



DECISION ON ADMISSIBILITY

Case no. CH/02/9854

E.P.

against

**BOSNIA AND HERZEGOVINA,
THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
OTHERS**

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

I. INTRODUCTION AND FACTS

1. On 11 December 2001, a letter sent by the applicant to the Chamber was registered as a temporary file. The application form and an amendment to the application were introduced before the Chamber on 4 April 2002 and registered on the same day. The applicant addressed his application against Bosnia and Herzegovina, the Cantonal Prosecution and Court of Una-Sana Canton, judge N.S., the Police Administration in Ključ and its Chief A.Dž., and against F.S and H.P.

2. By a judgement of the Cantonal Court in Bihać of 18 May 2001 the applicant was convicted of repeated rape under Article 224, paragraphs 1 and 2 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 by the same judgement was convicted for the criminal act of illicit possession of weapons under Article 348 paragraph 1 of the Criminal Code and for the criminal Act of imperilling security under Article 190 of the Criminal Code, because on 13 August 2000 he threatened S.P and F. P that he would kill them. For the criminal acts that the applicant committed, the Court pronounced compound punishment of twelve years of imprisonment. Finally, for the criminal act of defiling a grave or a corpse under Article 357 paragraph 1 of the Criminal Code, the applicant was acquitted due to lack of evidence.

3. On 12 June 2001, the applicant was permitted, upon his request, to start serving his sentence of 12 years of imprisonment before the judgement of 18 May 2001 became enforceable.

4. On 11 October 2001, the Supreme Court of the Federation of Bosnia and Herzegovina accepted the applicant's appeal and annulled the judgement of the Cantonal Court of 18 May 2001 because of serious breaches of the Code of Criminal Procedure and of the Criminal Code. The case was returned for retrial. The Supreme Court found the operative part of the Cantonal Court's judgement not understandable, as the Cantonal Court failed to establish the compound punishment in accordance with Article 46 of the Criminal Code.

5. On 4 March 2002, the Cantonal Court in Bihać issued and published the new judgement in the applicant's case. The applicant's sentence remains, but the Criminal act was qualified as a continuous criminal act of forced sexual intercourse under Article 221 paragraph 2 in conjunction with paragraph 1 of the Criminal Code.

6. On 18 March 2002, the applicant was permitted, upon his request, to start serving his sentence of imprisonment before the judgement of 4 March 2002 became enforceable.

7. The applicant alleges that on the critical dates when the criminal acts happened, he was out of Bosnia and Herzegovina. In addition, he states that he was not capable of committing the criminal act of rape as he was "half – impotent after he was released from concentration camp in 1993." Furthermore, he states that he himself is the victim of all the events and the victim of the hatred of witnesses before the court as well.

8. The applicant claims that he is innocent and unlawfully accused and sentenced only because his previous tempestuous life and history (*n.b.*, the applicant was previously sentenced on eight different occasions, twice for rape committed in the Republica of Croatia). He states that the courts did not accept evidence on his behalf and judged him on the grounds of suspicions and fabricated statements of false witnesses. He further alleges that the Court refused to hear approximately 30 witnesses, to use a lie detector, or to include in the procedure an expert of sexology, which would have proved his innocence. Finally, he claims that his appointed defence lawyer performed his duties unprofessionally, as he did not care if the applicant, as an innocent person, served his sentence.

II. COMPLAINTS

9. The applicant alleges numerous violations of human rights in his case, such as disrespect of his personality, physical and psychic maltreatment, inhuman treatment, and stalling of procedure. He complains that he was deprived of the right to defence and correspondence. He complains that he was kept in detention with no windows and daylight for a long time, and without appropriate medical care.

10. The applicant requests to talk with a representative of the Chamber and to be furnished with a verbatim record of that conversation, as he cannot prove his innocence without the Chamber's aid. He further requires an expertise by a sexology expert, use of a lie detector, an oral record of the parties to the procedure before the Court under the supervision of the Chamber's employee, and a hearing with 30 proposed witnesses. He requests to be released as soon as possible in order to defend himself as a free man and prove his innocence with the help of new defence lawyer. He requests to perform a check of police stations and border crossings to Republica Croatia for 1999, for the period between 15 April 2000 and 15 July 2000; to hear a social worker from Bjelovar, Croatia; and to get a police report from Bjelovar on the hearing of A.S., the rape victim. He submitted a criminal charge against F.H. and H.P. and requests their arrest. He claims compensation for physical and psychic maltreatment and inhuman treatment. The applicant asks that the Chamber provide him a new defence lawyer, as he has no money.

III. OPINION OF THE CHAMBER

11. 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."

12. The applicant directs his application against Bosnia and Herzegovina and against two private persons, F.S. and H.P. First, the Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the Chamber on its own motion find any such evidence. Second, the Chamber finds that the persons that the applicant directed his application against F.S and H.P are private persons, and disputes between the applicant and these persons do not concern an interference with the applicant's rights under the Agreement by the authorities of any of the signatories to the Agreement. The application is therefore incompatible *ratione personae* with the Agreement, within the meaning of Article VIII(2)(c), in so far as it is directed against Bosnia and Herzegovina, F.S., and H.P. The Chamber therefore decides to declare these parts of the application inadmissible.

13. 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."

14. With regard to the applicant's complaints against the Cantonal Prosecution and Court of Una-Sana Canton, judge NS and the Police Administration in Ključ and its Chief A.Dž, the Chamber notes that the judiciary responsible for the proceedings complained about by the applicant are the organs of the Una-Sana Canton, the conduct of which engages the responsibility of the Federation of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. The Chamber decides to consider that part of the application as directed against the Federation of Bosnia and Herzegovina.

15. The Chamber notes that the Cantonal Court in Bihać, on 4 March 2002, issued a new judgement in the applicant's case. An appeal against this judgement to the Supreme Court of the Federation of Bosnia and Herzegovina is permitted as an ordinary remedy within 15 days from the date of its receipt. The applicant has not shown that he exhausted this remedy, nor that this remedy would have been ineffective. Accordingly, the applicant has not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible in this respect as well.

16. With regard to the numerous other alleged violations of human rights in this case, such as disrespect of the applicant's personality, physical and psychic maltreatment, inhuman treatment, stalling of procedure, deprivation of the right to defence and correspondence, and detention with no windows and daylight for a long time with no appropriate medical care, the Chamber finds that the applicant has failed to substantiate his statements 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 in this regard. It follows that this part of 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

17. 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