



DECISION ON ADMISSIBILITY

Case no. CH/02/10497

Ejub IKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2002 with the following members present:

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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin.
2. The applicant has been charged with the criminal offence of preparation of criminal acts of terrorism under Article 151 in conjunction with Article 146(2), the criminal offence of terrorism under Article 146(1) in conjunction with Article 24, the criminal offence of espionage under Article 147(1), and the criminal offence of abuse of office under Article 358(3) of the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 43/98, 29/00). The applicant is accused of participating in planning the murder of Fikret Abdić, who was convicted on 1 August 2002 by the Cantonal Court in Karlovac for war crimes committed in Bosnia and Herzegovina during the armed conflict of 1992-1995. It is not known when the alleged plan to murder Fikret Abdić was made.
3. On 30 April 2002 the investigative judge of the Supreme Court of the Federation of Bosnia and Herzegovina (the "Supreme Court") ordered the applicant's detention for a period of one month under Article 183(1)(ii) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 43/98, 50/01, 27/02) as there was a reasonable suspicion that the applicant had committed an offence and that there was a risk that he would destroy, hide, alter or falsify evidence or influence potential witnesses. The applicant appealed against this procedural decision, but on 2 May 2002 the Supreme Court rejected his appeal as ill-founded.
4. On 30 May 2002 the Supreme Court extended the applicant's detention for a further two months under Article 183(1)(ii) and (iv) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina. On 3 June 2002 the applicant submitted an appeal stating that the classification of the criminal charges as acts of terrorism was incorrect. On 6 June 2002 the Supreme Court rejected his appeal as ill-founded.
5. On 18 June 2002 the applicant submitted a request to terminate his detention as all witnesses had been heard by the investigating judge. On 23 July 2002 the Panel of the Supreme Court issued a procedural decision rejecting the applicant's request as not all witnesses had been heard and there remained a possibility of the applicant influencing witnesses if he were released on bail.

II. COMPLAINTS

6. The applicant complains that his continued detention is unlawful as the Supreme Court failed to consider real and sufficient reasons to terminate his detention.
7. In addition, the applicant complains that his detention is unlawful under Article 5(1)(c) of the European Convention on Human Rights (the "Convention"). He contends that his prolonged detention has exceeded the meaning of reasonableness of time under Article 5(3) of the Convention. He further complains that due to the adverse media coverage, he will not receive a fair trial by an independent and impartial tribunal as guaranteed under Article 6(1) of the Convention and the presumption of innocence as guaranteed under Article 6(2) of the Convention has been violated. Lastly, the applicant alleges that he has been discriminated against due to his Bosniak origin in the enjoyment of the above-mentioned rights.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The application was submitted to the Chamber on 14 May 2002 and registered on the same day. The applicant is represented by Mustafa Bračković, a lawyer practising in Sarajevo. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to immediately release him from pre-trial detention. On 6 September 2002 the First Panel decided not to order the provisional measure requested.

9. The Chamber deliberated on the admissibility of the application on 6 September and 11 October 2002 and on the latter date adopted the present decision.

IV. OPINION OF THE CHAMBER

10. 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.”

A. Categorisation of criminal charge and misapplication of Code of Criminal Procedure

11. The Chamber notes that the applicant complains that the Supreme Court wrongly assessed the facts pertaining to his case and misapplied the law. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (*see, e.g.*, case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD “Trgosirovina” Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the Supreme Court failed to act fairly. It follows that the application in this respect 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.

B. Lawfulness and reasonable length of detention

12. The applicant also complains that his detention is in violation of Article 5(1)(c) of the Convention as the Supreme Court based his continued detention solely on the grounds of the existence of a reasonable suspicion and the risk of interfering with witnesses. He submits that the Supreme Court failed to consider the risk of flight or any other reasons indicated under the domestic law. Furthermore, one ground indicated, namely the risk of interfering with witnesses, must be a real risk and cannot be considered in the abstract. The Chamber recalls that the European Court of Human Rights (the “European Court”) has listed four possible grounds on which pre-trial detention may be based (*see, e.g.*, Eur. Court HR, *Letellier v. France*, judgment of 26 June 1991, Series A no. 207): fear of absconding; interference with the course of justice; the prevention of crime; and the preservation of public order. The Supreme Court considered that there was a real risk that the applicant would interfere with the course of justice, and by its procedural decision of 30 June 2002, the Supreme Court stated that due to the categorisation of the criminal charges as terrorism, there was a risk of public safety. In accordance with the case law of the European Court, the Chamber considers these grounds to be lawful. Therefore, the Chamber finds that the applicant’s continued detention was in accordance Article 5(1)(c) of the Convention.

13. The applicant further considers his detention to have exceeded the limits of reasonableness under Article 5(3) of the Convention. The Chamber notes that the applicant was initially detained on 30 April 2002 and has therefore been held in pre-trial detention for a total 5 months to date. In determining whether there has been a violation of Article 5(3) of the Convention, the European Court has adopted a case by case approach, considering the actual length of pre-trial detention, the relationship between any such detention and the likely penalty, the complexity of the proceedings, the conduct of the accused, and the efficiency of the national authorities. The Chamber notes that the applicant has been charged with offences of terrorism and that a large number of witnesses have been heard during the pre-trial investigation. The applicant has further failed to substantiate his claim that the respondent Party has not acted diligently. The Chamber therefore finds that the length of the applicant’s detention since 30 April 2002 has not exceeded the limits of reasonableness.

14. Therefore, the Chamber finds that the application in respect of Article 5 of the Convention 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.

C. Right to a fair trial and the presumption of innocence

15. The applicant complains that due to adverse media coverage of his case he will not receive a fair trial and that he has been prejudged in the media. However, he has not substantiated his suggestion that the respondent Party is in any way responsible for any adverse publicity, nor has he shown that a fair trial will not be possible. Therefore, the Chamber finds that the application in this respect 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.

D. Discrimination in the enjoyment of various rights

16. The applicant alleges that he has been discriminated against because of his Bosniak origin in the enjoyment of his right to liberty and security of person under Article 5(1)(c) of the Convention, his right to a trial within a reasonable time or release pending trial, his right to a fair trial under Article 6(1) of the Convention, and his right to be presumed innocent until proved guilty according to law as guaranteed under Article 6(2) of the Convention.

17. The Chamber finds that the facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that the application in respect of discrimination 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 as well.

V. CONCLUSION

18. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Second Panel