



DECISION ON ADMISSIBILITY

Case no. CH/99/1433

Hurem SMAJIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 November 1999 with the following members present:

Mr. Rona AYBAY, Acting 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 Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant was arrested and detained pending trial on suspicion of murder on 22 March 1994. On 22 June 1995 the applicant was convicted of murder and sentenced to three years imprisonment by the Sarajevo High Court (now the Cantonal Court) (judgment no. KJ. 62/94).
2. Within the eight-day time-limit prescribed by law, the High Public Prosecutor in Sarajevo appealed this decision to the Supreme Court of the Federation asking that the applicant be sentenced to a longer term. Pursuant to Article 387 of the Law on Criminal Procedure of the Federation of Bosnia and Herzegovina, the applicant was released pending the appeal decision.
3. On 10 March 1997 the Supreme Court decided to increase the defendant's sentence from three to seven years. The applicant was taken into custody on 18 March 1997 when the period to file an appeal closed. He remains imprisoned.

II. COMPLAINTS

4. The applicant alleges violations of his right not be subjected to inhuman or degrading punishment, his right to a fair hearing, and specifically those rights associated with criminal proceedings including the right to defend himself and the right to examine witnesses who would testify on his behalf.

III. PROCEEDINGS BEFORE THE CHAMBER

5. On 24 December 1998 the Chamber received a letter from the applicant entitled "Complaint – Appeal," wherein he asked the Chamber for assistance in investigating both his trial proceedings, as he felt they had been conducted in a fraudulent manner, and the crime for which he was convicted in general.
6. On 12 January 1999 the Chamber received the application from the applicant. The application was registered on 13 January 1999.
7. On 19 July 1999 the Chamber requested the applicant to provide further information regarding his application. Specifically, the Chamber asked why the applicant had not submitted his application to the Chamber within six months from the final decision in his case, as required by Article VIII (2)(a) of the Agreement.
8. The Chamber received the applicant's reply on 3 August 1999. In his reply the applicant stated that he did not submit his application within the six-month time frame because he did not know that submitting his case to the Human Rights Chamber was an option available to him.
9. On 7 October and 4 November 1999 the Chamber considered the complaint. The Chamber adopted its decision on the latter date.

IV. OPINION OF THE CHAMBER

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

The Chamber shall decide which applications to accept In so doing the Chamber shall take into account the following criteria:

- (a) Whether ... the application has been filed with the Commission within six months from such date on which the final decision was taken.

11. To apply the 'six-month rule,' as stated above, the date of the "final decision" must first be determined. The facts present no controversy as to this point; the final decision was the decision of the Supreme Court of the Federation of 10 March 1997.

12. Accordingly the date of the filing of the application with the Chamber must be determined. The Chamber recalls Rule 46(5) of its Rule of Procedure which states that the date of introduction of an application is in general considered to be the date of the applicant's first communication setting out, even summarily, the object of the application. This reflects the jurisprudence of the European Commission of Human Rights (see application no. 8299/78, *X v. Ireland*, decision of 10 October 1980, Decisions and Reports 22, p. 51, paragraph 72). Therefore, the date to consider for purposes of Article VIII(2)(a) is the applicant's first letter to the Chamber dated 24 December 1998. Clearly, this date is beyond six months from the date of the final decision.

13. Article 35 of Convention provides that the European Court of Human Rights may only deal with an application if it submitted to the Court within a six-month period from the date of the final decision. This gives the Court little discretion in the application of this rule and therefore the Court's enforcement of it has been strict.

14. However, the jurisprudence of the Commission has allowed for "special circumstances" to interrupt the running of the six-month period (see application no. 10416/83, *K v. Ireland*, decision of 17 May 1984, Decisions and Reports 38, p. 160). The Commission has maintained a narrow view of what may qualify as "special circumstances." One such circumstance described by the Commission is if an individual was incarcerated and prohibited from writing to the Commission because of prison restrictions (see application no. 214/56, *De Becker v. Belgium*, 2 YB 214 at 230-234).

15. While the applicant in this case was incarcerated shortly after the decision in his appeal, he did not argue, nor is there any indication, that he was prohibited from writing the Chamber. In fact, the applicant's first communication with the Chamber was from prison. Therefore, the Chamber finds that special circumstances do not exist in this case.

16. The analysis is not complete at this point, however, as the language of Article VIII(2) of the Agreement affords the Chamber greater discretion regarding findings of admissibility. The Chamber need only to "take into account" the criteria listed in Article VIII(2). Therefore, the Chamber considers it appropriate to examine each case on an individual basis when making determinations on admissibility.

17. In addition, a further consideration regarding admissibility is the Parties' obligation under Article XV of the Agreement to give effective notice throughout Bosnia and Herzegovina of the terms of the Agreement. Apparently, the Parties have failed to comply with this obligation because there has been no official notice of the Agreement given in Bosnia and Herzegovina. Accordingly, the Chamber may more easily excuse a failure to comply with the six-month rule if the applicant is able to provide an adequate explanation for this failure.

18. The Chamber recalls that when asked why he did not file his application with the Chamber within six months of the final decision, the applicant replied via letter that he was "poorly informed" about the law. The Chamber further recalls that on the Chamber's application form, when asked if there were any other remedy or appeal that he could have used, the applicant replied that he was not informed of them in time to use them.

19. The Chamber notes that the applicant was not incarcerated from the end of June 1995 to 18 March 1997. During this period the Agreement came into force. Therefore there were no significant hindrances to the applicant's ability to become better informed regarding the Agreement. Accordingly the Chamber finds that the applicant has not provided an adequate explanation for his failure to comply with the six-month time-limit.

20. Accordingly the Chamber decides that the application must be rejected for a failure to comply with the time limit set out in Article VIII(2)(a) of the Agreement.

V. CONCLUSION

21. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Rona AYBAY
Acting President of the First Panel