



DECISION ON THE ADMISSIBILITY

of

CASE No. CH/96/1

Josip, Bozana and Tomislav MATANOVIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 13 September 1996 with the following members present:

Peter GERMER, President
Rona AYBAY
Hasan BALIĆ
Mehmed DEKOVIĆ
Giovanni GRASSO
Želimir JUKA
Vlatko MARKOVIĆ
Jakob MÖLLER
Manfred NOWAK
Miodrag PAJIĆ
Michèle PICARD
Dietrich RAUSCHNING
Adam ZIELINSKI

Andrew GROTRIAN, Registrar

Having considered the Application on behalf of Josip MATANOVIĆ, Bozana MATANOVIĆ and Tomislav MATANOVIĆ against the Republika Srpska submitted on 6 June 1996 by Human Rights Ombudsperson for Bosnia and Herzegovina under Article V paragraph 7 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered under Case No. CH/96/1;

Takes the following decision on the Admissibility of the Application under the second paragraph of Article VIII of Annex 6 to the General Framework Agreement.

I. THE FACTS

The facts of the case as they appear from the Report of the Ombudsperson may be summarised as follows:

According to the Ombudsperson's Report Josip and Bozana MATANOVIĆ are the parents of Tomislav MATANOVIĆ, who is the priest of the Roman Catholic parish at Prijedor in the Republika Srpska. Tomislav Matanović was arrested on 24 August 1995 by local Bosnian Serb police officers and detained at the "Urije" police station at Prijedor. He was subsequently brought to his parent's home where he was guarded by police officers. On 19 September 1996 he and his parents were taken to the "Urije" police station at Prijedor. They have been missing since then. On 21 December 1995 and 23 March 1996 the authorities of the Republika Srpska offered to exchange Tomislav Matanović and his parents for prisoners of war held by the Federation of Bosnia and Herzegovina but they have not been exchanged or released, (see paras. 14-18 of the Ombudsperson's Report).

II. VIOLATIONS OF HUMAN RIGHTS FOUND BY THE OMBUDSPERSON

In her Report the Ombudsperson has found that the detention of the three persons in question as from 14 December 1995 has been in breach of Article 5 paragraphs (1)-(4) of the European Convention on Human Rights and that there has thus also been a violation of Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, (see paras. 20-28 of the Ombudsperson's Report).

III. PROCEEDINGS BEFORE THE CHAMBER

Proceedings before the Chamber were initiated by the Ombudsperson under Article V para.7 of Annex 6 to the General Framework Agreement on 6 June 1996. The Chamber considered the case on 20 June 1996 and decided to request certain factual information from the Republika Srpska as respondent Party. It fixed a time-limit expiring on 5 July 1996 for the submission of this information. This request was transmitted to the respondent Party on 21 June 1996. The Chamber also requested the Ombudsperson to submit details of the evidence on which the findings in her Report were based. The Ombudsperson submitted copies of a number of documents in response to the Chamber's request. The Chamber again considered the case on 11 July 1996. It decided that copies of certain documents submitted by the Ombudsperson should be transmitted to the respondent Party for information. Copies of the documents in question were delivered to the respondent Party by letter of 2 August 1996 delivered on 5 August 1996. The respondent Party was also again requested to submit the information previously requested by the Chamber.

The Chamber again considered the case on 15 August 1996. No response had been received from the respondent Party to the Chamber's request for information. The Chamber decided to request the respondent Party, in accordance with Rule 1 of its Provisional Rules of Procedure, to submit written observations on the admissibility and merits of the case by 5 September 1996. It further requested the respondent Party to take such interim measures as might be necessary to safeguard the lives and well-being of the three alleged victims and also to inform the Chamber of their whereabouts. It also decided to inform the Ombudsperson and the respondent Party that it was at their disposal with a view to achieving an amicable resolution of the matter under Article IX of Annex 6 to the General Framework Agreement. This decision was communicated to the respondent Party by letter of 19 August 1996.

No response has been received from the respondent Party to any of the communications from the Chamber.

IV. REASONS FOR THE CHAMBER'S DECISION

Before proceeding to consider a case on the merits, the Chamber must decide, pursuant to Article VIII, paragraph 2 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina (the Agreement) whether to accept a case brought before it under the Agreement. In doing so, the Chamber must take into account the admissibility criteria set out in Article VIII, paragraph 2 of Annex 6 to the Agreement, including whether effective remedies exist and have been exhausted by the alleged victims or on their behalf, and whether the subject matter is compatible with the Agreement and, thus, comes within the competence of the Chamber.

The Chamber will first address the question whether the Chamber is competent, *ratione temporis*, to consider the case, bearing in mind that the alleged victims were deprived of their liberty before the entry into force of the Agreement on 14 December 1995. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively. Accordingly, the Chamber is not competent to consider events that took place prior to 14 December 1995, including the arrest and detention of the alleged victims up to 14 December 1995. However, in so far as it is claimed that the alleged victims have continued to be arbitrarily detained and thus deprived of their liberty after 14 December 1995, the subject matter is compatible with the Agreement and comes within the competence of the Chamber *ratione temporis*.

Secondly, the Chamber will address the question whether effective remedies exist and have been exhausted by the alleged victims, or on their behalf, as required under Article VIII, paragraph 2(a) of Annex 6 to the Agreement. In the present case, it is uncontested that the alleged victims have been held *incommunicado* from the time of their detention, including from 14 December 1995. In the circumstances, it is obvious, and again uncontested, that no effective remedies have been available to the alleged victims.

On the basis of the information before it, the Chamber is satisfied that other criteria for admissibility, set out in Article VIII, paragraph 2 of Annex 6 to the Agreement, are also met.

DECISION

In the light of the above, the Chamber, without prejudging the merits, decides by a majority:

1. That the case is admissible, in so far as it relates to the claim that Tomislav Matanović and his parents have been detained after 14 December 1995 in violation of Article 5 of the European Convention on Human Rights and that this claim will therefore be examined on the merits;
2. That this decision be communicated to the parties, the Ombudsperson and the Republika Srpska;
3. That the Republika Srpska be again requested to make its written submission on the merits of the matter under examination and that it be requested to do so not later than 10 October 1996.

(signed) Andrew Grotrian
Registrar of the Chamber

(signed) Peter Germer
President of the Chamber

A separate concurring opinion of M. G. Grasso and a separate dissenting opinion by MM. P. Germer and M. Pajić are annexed to this decision.

ANNEX

SEPARATE CONCURRING OPINION OF MR G. GRASSO

I have voted in favour of declaring this case admissible, but my reasons for doing so differ slightly from those stated in the decision.

1. In my opinion what is decisive is not merely that “ it is claimed that the alleged victims have continued to be arbitrarily detained.... After 14 December 1995”, as it is stated in the second paragraph of the reasons for the decision; it is necessary also to stress that the documents submitted to the Chamber by the Ombudsperson (and transmitted to the respondent Party without observation or reply) *prima facie* indicate that three persons concerned have been arbitrarily detained after 14 December 1995 by the authorities of the respondent Party.

2. As far as the existence of local remedies is concerned, it is not sufficient to make reference to the fact that the respondent Party has not contested that the alleged victims have been held *incommunicado*, as it is stated in the third paragraph of the reasons; it is necessary to consider the fact that the documents in our file (transmitted to the respondent Party) appear to prove that the three persons concerned have been held *incommunicado* and therefore no effective remedies have been available to them.

SEPARATE DISSENTING OPINION OF MM P. GERMER AND M. PAJIĆ

From the outset this case was handled in an awkward manner in that the Ombudsperson addressed the respondent Party in English only. This was an insult to the respondent Party. Moreover in deciding on the case, the Ombudsperson jumped to conclusions. All this may have caused the respondent Party to decide not to react although the letters from the Chamber were accompanied by translations into the Serbian language. Various possibilities of establishing direct contact between the Chamber and the respondent Party have been discussed in the Chamber. These possibilities have not been explored. We are of the opinion that, at the present stage, the Chamber should not and could not decide on the question of the admissibility. Therefore, we vote against declaring the application admissible.