



DECISION ON ADMISSIBILITY

Case no. CH/02/8795

Nermin MULASALIHović

against

THE FEDERATION OF BOSNIA AND HERCEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 April 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 prisoner in the Correctional Institution Zenica, where he is serving a criminal sentence. By judgment of 15 July 1994 the applicant was sentenced to 10 years imprisonment for murder. On 7 September 1995 the Supreme Court confirmed this sentence.
2. The applicant alleges that on 25 November 1995, the President of the Republic of Bosnia and Herzegovina issued a decision on pardon for all convicted persons serving criminal sentences which he met the conditions for. However, the applicant was not pardoned.
3. The applicant further alleges that in accordance with Article VI of Annex 7 of the General Framework Agreement on Peace in Bosnia and Herzegovina he falls under an amnesty and that his detention hence is unlawful.
4. Article VI reads as follows:

Amnesty

“Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.”

II. ALLEGED HUMAN RIGHTS VIOLATIONS

5. The applicant claims he has been violated in his right to fair criminal proceedings and in his right to amnesty and pardon.

III. OPINION OF THE CHAMBER

6. 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. In regard to the fact that the applicant was not pardoned

7. The Chamber finds that the fact the applicant was not pardoned in accordance with the decision of the President of the Republic of Bosnia and Herzegovina of 25 November 1995, relates to a period prior to 14 December 1995, which is the date on which the Agreement entered into force. However, the Agreement only governs facts subsequent to its entry into force. It follows that in this respect the application is incompatible *ratione temporis* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this complaint inadmissible *ratione temporis*.

B. In regard to the fact that the applicant did not enjoy an amnesty as provided for in Article VI of Annex 7 of the General Framework Agreement on Peace in Bosnia and Herzegovina

8. The Chamber notes that the applicant complains of a violation of his right to an amnesty. The Chamber finds that the right to amnesty is 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 in this respect, too.

V. CONCLUSION

9. For these reasons, the Chamber, unanimously,
DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Ms. Michèle PICARD
President of the First Panel