



PARTIAL DECISION ON ADMISSIBILITY

Case no. CH/98/1335

Zuhdija RIZVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Peter KEMPEES, 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) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant, who is of Bosniak origin, contests proceedings which led to his conviction for war crimes against prisoners of war. Specifically, the applicant alleges that he was badly beaten in order to force a confession and that he did not receive a fair trial.
2. The case raises issues under Articles 3, 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention"). This case along with other similar cases before the Chamber raises a particular issue of the fairness of the proceedings because of the fact that only the supporters of Mr. Fikret Abdić were convicted for serious violations of international humanitarian law committed during war hostilities between the armed forces of the Autonomous Province of Western Bosnia ("the Autonomy") and the Army of the Republic of Bosnia and Herzegovina.

II. FACTS

3. On 27 September 1993 Mr. Fikret Abdić proclaimed the Autonomy on the territory of the Velika Kladuša and Cazin municipalities. It appears that the applicant already joined the armed forces of the Autonomy by 27 September 1993.
4. On 24 August 1995 the applicant was arrested in Velika Kladuša and detained in a holding cell in the police station. On 25 August 1995 the applicant was transferred to Bihać and detained in a holding cell in the police station again. The applicant alleges that he was badly beaten while he was detained in the police station in order to force a confession.
5. On 28 August 1995 the applicant was interrogated by the investigative judge in the presence of his defense counsel. On the same date the Higher Court in Bihać issued a procedural decision on the applicant's detention.
6. On 22 September 1995 the Higher Court in Bihać issued a decision prolonging the applicant's detention.
7. On 23 November 1995 the Supreme Court of Bosnia and Herzegovina sitting in Bihać issued another decision prolonging the applicant's detention.
8. On 21 February 1996 the Higher Public Prosecutor Office in Bihać issued an indictment against the applicant for war crimes against prisoners of war.
9. On 3 December 1996 the Higher Court in Bihać submitted the case to the International Criminal Tribunal for the former Yugoslavia ("the International Tribunal") for review under Article 5 of the Agreed Measures of 18 February 1996 ("the Rules of the Road"). On 10 March 1997 the Prosecutor of the International Tribunal informed the Higher Court in Bihać that the evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law.
10. On 27 May 1997 the Cantonal Court in Bihać issued a judgment convicting the applicant of war crimes against prisoners of war and sentenced him to 12 years' imprisonment. In particular, the applicant was found guilty of having fired one bullet at Mr. I.M. after he had already been shot several times by other men. It appears from the judgment that none of the witnesses saw the applicant shooting at Mr. I.M, but they heard about it from the applicant or from other persons.
11. On 18 June 1997 the applicant appealed to the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court"). The applicant claimed that he had been ordered to shoot by a superior officer. The applicant further claimed that Mr. I.M. was already dead when he approached him and that he had shot into the ground next to Mr. I.M. Finally, the applicant claimed that he had told the other soldiers that he had shot at Mr. I.M. because he was afraid of his superior officer.

12. On 13 January 1998 the Supreme Court upheld the judgment of 27 May 1997.
13. On 13 April 1998 the applicant was transferred to the Correctional Institution in Zenica.
14. On 19 October 1998 the Ministry of Justice of the Federation of Bosnia and Herzegovina refused the applicant's request to be transferred back to the District Prison in Bihać.

III. PROCEEDINGS BEFORE THE CHAMBER

15. The application was introduced on 8 December 1998.
16. On 27 September 1999 the case was transmitted to the respondent Party for its observations under Articles 3, 5 and 6 of the European Convention. Further, the respondent Party was asked to inform the Chamber specifically about its compliance with Article 5 of the Agreed Measures of 18 February 1996 ("the Rules of the Road").
17. On 27 November 1999 the respondent Party submitted its observations on admissibility and merits.
18. The respondent Party was of the opinion that the application was inadmissible because it was filed nearly 11 months after 13 January 1998 when the final decision in this case was taken. Furthermore, the respondent Party was of the opinion that Articles 3, 5 and 6 of the European Convention had not been violated. However, the respondent Party did not inform the Chamber about its compliance with the Rules of the Road.
19. On 7 December 1999 the applicant submitted his response, claiming that it was very difficult for him, as a detained person, to be aware of the possibility of applying to the Chamber since he had not had any contacts with his lawyer after he had been convicted. The applicant did not specify his compensation claim.
20. On 15 February 2001 the Chamber requested certain additional information from the applicant and the respondent Party. On 2 March 2001 and 27 April 2001 the respondent Party submitted additional documents. On 20 February 2001 the applicant submitted a letter repeating his allegation that he was badly beaten while detained in the police station.

IV. COMPLAINTS

21. The applicant alleges that he was badly beaten while detained in the police station (Article 3 of the European Convention). Further, the applicant alleges that he did not receive a fair trial (Article 6 of the European Convention). Finally, the case also raises an issue of compliance by the respondent Party with the Rules of the Road (Article 5 of the European Convention).

V. OPINION OF THE CHAMBER

22. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2)(a) and (c) of the Agreement which, so far as relevant, provides as follows:

"The Chamber will 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.

...

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

A. Whether the application should be rejected as out of time

23. The respondent Party argues that the application should be rejected because it was filed nearly 11 months after 13 January 1998 when the final decision in this case was taken.

24. The Chamber recalls that the applicant was in detention when the Agreement came into force on 14 December 1995 and that the applicant was still in detention when he filed the application on 8 December 1998. Further, it appears that the applicant did not have any contact with his lawyer after the final domestic decision in this case was taken.

25. The Chamber therefore considers that it is likely that the applicant had limited access to information and was not aware of the Agreement before he filed the application.

26. For these reasons the Chamber considers that, in the specific circumstances of the present case, the application should not be rejected for failure to comply with the six-months rule.

B. The applicant's complaints about maltreatment in the District Prison in Bihać

27. The applicant complains that he was badly beaten while detained in the police station in August 1995.

28. The Chamber recalls that, according to the generally accepted principles of international law and to its own case-law, it is outside of its competence to decide whether events occurring before the Agreement came into force on 14 December 1995 involve violations of human rights (see case no. CH/96/1, *Matanović*, decision on the merits of 11 July 1997, paragraph 32, Decisions on Admissibility and Merits March 1996-December 1997).

29. The Chamber therefore concludes that the applicant's complaints that he was badly beaten while detained in the police station do not fall within its competence *ratione temporis*.

C. The applicant's complaints about the fairness of the proceedings

30. The Chamber finds that these complaints raise issues of fact and of law that require an examination of the merits. No reason for declaring them inadmissible having been established, the Chamber will declare them admissible without prejudging the merits.

D. The compliance by the respondent Party with the Rules of the Road

31. Although the applicant did not raise it, the Chamber notes that the application raises issues under Article 5 of the European Convention regarding the compliance by the respondent Party with the Rules of the Road. No reason for declaring them inadmissible having been established, the Chamber will declare them admissible without prejudging the merits.

VI. CONCLUSION

32. For these reasons, the Chamber,

unanimously, declares the applicant's complaints that he was badly beaten while detained in the police station (Article 3 of the European Convention) inadmissible,

and;

unanimously, declares the applicant's complaints that he did not receive a fair trial (Article 6 of the European Convention) and the issue of compliance by the respondent Party with Article 5 of the Agreed Measures of 18 February 1996 ("the Rules of the Road") (Article 5 of the European Convention) admissible.

(signed)
Olga Kapić
Deputy Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel