



DECISION ON ADMISSIBILITY

Case no. CH/98/1021

Nevres AGIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 October 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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) of the Agreement and Rule 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant, born in 1978, is a citizen of Bosnia and Herzegovina. On 22 March 1996 he was arrested and put in detention by the authorities of Republika Srpska because of the suspected criminal acts of associating with two other persons for the purpose of performing hostile activities and of terrorism, punishable under articles of the Criminal Code of the Republika Srpska. He did not, at first, receive the procedural decision concerning his detention of 22 March 1996 which had been taken by the Ministry for Internal Affairs, Department by State Security of Srpsko Sarajevo, but he was later provided with it. The Municipal Court in Sokolac issued procedural decisions on his detention on 27 March 1996 and on 22 April 1996.

2. On 26 September 1996 the Public Prosecutor at the Municipal Court in Sokolac brought charges against the applicant for the above-mentioned criminal acts and requested that the court render a judgment sentencing him to imprisonment in an institution for minors. The Court transmitted the indictment to the applicant on 26 September 1996. The applicant had the right to raise objections against the indictment but did not do so. On 1 October 1996, the applicant was released by a procedural decision of the court because of lack of evidence. He did not receive a written decision for his release from prison.

3. The case resembles the case of Mr. Jasmin Šljivo who submitted his application to the Chamber on 28 February 1997 (see case no. CH/97/34, *Šljivo*, decision on admissibility and merits delivered on 10 September 1998, Decisions and Reports 1998). The Chamber found in that case violations of Article 5 paragraphs 1 and 3 and Article 6 paragraph 3(b) taken together with paragraph 1 of the European Convention on Human Rights, but did not award any compensation.

II. COMPLAINTS

4. The applicant alleges that his rights to personal freedom, to freedom of speech, the right not to be subjected to physical and mental maltreatment, the right not to be held in slavery, the right not to be subjected to forced labour, the right to security and the right to a fair hearing and a fair trial have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 13 October 1998 and registered on the same day. The applicant requested the Chamber, as a provisional measure, to order the respondent Party to compensate him for the maltreatment he had suffered.

6. The Chamber decided to refuse the request for a provisional measure on 13 November 1998. On 22 January 1999 the Chamber sent a letter to the applicant inquiring why he had not submitted an application within six months from his release from detention in 1996. Further, the Chamber asked why he had not initiated proceedings against his pre-trial detention or his alleged ill-treatment in custody.

7. As the applicant did not reply, the Chamber contacted him by telephone and inquired whether he wanted to pursue the case. He said he had not received the Registry's letter and submitted a written statement on 28 April 1999. He asserted that he could not have applied to the Chamber earlier as he had not known of its existence. He did not comment on the question why he had not instituted domestic proceedings.

8. On 28 May 1999 the Chamber transmitted the case to the respondent Party with a specific question relating to any measures taken to comply with the obligation to give effective notice of the terms of the Agreement as contained in Article XV of the Agreement. The respondent Party replied on 24 July 1999 and gave some details as to how notice had been given in the Republika Srpska of the terms of the Agreement.

9. The Chamber contacted the applicant on 27 September 1999 in order to ascertain whether in view of the observations of the respondent Party he upheld his statement of 28 April 1999. He maintained that he did not lodge an application earlier as he did not know that the Chamber existed. He further said that had he known earlier that the Chamber existed, he would not have submitted an application until his friend Jasmin Šljivo had left the Republica Srpska in order to protect him. Further, he stated that he knew about his possibility to appeal to domestic courts but was afraid to make use of it when he was in Republika Srpska.

IV. SUBMISSIONS ON THE ADMISSIBILITY

10. The respondent Party submits that the application should be rejected as being out of time and because of non-exhaustion of domestic remedies. It points to the fact stated that the applicant was prosecuted together with Mr. Šljivo who had applied to the Chamber much earlier than the present applicant. Therefore, the applicant had known of the existence of the Chamber and could have submitted his application within the six-month time-limit stipulated by Article VIII (2)(a) of the Agreement.

11. The respondent Party further states that the General Framework Agreement for Peace and its Annexes had been published twice by the Institute for International Law and International Business Cooperation in Banja Luka in the Republika Srpska in 1996 and 1997 in a total of 3,000 copies. It did not indicate how the 3,000 copies had been distributed or made available to the general public. The respondent Party further submits that the text of the European Convention of Human Rights was published in the Official Gazette of Bosnia and Herzegovina no. 6/99 of 14 May 1999.

V. OPINION OF THE CHAMBER

12. Before considering 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. According to Article VIII(2)(a), the Chamber must take into account whether the application has been filed with the Human Rights Commission (the Human Rights Ombudsperson or the Chamber) within six months from the date of the final decision taken in the applicant's case. If there is no such decision, the six-month period starts to run on the day when the alleged violations of the applicant's rights ended.

13. The Chamber, recalling that the alleged violations in the case all relates to the applicant's detention, notes that the applicant filed the application with the Chamber more than two years after he had been released from detention, that is, after the expiry of the above-mentioned six-month period. It will therefore consider whether there are special circumstances which could justify the failure to apply in time.

14. The Chamber asked the applicant to explain why he had not lodged his application within the time-limit. The applicant replied that he could not apply earlier as he had not known about the existence of the Chamber. The Chamber notes, however, that the applicant was arrested together with Mr. Šljivo who applied to the Chamber on 28 February 1997 and that the applicant lodged his application shortly after the Chamber's favourable decision in Mr. Šljivo's case (see paragraph 3 above). Having regard to this, the Chamber considers that the applicant has not been able to show justifiable reasons for his failure to comply with the six-month time-limit set out in Article VIII(2)(a) of the Agreement.

15. Accordingly, and leaving aside the issue whether all available domestic remedies have been exhausted, the Chamber decides not to accept the application pursuant to Article VIII(2)(a) of the Agreement.

VI. CONCLUSION

16. For these reasons, the Chamber, by 13 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber