



DECISION ON THE ADMISSIBILITY

of

CASE No. CH/97/68

Miloš SIMIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 10 September 1998 in a Panel composed of the following Members:

Manfred NOWAK, President
Giovanni GRASSO, Vice-President
Vlatko MARKOTIĆ
Jakob MÖLLER
Mehmed DEKOVIĆ
Vitimir POPOVIĆ
Viktor MASENKO-MAVI

Leif BERG, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the application submitted by Miloš Simić on 19 September 1997 under Article VIII (1) of the Human Rights Agreement (“Agreement”) set out in Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina, and registered on 16 October 1997 under Case No. CH/97/68;

Adopts the following Decision on the admissibility of the application in accordance with Article VIII (2) of the Agreement and Rule 52 of its Rule of Procedure.

I. THE FACTS

1. The facts are based on the application form and appended documents and can be summarised as follows:

2. On 3 October 1992 the applicant entered into a contract with Mr. Ismet Kožo to reside in and look after Mr. Kožo's house in Doboj. On 7 September 1993 the applicant was informed by Mr. Lazo Todorović that the municipality of Doboj had allocated the house to Mr. Todorović. A fight ensued and the applicant subsequently shot and seriously wounded Mr. Todorović, who died from his injuries on 11 September 1993.

3. On the day of the shooting the applicant went to the police to inform them of the incident and he was subsequently questioned and detained. On 9 September 1993 an investigative judge of the Court of First Instance ordered an inquiry into the incident.

4. At his trial (date unknown) the applicant pleaded self-defence. On 28 March 1994 the Court of First Instance in Doboj found the applicant guilty of murder under Article 36 (1) of the Criminal Law and sentenced him to a term of imprisonment of ten years.

5. On 5 May 1994 the applicant appealed against the decision of the Court of First Instance to the Higher Court in Doboj claiming that the lower court had established the facts incorrectly and that consequently the penalty imposed was inappropriate. On 6 July 1994 the Higher Court found that the lower court had established the facts incorrectly. It accordingly annulled the decision of first instance and sent the case back to the lower court.

6. On 27 October 1994 the Court of First Instance, after a retrial, again found the applicant guilty and imposed a sentence of ten years' imprisonment. On 9 January 1995 the applicant appealed against this decision to the Higher Court.

7. On 11 May 1995 the Higher Court rejected the appeal as ill-founded and pronounced the 27 October 1994 decision of the Court of First Instance to be final and binding. The applicant claims that his wife received a phone call from one of the judges of the Higher Court shortly before the decision was issued, offering to give judgement in favour of the applicant in exchange for monetary compensation.

8. The applicant next pursued three extraordinary remedies:

a. On 29 May 1995 the applicant submitted a "Request for the Extraordinary Inquiry of a Binding Judgement" to the Supreme Court of Republika Srpska in accordance with Article 425 of the Law on Criminal Procedure. This request was rejected on 6 June 1995.

b. On 7 June 1995 the applicant submitted a "Request for the Protection of Legality" to the Public Prosecutor of Republika Srpska in Pale in accordance with Article 416 of the Law on Criminal Procedure. This request was rejected on 10 July 1995.

c. On 4 November 1996 the applicant submitted a "Request for the Extraordinary Mitigation of the Penalty" to the Supreme Court of Republika Srpska in accordance with Article 412 of the Law on Criminal Procedure. The applicant based his request on the lack of appropriate medical treatment in prison. It is unclear what response, if any, was received to this request.

9. The applicant also made two "special requests":

a. On 12 May 1997 the applicant submitted a "Request for the Adjournment of Imprisonment" to the Ministry of Justice of the Republika Srpska on the basis of his health problems. It appears unclear what response, if any, was received to this request.

b. On 29 July 1997 the applicant submitted a request to the President of the Supreme Court of Republika Srpska requesting the resolution of his earlier requests of 29 May 1995 and 4 November 1996 to the Supreme Court. It appears unclear what response, if any, was received to this request.

II. PROCEEDINGS BEFORE THE CHAMBER

10. The application was referred to the Chamber by the Office of the Human Rights Ombudsperson for Bosnia and Herzegovina on 19 September 1997 and registered on 16 October 1997. The applicant subsequently submitted additional information related to his case on 11 October 1997 and 27 January 1998.

11. On 13 May 1998 the Chamber sent a letter to the applicant requesting additional information, particularly concerning his physical condition and medical treatment in prison.

12. On 7 July 1998 the Chamber telephoned Ms. Jasna Softić, Lawyer with the Banja Luka Office of the Human Rights Ombudsperson for Bosnia and Herzegovina, to request assistance in determining whether the applicant received the Chamber's letter dated 13 May 1998 and whether he had sent a response. After speaking with the applicant, Ms. Softić informed the Chamber later the same day that the applicant stated that he had received the Chamber's letter on 25 May 1998 but that he did not wish to submit a response.

13. On 16 July 1998 a Panel of the Chamber considered the application and deliberated on the admissibility of the case.

III. COMPLAINTS

14. In his application the applicant does not specify which human rights have been violated. However, it appears that his complaints regards three issues:

- a. the impartiality and fairness of the Higher Court in reaching its 11 May 1995 decision;
- b. the lack of responses to the extraordinary remedies and special requests submitted by the applicant; and
- c. the lack of adequate medical treatment in prison and the respondent Party's failure to suspend the applicant's prison sentence on the basis of his poor health.

IV. OPINION OF THE CHAMBER

15. Before examining the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. The Chamber will consider each of the applicant's complaints in turn.

A. Higher Court Decision of 11 May 1995

16. First, the applicant alleges that the decision of the Higher Court in Doboj dated 11 May 1995, as well as the proceedings related to that decision, were partial and unfair.

17. The Chamber notes that it is not competent to consider alleged violations of human rights which occurred before 14 December 1995, the date on which the Agreement entered into force (See

Case No. CH/96/1, Matanović v. Republika Srpska, Decision on Admissibility of 13 September 1996).

18. In the present case, the Higher Court's decision of 11 May 1995 was issued before 14 December 1995. It is therefore not within the competence of the Chamber *ratione temporis*. The applicant's complaints, in so far as they concern the decision of the Higher Court dated 11 May 1995, are thus inadmissible as incompatible with the Agreement *ratione temporis*.

B. Extraordinary Remedies and Special Requests

19. Second, the applicant alleges that the respondent Party did not respond to the requests for extraordinary remedies and "special requests" filed with various officials and organs of the respondent Party.

20. The Chamber notes that it is competent to consider, in accordance with Article II (2) (a) of the Agreement:

"alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto..."

21. Article 2 (1) of Protocol No. 7 to the Convention ("Protocol No. 7") guarantees the right to appeal in criminal cases. It reads, in relevant part, as follows:

"Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law".

22. Article 2 (1) of Protocol No. 7 provides for the right to appeal, that is, to ordinary remedies. However, it does not guarantee the right to extraordinary remedies or to "special requests" such as those requested by the applicant. Accordingly, the Chamber cannot consider the applicant's complaints concerning extraordinary remedies as they are not within the Chamber's competence *ratione materiae*. These complaints therefore must also be declared inadmissible as incompatible with the Agreement *ratione materiae*.

C. Medical Treatment

23. Finally, the applicant alleges that he failed to receive proper medical treatment in prison and further that the respondent Party failed to suspend his prison term on the basis of his poor health.

24. In accordance with Article VIII (2) (c) of the Agreement, the Chamber cannot consider applications which it considers manifestly ill-founded. Article VIII (2) (c) provides as follows:

"The Chamber...shall dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

25. In the present case, the applicant did not provide any evidence in his application or in any documents appended to the application to support his allegations concerning his medical treatment. Furthermore, he did not respond to the Chamber's requests for additional information concerning these allegations. In the Chamber's view, a *prima facie* case does not exist against the respondent Party with regard to the applicant's medical treatment. The Chamber thus finds the applicant's allegations manifestly ill-founded and declares this part of the application inadmissible on that ground also.

26. In conclusion, the Chamber finds the application inadmissible because the applicant's complaints regarding the 11 May 1995 decision of the Higher Court are outside the Chamber's competence *ratione temporis*, the applicant's complaints regarding the lack of responses to his

requests for extraordinary remedies are outside the Chamber's competence *ratione materiae* and the applicant's complaints regarding his medical treatment in prison are manifestly ill-founded.

V. CONCLUSION

27. For the above reasons, the Chamber unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(signed) Leif BERG
Registrar of the Chamber

(signed) Manfred NOWAK
President of the Panel