DECISION ON THE ADMISSIBILITY

CASE No. CH/98/522

Obrad ČABAK

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 15 October 1998 with the following members present:

Mr. Manfred NOWAK, President
Mr. Giovanni GRASSO, Vice-President
Mr. Vlatko MARKOTIĆ
Mr. Jacob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII (1) of the Human Rights Agreement ("Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision on the admissibility of the application under Article VIII(2)(c) of the Agreement and Rule 52 of its Rules of Procedure:

I. FACTS

1. The facts of the case, as they appear from the application and other documents in the case-file, may be summarised as set out below. The facts of the case are partially in dispute between the parties.

2. According to the applicant's father, the applicant was taken from his apartment by members of armed forces operating in the Sarajevo area. These are described in the application as the "Army of Canton Sarajevo" ("Vojska Kantona Sarajevo"). The applicant's parents saw the applicant later that day on a television broadcast. Together with a number of other persons of Serb origin, he was shown with Mr. Zoran Čegar, a policeman with the then Internal Affairs Service in Sarajevo (now the State Ministry of Internal Affairs). Mr. Čegar stated that the persons shown were persons of Serb origin from the other side of the "front-line". Mr. Čegar reportedly said that he was entitled to kill them, as they had threatened him for not joining the Bosnian Serb armed forces.

3. The applicant's father states that he has not seen his son since 18 June 1992. He states further that he immediately reported the broadcast referred to above to the Red Cross Sarajevo, the Department for Missing Persons and the State Commission for the Exchange of Prisoners of War and Missing Persons.

4. In its observations on the admissibility and merits of the application, the respondent Party contested a number of the factual allegations made in the application to the Chamber. It stated that the applicant could not have been abducted by members of the Army of Canton Sarajevo, as there has never been any such army. In addition, the Canton of Sarajevo did not exist at the time of the events complained of. The respondent Party also stated that Mr. Čegar never worked for the Internal Affairs Service.

II. COMPLAINT

5. The applicant's father complains of the abduction of his son by members of the armed forces of the then Republic of Bosnia and Herzegovina. He requests that Mr. Čegar be taken into custody and forced to disclose the fate of the applicant and the other persons who were arrested on 18 June 1992.

III. PROCEEDINGS BEFORE THE CHAMBER

6. Mr. Obrad Čabak, the applicant's father, submitted an application to the Chamber on 8 April 1998. The Chamber registered the application on 12 May 1998. Although the application was brought before the Chamber by the applicant's father, the Chamber will refer to Mr. Branislav Čabak as "the applicant" in accordance with Article VIII(1) of the Agreement.

7. Although the respondent Party was expressed in the application form to be Mr. Zoran Čegar, the Chamber will consider the Federation of Bosnia and Herzegovina ("the Federation") to be the respondent Party. This is because Mr. Čegar was, at the time of the events complained of, a member of the armed forces of the then Republic of Bosnia and Herzegovina. Article III(3)(a) of the Constitution of Bosnia and Herzegovina provides: "all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities". Article III(1) of the Constitution sets out the responsibilities of Bosnia and Herzegovina and does not include armed forces. Accordingly, armed forces are the responsibility of the Entities.

8. The Chamber first considered the case on 16 July 1998 and decided to request certain information from the applicant's father. It decided to address certain requests for information to the Federation and to invite it to act as respondent Party. It also decided to write to the Human Rights Office of the United Nations Mission to Bosnia and Herzegovina ("UNMIBH") and the International Committee of the Red Cross ("ICRC"), requesting any information regarding the applicant. A time-limit expiring on 7 September 1998 was set for the receipt of such information.

9. No replies have been received to the Chamber's letters to the applicant's father and to UNMIBH. On 7 September 1998, the Chamber received a letter from the liaison officer of the

Federation, requesting an extension of the time-limit for the submission of a response to the Chamber's request. The Chamber granted an extension of this time-limit until 2 October 1998. The response of the Federation, dated 1 October 1998, was received by the Registry on 5 October 1998.

10. By a letter dated 27 August 1998, the ICRC informed the Chamber that the applicant was never registered or visited by the ICRC during the conflict or after its end. The applicant's father had submitted a tracing request to the ICRC on 2 April 1996 but no information regarding the fate of the applicant had been obtained.

IV. SUBMISSION BY THE RESPONDENT PARTY

11. In its observations on the admissibility and merits of the application, the respondent Party considers that the application should be declared inadmissible as the remedies available to the applicant have not been exhausted. The respondent Party refers to the possibility of seeking to trace the applicant through the mechanism provided for in "Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina." Moreover, as the relevant events occurred prior to the entry into force of the Agreement, they are outside the Chamber's competence *ratione temporis*.

V. OPINION OF THE CHAMBER

12. Following, for example, its decision in the case of Ratko Grgić v. Republika Srpska (Case No. CH/96/15, Decision on the Merits of 3 September 1997 para. 15), the Chamber finds that the respondent Party cannot be held responsible under the Agreement for acts or omissions which occurred before it came into force. The Chamber could therefore find that the respondent Party had breached its obligations under the Agreement only if there were evidence before it demonstrating that the applicant had been unlawfully detained, or had suffered some other violation of his rights under the Agreement, after 14 December 1995.

13. The Chamber has held in the case of Matanović v. Republika Srpska that the obligation incumbent on the parties to the Annex 6 Agreement to ensure human rights "entails positive obligations to protect these rights" (Case No. CH/96/1, Decision on the Merits of 6 August 1997, para. 56). In the Chamber's opinion, the Parties' responsibility to ensure and protect human rights means that the Parties must provide not only the appropriate structures to guarantee the exercise of these rights, but also appropriate means for preventing and punishing violations. Regarding the forced disappearance of persons, the Inter-American Court of Human Rights has held that this responsibility encompasses the obligation "to carry out a serious investigation of violations within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation ..." (see Velasquez Rodriguez v. Honduras, Judgment of 29 July 1988, para. 174).

14. As the Chamber has held in the Matanović and Grgić decisions, evidence of detention prior to the Agreement's entry into force may well be relevant to the question of whether the person concerned has remained in custody since that date. The weight attached to such evidence will vary according to the circumstances, including the length of time elapsed since the person concerned was last shown to be in custody, and any explanation or lack of explanation regarding the person's fate. However, before the Chamber can conclude that the Agreement has been violated there must normally be some evidence (including circumstantial or presumptive evidence) indicating that the applicant's detention continued after the Agreement entered into force.

15. In the present case, the applicant's father has presented evidence relating only to his son's arrest on 18 June 1992, three and a half years prior to the Agreement's entry into force. There is no evidence of the applicant's detention after that date. There is therefore insufficient evidence that the applicant has been kept in detention by the respondent Party after 14 December 1995.

16. Accordingly, the case does not fall within the Chamber's competence *ratione temporis*. However, if new facts come to light which would support the claim of a violation of the applicant's rights *after* 14 December 1995, a new application could be filed by the applicant or on his behalf.

VI. CONCLUSION

17. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Manfred NOWAK
President of the Second Panel