concerning these alleged violations. 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 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.

IV. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel