DECISION ON ADMISSIBILITY

Cases nos. CH/98/905 and CH/98/906

Nedeljko JANDRIĆ and Đorđe VULETA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 July 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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicants are citizens of Bosnia and Herzegovina of Serb descent. On 1 June 1996, while travelling together with certain other persons (see *Čegar v. The Republika Srpska*, Decision of 6 April 1998, Decisions and Reports 1998), they were arrested by the Bosnian-Croat police, near Glamoč, the Federation of Bosnia and Herzegovina. They were detained in Glamoč until 3 June 1996, when they were transferred to a place of detention in Livno. On 11 June 1996 they were moved to the military detention centre operated by the Croat Defence Council ("the HVO") in Rodoč, Mostar. They were registered as detainees by the International Committee of the Red Cross ("the ICRC") on 12 June 1996.

2. The applicants were forced to carry out manual labour while detained in Rodoč and were repeatedly subject to abuse based on their national origin.

3. The applicants were released from detention on 12 July 1996.

4. The applicants have never been provided with any information about the reasons for their arrest and subsequent detention other than that they were being held for the purpose of being exchanged for prisoners held by the authorities of the Republika Srpska.

II. COMPLAINTS

5. The applicants allege violation of the following rights: freedom from inhuman or degrading treatment or punishment, freedom from forced or compulsory labour, right to lawful detention (only on suspicion of commission of criminal offence), right to be informed of reasons for arrest and of any charge, right to be brought before a judge or other authorised official promptly, right to *habeas corpus*, right to compensation for violations of the previously mentioned rights, right to respect for private and family life and correspondence, right to an effective remedy in national law (this claim is only made by Mr. Jandrić), enjoyment of rights guaranteed without discrimination on grounds of, *inter alia*, religion and national origin, and right to peaceful enjoyment of possessions.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The applications were introduced on 28 August 1998 and registered on the same day. Both applicants are represented by Ms. Vesna Rujević, a lawyer practising in Banja Luka.

7. The Chamber considered the applications on 13 November 1998 and decided to request the applicants to explain why the applications had not been lodged within the six-month time-limit, as set out by Article VIII(2)(a) of the Agreement. The Registry wrote to the applicants' representative on 8 December 1998, whose reply was due by 22 December 1998. The Registry received no reply.

8. On 16 March 1999 the Registry sent a reminder to the applicants' representative. On 8 April 1999 the applicants' representative requested an extension of the time-limit for reply on the ground that she could not contact her clients.

9. On 10 June 1999 the Chamber decided to extend the time limit for reply until 30 June 1999. No reply was received. On 9 July 1999 the Chamber decided to join the applications.

IV. OPINION OF THE CHAMBER

10. 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 an 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 an applicant's case.

11. The Chamber notes that the applicants filed the applications to the Chamber more than two years after their release, i.e. more than eighteen months after the time limit referred to above expired. It must therefore be considered whether there are special circumstances in the applicants' cases which could justify the failure to lodge the applications within six months from the date of the final domestic decision.

12. The Chamber asked the applicants' representative to forward the specific reasons for the delay in lodging their applications, but no response was received despite the fact that the time limit for the receipt of such observations was extended. Therefore, the Chamber cannot find that there are justifiable reasons why the applicants failed to lodge their applications within the six-month time-limit set out in Article VIII(2)(a).

13. Accordingly, the Chamber decides not to accept the applications pursuant to Article VIII(2)(a) of the Agreement.

V. CONCLUSION

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

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Dietrich Rauschning.

DISSENTING OPINION OF MR. DIETRICH RAUSCHNING

1. The Chamber has declared the application inadmissible because the applicants did not file their application with the Chamber within six months from the end of the alleged violations of their human rights, i. e. their release from detention, as required by Article VIII(1) of the Agreement. In my view, this provision cannot be applied to the disadvantage of citizens because it was not officially publicized in Bosnia and Herzegovina.

2. According to its Article XVI, Annex 6 of the General Framework Agreement entered into force upon signature, i. e. on 14 December 1995. However, the basic principles of the rule of law which set out prerequisites for the application of law are still applicable. From as long ago as the Roman Republic, a legal provision was not applicable to the detriment of citizens as long as it had not been made officially known to them.

3. The principle that laws had to be publicised in order to take effect became effective in all European law systems. In a later stage of development, this principle was included in the 18th century codifications of civil law. For example, in the *"Codex Maximilianeus Bavaricus"* from 1756 (I Th, 1st Cap, § 6) or in the Prussian *"Allgemeinen Landrecht"* (ALR) which reads in its introduction (*Einleitung*, § 10): *"Das Gesetz erhält seine rechtliche Verbindlichkeit erst von der Zeit an, da es gehörig bekannt gemacht worden"* (The legally binding force of a law does not begin until it is properly publicised).

4. Two ways of publicising may be distinguished: The material publicising asks for official acts which bring the law *de facto* to the knowledge of the citizens. Since the French Revolution, however, the formal system of publicising has been predominantly adopted throughout Europe as it is the most practical: Following the introduction of the *"Bulletin des lois de la République"* at the end of the 18th century, all European States adopted the method that the laws have to be published in an official organ, such as the Official Gazette here in Bosnia and Herzegovina. Thereafter, it is assumed that the law is known to all citizens.

5. From the principles set out above it follows that a law cannot be applied before it is properly and officially publicised in that way (see Josef Lukas, *Über die Gesetzes-Publikation in Österreich und dem Deutschen Reiche*, Graz 1903). It goes without saying that this general principle – inherent in the rule of law – was applicable in Yugoslavia; it was expressed in Article 208, 209 of the Constitution of the Socialist Federal Republic of Yugoslavia.

6. Reverting to the applicability of the Article VIII(1) of the Agreement, it is true that Article XVI of the Agreement provides that it enters into force upon signature. However, this article cannot be interpreted to mean that it sets aside the principle that a law can only be applied to the detriment of the citizenry if it is made known to them in a formal or material way. This principle is particularly important concerning the application of time-limits that disadvantage citizens because such time-limits are never set through general legal practice, but only through enactment of a statute.

7. Article XVI is to be read in conjunction with Article XV of the Agreement, stipulating that the Parties shall give notice of the terms of the Agreement throughout Bosnia and Herzegovina. This provision could be interpreted to allow a diversion from the generally accepted formal method of promulgation by publication in the respective Official Gazette because it does not state how such notice should be given.

8. However, the Parties completely failed to fulfil their obligation to give effective notice. The Parties never published or officially proclaimed the General Framework Agreement *in toto* or, most relevantly, Annex 6 thereto, neither in the Official Gazette nor in any other official publication. The Agent of the Federation of Bosnia and Herzegovina as respondent Party mentions in her arguments in other cases that the Dayton Agreement was publicised, first citing a daily newspaper – *Dnevni Avaz* –

of 28 November 1995. This, however, is not an official publication; further it only published the draft of the Dayton Agreement prior to signature. The other publication the Agent refers to is the publication of a book with the text of the Dayton Agreement by the firm "*Službeni List* of the Republic of Bosnia and Herzegovina". However, like the newspaper, this book is not an official publication. In conclusion, it must be stated that to this day that there exists no official translation of the Agreement into the languages of Bosnia and Herzegovina and that there has been no official publication neither of the General Framework Agreement for Peace in Bosnia and Herzegovina nor Annex 6 setting out the Agreement thereto. Therefore, the six-month rule cannot be said to apply.

9. Taking into account that Article XVI provides for the immediate entry into force upon signature, the reasons stated above do not have the consequence that the Agreement cannot be applied at all. The rule that laws can only be applied after publicising shall protect the citizens; the authorities can be ordered in other ways to apply the laws. The obligations of the Parties to respect and secure for all persons within their jurisdiction the highest level of human rights are without doubt applicable, as well as the provisions setting up the Human Rights Commission and organising the procedure to assist the Parties in honouring their obligation (Article II.1). But the responding Party cannot argue to the disadvantage of the applicants that the time-limit has expired before the applications were submitted, if the respondent Party failed to fulfil its obligation to publicise the Agreement.

(signed)
Dietrich Rauschning