



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/02/12499

Sabahudin FIJULJANIN

against

BOSNIA AND HERZEGOVINA

and

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 Article VIII(2)(c) and VIII(3)(b) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 9 December 2002 and registered on the same day. A lawyer, Mr. Osman Mulahalilović, represents the applicant before the Chamber.
2. The application concerns the conduct of the respondent Parties in the face of the applicant's arrest on 26 October 2002, by the Stabilisation Force ("SFOR") and detention at the SFOR Eagle Base near Tuzla. The SFOR suspected the applicant of terrorist activities and the surveillance of the SFOR personnel and installations. The SFOR claimed to have acted within the mandate provided for in Annex 1A to the General Framework Agreement for Peace in Bosnia and Herzegovina. On 11 January 2003, the Chamber issued an order for provisional measures, ordering the respondent Parties to formally request the SFOR to immediately place the applicant under the jurisdiction of the authorities of the Federation of BiH. The respondent Parties complied with the order for provisional measures. On 30 January 2003, the SFOR handed over the applicant to the authorities of the Federation of BiH. On the same date, the applicant was released.
3. The application raises issues surrounding the right to liberty and security of person under Article 5 of the European Convention on Human Rights ("Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

4. In the application, the applicant requested the Chamber to issue an order for provisional measures ordering the respondent Parties not to extradite, expel or in any other manner remove the applicant from the territory of Bosnia and Herzegovina.
5. On 10 December 2002, the Chamber asked the respondent Parties to clarify certain points related to the applicant's citizenship, arrest and detention by the SFOR.
6. On 11 December 2002 and 13 December 2002, the Federation of BiH replied to the Chamber's questions.
7. On 12 December 2002, the Chamber transmitted the application to the respondent Parties for their observation on the admissibility and merits under Article 5 of the Convention.
8. On 30 December 2002, the Chamber received the observations on the admissibility and merits from Bosnia and Herzegovina.
9. On 3 January 2003, the Chamber received the observations on the admissibility and merits from the Federation of BiH.
10. On 11 January 2003, the Chamber issued an order for provisional measures, ordering the respondent Parties to formally request the SFOR to immediately place the applicant Fijuljanin under the jurisdiction of the authorities of the Federation of BiH.
11. On 15 January 2003, the Federation of BiH invited the SFOR to hand over the applicant to the authorities of the Federation of BiH.
12. On 16 January 2003, Bosnia and Herzegovina requested the SFOR to hand over the applicant to the authorities of the Federation of BiH.
13. On 31 January 2003, Bosnia and Herzegovina informed the Chamber that the applicant Fijuljanin had been handed over to the authorities of the Federation of BiH on 30 January 2003.
14. On 6 February 2003, the Federation of BiH informed the Chamber of the same, *i.e.* that the applicant had been handed over to its authorities on 30 January 2003.
15. The Chamber received additional information from the applicant's representative on 9 December 2002, 13 December 2002, 26 December 2002, 30 December 2002, 29 January 2003

and 20 February 2003. On the latter date, the applicant's representative confirmed that the applicant had been handed over to the authorities of the Federation of BiH.

16. In his submission of 29 January 2003, the applicant, through his lawyer, reiterated his request for the issuance of an order for provisional measures which would prevent the authorities from extraditing, expelling, or in any manner removing him from Bosnia and Herzegovina. The Chamber rejected the request on 8 February 2003.

17. On 20 February 2003, the applicant, through his lawyer, requested the Chamber to issue an order for provisional measures whereby, in the case that he is denaturalised, he and his lawyer be provided with the decision on denaturalisation. On 4 March 2003, the Chamber rejected the request.

III. FACTS

18. The applicant is a citizen of Bosnia and Herzegovina since 25 December 1995. He is originally from the Sandžak region of Serbia. He lives in Srebrenik Municipality, the Federation of BiH, together with his spouse and four children.

19. In his application, the applicant alleges that on 26 October 2002 he was arrested by police from the Srebrenik Police Department, and then handed over to representatives from the SFOR. He alleges that he was arrested because he was in possession of a rocket launcher and he was also believed to have been surveying the SFOR facilities.

20. The information obtained from the respondent Parties, which was not contested by the applicant, was that the applicant was arrested by representatives of the SFOR on 26 October 2002, and immediately taken to his home to be present at the conduct of a search of the premises. Members of the Police Department Srebrenik, upon the request of the applicant and the SFOR, were also present during the search of the applicant's home. After the search, the SFOR took the applicant to the Eagle Base where he was held in detention.

21. During his detention, the applicant had limited contact with his lawyer. The applicant was allowed to meet with his lawyer for the first time on 25 November 2002. The meeting was attended by two SFOR soldiers and a translator and videotaped. The applicant was also allowed to meet with his lawyer on 7 December 2002. The Chamber was not provided with any other information as to further meetings with his lawyer.

22. The Federal Ministry of Interior ("FMUP"), the BiH Council of Ministers Anti-Terrorism Coordination Team, and the SFOR, held high-level co-ordination meetings regarding the detention of the applicant. In this forum, the SFOR informed the national authorities about the reasons for the arrest of the applicant, namely, that he was found to have surveyed and followed the SFOR forces and installations. The SFOR also shared with the respondent Parties their suspicion that the applicant is connected with the Al-Qaida network. The Federation submits that it was agreed in these meetings that the applicant would be handed over to the competent authorities of the Federation of BiH upon the conclusion of the investigation by the SFOR.

23. On 27 November 2002, the SFOR handed over to the FMUP several items confiscated during the search of the applicant's home. The rocket launcher found in the applicant's apartment was in the possession of the SFOR throughout the detention of the applicant. The rocket launcher was handed over to the FMUP on 30 January 2003.

24. The Federation submits that on 29 January 2003, the SFOR informed the FMUP that the applicant would be handed over to them on 30 January 2003. A team from the FMUP travelled to Tuzla that day to coordinate with the Tuzla Ministry of the Interior the placing of the applicant within their custody on the following day. On 30 January 2003, the joint team, made of personnel from the FMUP and the Tuzla Ministry of the Interior, travelled to the SFOR Eagle Base, and after the applicant was examined by a doctor, he was handed over to their custody. At that time, the FMUP obtained the rocket launcher which had been disabled by the SFOR for security reasons. The applicant was taken to the Srebrenik Police Department where he was interviewed by the authorities in the presence of his lawyer, Osman Mulahalilović. The applicant was charged in accordance with Article 348 of the

Criminal Code of the Federation of BiH for the illicit possession of a weapon, and transferred to the jurisdiction of the Municipal Prosecutor and the investigative judge. The applicant was released that day, but served with a summons to appear before the investigative judge on the next day. On the 31 January 2003, the applicant appeared before the investigative judge of the Municipal Court Srebrenik, and those proceedings are still pending. During the criminal processing of the applicant, the authorities discovered that there are indications that one of the applicant's BiH passports appears to have been obtained in an unlawful manner. This is also the subject of continued investigation. While the Federation did not provide any documentation to support these facts, the applicant neither disputed them.

25. On 30 January 2003, the Presidency of BiH received a letter from General William Ward, Commander of the SFOR, dated 24 January 2003. The State enclosed this letter with its submission to the Chamber of 31 January 2003. In the letter, Commander Ward outlines the grounds for the SFOR arrest and detention of the applicant. Also, the Commander noted that the organs of the Federation of BiH have started a new procedure of denaturalisation of the applicant. The Federation of BiH has not provided the Chamber with any information to indicate that this was the case.

IV. COMPLAINTS

26. The applicant alleges that his rights have been violated in connection with the prohibition from slavery under Article 4 of the Convention, the right to liberty and security of person under Article 5 of the Convention, the right to a fair trial under Article 6 of the Convention, the right to no punishment without law under Article 7 of the Convention and the right to respect for his private and family life under Article 8 of the Convention. The applicant also sought that his application be considered in light of the prohibition of expulsion of nationals under Article 3 of Protocol No. 4 to the Convention, and, if his citizenship was taken away, or if it was determined that he was not a citizen, to consider the case in light of the procedural safeguards relating to the expulsion of aliens under Article 1 of Protocol No. 7 to the Convention. The applicant also cites violations of the Universal Declaration of Human Rights (Articles 3, 4, 8, 9 and 10) and the International Covenant on Civil and Political Rights (Articles 8, 9, and 14). Finally, the applicant refers to the Constitution of BiH, Article 2, paragraph 3, which guarantees the right to a fair trial in criminal matters. The Chamber transmitted the application to the respondent Parties for their observations on the admissibility and merits under Article 5 of the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

27. As to the admissibility of the application insofar as it is related to a violation of Article 5 of the Convention, the Federation submits that, as the bodies of the respondent Party did not arrest or detain the applicant, they can not be held accountable for the alleged violations under Article 5 of the Convention. The mere presence of some members of the Srebrenik Police Department during the search of the house does not mean that the respondent Party participated in the events in the sense of the alleged violations under Article 5 of the Convention. Consequently, the application is inadmissible *ratione personae* against the Federation of Bosnia and Herzegovina. Additionally, the Federation asserts that the respondent Party, in particular the FMUP, has, since the moment of the applicant's arrest, undertaken all necessary steps to have the applicant placed under the jurisdiction of the domestic authorities. These efforts resulted in the guarantee by the SFOR that the applicant will be handed over to the jurisdiction of the competent authorities as soon as their investigation is completed.

B. Bosnia and Herzegovina

28. Bosnia and Herzegovina alleges that it was not aware of the applicant's arrest and detention until informed by the Chamber on 12 December 2002. The State submits that the application is not admissible as to the State as its organs are not responsible for the alleged violations.

C. The Applicant

29. The applicant alleges that he is not a terrorist or connected with any terrorist organisation. In his application to the Chamber, in addition to the request for provisional measures, the applicant expressed his wish to be handed over to the appropriate domestic authorities.

30. In his submission of 26 December 2002, the applicant specified a claim for compensation from both respondent Parties. Specifically, 400,000 Convertible Marks (KM) for the alleged illegal deprivation of his liberty and KM 100,000 for the mental anguish from being accused of being a terrorist and associated with the Al-Qaida terrorist network. In the same letter, the applicant submits that the Supreme Court of the Federation of BiH is competent to try him for the criminal offence of terrorism and has not taken any steps aimed at fulfilling its constitutional duties. As to the suspicion that he possessed an illicit weapon, the territorial and subject matter jurisdiction over this allegation lies with the Municipal Court in Srebrenik. The applicant requested the Chamber to order the respondent Parties to have him handed over to the Federation authorities who have jurisdiction over the alleged charges.

VI. OPINION OF THE CHAMBER

A. As to the complaints relating to the applicant's denaturalisation and removal from BiH

31. 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."

32. The applicant alleges that proceedings are ongoing to (unlawfully) deprive him of his BiH citizenship with a view of removing him from Bosnia and Herzegovina. In this connection he alleges the threat of a violation of Article 3 of Protocol No. 4 to the Convention, banning the expulsion of nationals, or Article 1 of Protocol No. 7 to the Convention, providing for procedural safeguards in the case of expulsion of aliens. The Chamber notes that the applicant's fears and complaints in this respect have remained uncorroborated. There is no evidence in the case-file suggesting that any violation of the applicant's rights in this respect may have occurred, may be ongoing or imminent. The Chamber thus will declare this part of the application inadmissible as manifestly ill-founded, pursuant to Article VIII(2)(c) of the Agreement.

B. As to complaints resulting from the applicant's detention by the SFOR

33. In accordance with Article VIII(3) of the Agreement, "the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights."

34. The Chamber notes that the applicant applied to the Chamber while he was in the detention of the SFOR. His application essentially concerned his continued detention by the SFOR, and the fact that he was not provided with the legal safeguards he would have enjoyed if he had been under the jurisdiction of the national authorities. The applicant also alleged a great variety of other violations (see paragraph 26 above), in connection, it appears, with his deprivation of liberty by the SFOR.

35. The Chamber considers that in this respect the application raises the question as to whether the positive obligation of the respondent Parties to secure the protection of the rights of all persons within their jurisdiction, as enshrined in Article I of the Agreement, required them to take action to protect the applicant's rights while in the SFOR detention, and, if so, whether they have met that obligation in the applicant's case. The Chamber notes, however, that in compliance with the Chamber's order for provisional measures, the respondent Parties formally requested the SFOR that the applicant be placed under the jurisdiction of the Federation authorities, and that, on 30 January 2003, the applicant was released into the custody of the Federal Ministry of the Interior (FMUP). That being so, the Chamber considers that the main issue raised in the application has been resolved. Also, the Chamber finds no special circumstances regarding respect for human rights which would require the examination of the application to be continued. The Chamber therefore decides to strike out this part of the application pursuant to Article VIII(3)(b) of the Agreement.

36. The Chamber recalls that it can only order remedies for violations it has found, and as there has been no violations found in the present case, the Chamber did not consider the claim for compensation.

VII. CONCLUSION

37. For these reasons, the Chamber, unanimously,

DECLARES PART OF THE APPLICATION INADMISSIBLE

and, by 12 votes to 2,

STRIKES OUT THE REMAINDER OF THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the CHAMBER