



DECISION ON ADMISSIBILITY

Case no. CH/99/1505

Almir ŠABANČEVIĆ

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, that an investigative judge did not undertake any steps to investigate his complaint that he had been badly beaten and, finally, that he did not receive a fair trial.

2. The case raises issues under Articles 3, 5, 6 and 13 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 joined the armed forces of the Autonomy on or around 20 March 1994.

4. On 31 March 1996 the applicant was arrested in Cazin. On the same date the applicant was transferred to Bihać and detained in a holding cell in the police station. The applicant alleges that he was badly beaten while he was detained in the police station in order to force a confession.

5. On 6 April 1996, six days after he had been arrested, the applicant was brought before an investigative judge for the first time. He was examined in the presence of his *ex officio* defense counsel appointed by the court. The applicant complained to the investigative judge that he had been badly beaten in the police station in order to force a confession. The investigative judge however did not undertake any steps to investigate the applicant's complaint. On the same date the Higher Court in Bihać issued a procedural decision on the applicant's detention.

6. On 26 April 1996 the Higher Court in Bihać issued a decision prolonging the applicant's detention.

7. On 27 June 1996 the Supreme Court of Bosnia and Herzegovina issued another decision prolonging the applicant's detention.

8. On 1 October 1996 the Higher Public Prosecutor Office in Bihać issued an indictment against the applicant for war crimes against prisoners of war.

9. In 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 5 May 1997 the Cantonal Court in Bihać issued a judgment convicting the applicant of war crimes against prisoners of war and sentenced him to 14 years' imprisonment. In particular, the applicant was found guilty of killing Mr. N.D. and beating up other persons who were in captivity of the armed forces of the Autonomy. Two witnesses testified that they had seen the applicant shooting at Mr. N.D.

11. On 10 June 1997 the applicant appealed to the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court"). The applicant claimed that Mr. DŽ.Đ. had killed Mr. N.D. The

applicant further claimed that one of two witnesses who had testified against him actually had not been present at location when Mr. N.D. had been killed.

12. On 10 March 1998 the Supreme Court reduced the sentence to 12 years and upheld the rest of the judgment of 5 May 1997.

13. On 13 April 1998 the applicant was transferred to the Correctional Institution in Zenica.

III. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 26/86, 74/87, 57/89 and 3/90)

14. Article 190(2) reads as follows:

“The duration of custody must be reduced to the shortest necessary time. It is the duty of all bodies and agencies participating in criminal proceedings and of agencies extending them legal aid to proceed with particular urgency if the accused is in custody.”

15. Article 195 provides that authorised officials of law enforcement agencies may deprive a person of liberty if any of the reasons envisaged in Article 191 of this law exists, but they must bring that person without delay before the competent investigative judge. If it was not possible for the official to bring the person deprived of liberty before the investigative judge within 24 hours due to unavoidable circumstances, the official is obliged to explain the delay.

16. Article 196 provides that custody may be exceptionally ordered by the law enforcement agency. Custody ordered by the law enforcement agency may last 3 days at the longest, counting from the day of deprivation of liberty.

17. Article 218(8) reads as follows:

“The statement or confession may not be extorted from the accused by the use of force, threat or other similar means.”

IV. PROCEEDINGS BEFORE THE CHAMBER

18. The application was introduced on 28 January 1999.

19. 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 the Rules of the Road.

20. On 27 November 1999 the respondent Party submitted its observations on admissibility and merits.

21. The respondent Party was of the opinion that the application was inadmissible because it was filed nearly 11 months after 10 March 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.

22. On 29 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. The applicant also requested to be compensated but did not specify his compensation claim.

23. On 10 February 2000 the respondent Party submitted its observations on compensation claim suggesting the Chamber to reject the applicant's compensation claim as not specified.

24. On 15 February 2001 the Chamber requested certain additional information from the applicant and the respondent Party. On 28 February 2001 the applicant submitted the statement of Mr. I.G. supporting the applicant's allegation that he had been beaten in the police station. On 2 March 2001 the respondent Party submitted additional documents.

25. On 27 March 2001 the case was retransmitted to the respondent Party for its observations under Article 13 of the European Convention. The respondent Party was asked again to inform the Chamber specifically about its compliance with the Rules of the Road. Further, the respondent Party was asked to inform the Chamber whether anybody was compensated for maltreatment committed by the authorities of the Una-Sana Canton since 1 January 1991.

26. On 27 April 2001 the respondent Party submitted its further observations on admissibility and merits.

27. The respondent Party was of the opinion that Article 13 of the European Convention was not violated. Namely, the investigative judge did not undertake any steps to investigate the applicant's complaint that he had been badly beaten in the police station in Bihać because the applicant did not submit any evidence for his allegation. Further, the respondent Party was of the opinion that it had complied with the Rules of the Road although the applicant's case was submitted to the International Tribunal for review more than 8 months after the applicant had been arrested. Finally, the respondent Party did not inform the Chamber whether anybody was compensated for maltreatment committed by the authorities of the Una-Sana Canton since 1 January 1991.

V. COMPLAINTS

28. The applicant alleges that he was badly beaten while detained in the police station in Bihać (Article 3 of the European Convention). Further, the applicant alleges that the investigative judge did not undertake any steps to investigate his complaint that he had been badly beaten in the police station in order to force a confession (Article 13 of the European Convention). Finally, the applicant alleges that he did not receive a fair trial (Article 6 of the European Convention). The case also raises an issue of compliance by the respondent Party with the Rules of the Road (Article 5 of the European Convention).

VI. OPINION OF THE CHAMBER

29. 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) of the Agreement which, as 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."

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

30. The respondent Party argues that the application should be rejected because it was filed nearly 11 months after 10 March 1998 when the final decision in this case was taken.

31. The Chamber recalls that the applicant was in detention since 31 March 1996 and that the applicant was still in detention when he filed the application on 28 January 1999. Further, it appears that the applicant did not have any contact with his lawyer after the final domestic decision in this case was taken.

32. 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.

33. 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 police station

34. 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.

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

35. 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 failure of the investigative judge to investigate the applicant's complaint that he was badly beaten in the police station

36. 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.

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

37. 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.

38. The Chamber finds that there are no other grounds for declaring the application inadmissible. Accordingly, the application is to be declared admissible in its entirety.

VII. CONCLUSION

39. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION ADMISSIBLE.

(signed)
Olga Kapić
Deputy Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel