



DECISION ON ADMISSIBILITY

Case no. CH/98/901

S.T.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 September 1999 with the following members present:

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

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 Articles VIII(2)(a) and (c) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The application relates to the detention and conviction of the applicant for public order offences by police officers of the Republika Srpska in Gradiška.

2. In July 1998 the applicant returned temporarily to Gradiška, his place of origin which he had left during the war. On 23 July 1998 the applicant was arrested by the police in Gradiška, while in the back garden of the family house. A neighbour had called the police due to the behaviour of the applicant. While in detention, the applicant was examined by a court-appointed psychiatrist.

3. On the day of his arrest, the applicant appeared before the Petty Offences Court in Gradiška. He was charged with offences contrary to public order, in contravention of the Law on Public Peace and Order (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 42/90). The Court found that he had made certain statements which had endangered public peace and order. He was sentenced to 60 days imprisonment in accordance with the Law on Offences (Official Gazette of the Republika Srpska no. 12/94). He was also ordered to pay the costs of the proceedings.

4. On 24 July 1998 the applicant appealed to the Regional Court in Banja Luka against the sentence imposed on him by the Petty Offences Court. On 28 July 1998 his appeal was rejected on the ground that the applicant was responsible for the actions of which he had been convicted. This finding was based on the evidence of the court-appointed psychiatrist who had examined the applicant. The applicant complied with the sentence imposed upon him by the Petty Offences Court. Upon his release from prison in September 1998 the applicant returned to Denmark.

II. COMPLAINTS

5. The applicant alleged that his rights to property, to freedom of expression and to freedom from inhuman and degrading treatment and punishment had been violated. He also complained of his treatment while detained by the police and alleged that the police officer who arrested him had lied regarding the circumstances of his arrest. He also complained in a general manner of the fairness of the proceedings against him.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 18 August 1998 and registered on 28 August 1998. The applicant is represented by his sister. The applicant's representative requested that her identity and that of her brother be kept confidential during the proceedings before the Chamber.

7. The applicant requested that the Chamber order the respondent Party as a provisional measure that he be released from prison. On 26 August 1998 the request was rejected by the President of the Chamber.

8. On 29 October 1998 the Chamber transmitted the application to the respondent Party for its observations on its admissibility and merits. Any such observations were due to be received by 29 December 1998.

9. No observations have been received from the respondent Party.

10. On 18 January 1999 the applicant was invited to submit any further observations and any claim for compensation or further relief which he wished to make. The applicant's further observations were received on 19 April 1999. The applicant requested compensation in the sum of KM 30,000 for the trauma he allegedly suffered as a result of his detention and conviction. On 22 April 1999 these observations were transmitted to the respondent Party for its observations, which were not received.

11. The First Panel deliberated upon the admissibility of the application on 8 July 1999.

IV. SUBMISSIONS OF THE PARTIES

12. The respondent Party has not submitted any observations on the application.

13. The applicant maintains his complaint and requests compensation as specified at paragraph 10 above.

IV. OPINION OF THE CHAMBER

14. 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 consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted, and according to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded. The Chamber interprets the applicant's complaints as essentially being directed against his initial detention and also against his subsequent conviction by the Petty Offences Court in Gradiška.

A. Exhaustion of domestic remedies

15. The Chamber notes that the applicant appealed against his conviction to the Regional Court. However, he only appealed against the severity of the sentence, rather than against the conviction itself. It would have been open to the applicant to appeal against the conviction itself. The applicant did not allege that such an appeal would have been ineffective. Accordingly, the applicant cannot be considered to have exhausted the domestic remedies available to him in relation to his conviction by the Petty Offences Court.

B. The applicant's complaint concerning the fairness of the proceedings

16. The applicant also complained of the fairness of the proceedings before the courts of the Republika Srpska. The European Court of Human Rights has held that in assessing the fairness of criminal proceedings, it must examine the proceedings as a whole, including any appellate proceedings (*Edwards v. the United Kingdom* judgment of 16 December 1992 Series A no. 247-B, paragraph 34).

17. The Chamber notes that the applicant was not legally represented before the Petty Offences Court and that he appeared before that Court on the day of his arrest, when he may have been in a distressed state. However the Chamber notes that he was legally represented at his appeal proceedings before the Regional Court, when he could have challenged his conviction.

18. Having examined the decisions of the Petty Offences Court and the Regional Court, the Chamber notes that both decisions appear to have been taken after a full examination of the relevant facts and after hearing relevant witnesses. In addition, the applicant did not, in his appeal, challenge the findings of fact made by the Petty Offences Court. Therefore the Chamber does not find it established that the proceedings as a whole were conducted otherwise than in accordance with the requirements of Article 6 of the Convention.

19. Therefore the Chamber refuses to accept the application, partly for non-exhaustion of domestic remedies in accordance with Article VIII(2)(a) of the Agreement, and partly as manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

20. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel