



DECISION ON ADMISSIBILITY

Case no. CH/02/9554

Drago DRAGIČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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)(a) and (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 Croat origin. He is a soldier by profession and up until the initiation of criminal proceedings in the domestic courts was employed by the Federal Ministry of Defence in Sarajevo.

2. In the request to investigate the applicant, it is alleged that during the period of April 1992 to the beginning of 1994, he was responsible for the intentional ethnic cleansing in the Municipality of Žepče of the Serb-Orthodox and Bosniak-Muslim population in contravention of the Geneva Convention and the Statutory Provisions of the International Criminal Tribunal for the Former Yugoslavia (the "ICTY"). He is further charged with the misappropriation of property, destruction of property and in furtherance of this plan the applicant allegedly formed and organised the military and police armed forces for the Croat Defence Council (the "HVO"), issued decisions and formed camps for the non-Croat population in Žepče, ordered and took part in the military and police operations.

3. The investigation against the applicant specifically alleges that he acted as Commander of the Žepče HVO Intelligence Headquarters. In the request to investigate the applicant, it is alleged that as Commander he issued orders for the detention, interrogation and murder of non-Croat citizens.

4. The applicant is charged with such offences under Article 154 paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98, hereinafter the "Criminal Code"). The applicant has at all times denied his involvement in the acts charged and on 26 March 2002 sought to have his trial severed from that of his co-defendants and further appealed that the continuation of a criminal investigation against him should be stopped as the prosecutor had failed to present sufficient evidence to justify it going to trial. On 8 April 2002 the Cantonal Court in Zenica rejected the applicant's request on all grounds.

5. The applicant's trial in the Cantonal Court in Zenica started on 22 July 2002.

II. COMPLAINTS

6. The applicant complains that his right to a fair and public hearing within a reasonable time by an independent and impartial tribunal under Article 6 paragraph 1 of the Convention has been violated and that the principle of equality of arms has been violated under the same provision. He also claims that his right to have adequate time and facilities for the preparation of his defence as guaranteed under Article 6 paragraph 3(b) of the Convention has been violated and his right to physical integrity as guaranteed under Article 3 of the Convention has been violated.

7. The applicant has further submitted that damage has been done to his dignity and honour.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The applicant originally applied to the Chamber on 29 October 2001 and complained of violations of Articles 5(1), 5(3) and 6(1) of the Convention. This application was registered under case no. CH/01/8325 *Lozančić & Others v. the Federation of Bosnia and Herzegovina*. In the original application before the Plenary the request concerned compulsory detention under the former Article 183(1) of the Code of Criminal Procedure for the Federation of Bosnia and Herzegovina, disqualification of judges and change of venue in criminal proceedings. On the date of registration, the Chamber issued an order for provisional measures requiring the respondent Party to refrain from applying that provision. This order expired on 7 November 2001 and was not renewed.

9. On 8 March 2002 the Chamber issued its decision declaring the case inadmissible partly under Article VIII(2)(a) of the Agreement as domestic remedies had not been exhausted and partly under Article VIII(2)(c) of the Agreement as manifestly ill-founded.

10. On 15 March 2002 the present application was received by the Chamber and registered on the same day. The present application concerns matters distinct from those raised in the original application. The Chamber will therefore determine whether the application is admissible in this respect.

11. The Chamber deliberated on the admissibility on 7 September 2002 and 11 October 2002 and on the latter date adopted the present decision.

IV. OPINION OF THE CHAMBER

12. 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(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.”

13. The Chamber notes that the applicant’s complaints concerning his right to a fair and public hearing within a reasonable time by an independent and impartial tribunal and the principle of equality of arms as guaranteed by Article 6 paragraph 1 of the Convention and his right to have adequate time and facilities for the preparation of his defence as guaranteed under Article 6 paragraph 3(b) of the Convention are premature, as the proceedings are still pending before the Cantonal Court in Zenica. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

14. In relation to the applicant’s complaint concerning Article 3 of the Convention, the Chamber notes that the applicant has failed to explain how his right to physical integrity has been violated. 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 as well.

V. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel