



DECISION ON ADMISSIBILITY

Case no. CH/99/1955

Rajko PAČAVRA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 April 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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent. On 16 September 1995, while serving in the Army of the Republika Srpska ("VRS"), he was detained by armed forces of the Federation of Bosnia and Herzegovina in Bosanski Petrovac, which at that time came under the control of those forces. He was detained until 27 January 1996, without ever being brought before a court or other judicial authority.

2. On 2 June 1999 he initiated proceedings before the Court of First Instance II in Sarajevo against the Ministries of Justice, Defence and Internal Affairs of the Federation. In these proceedings he claims 70,000 Convertible Marks (*Konvertibilnih Maraka*) for damage he suffered during his detention. On 5 November 1999 the Court rejected his claim on the ground that it is incompetent to decide such matters. On 24 November 1999 the applicant appealed against this decision to the Cantonal Court where, according to the information available to the Chamber, his appeal is still pending.

II. COMPLAINTS

3. The applicant complains that his rights as guaranteed by Articles 3, 4 and 5 of the European Convention on Human Rights have been violated. He also complains of a violation of his right to an effective remedy against violations of those rights and of discrimination in the enjoyment of those rights, as guaranteed by Articles 13 and 14 of the Convention respectively.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 22 June 1999 and registered on the same day. On 21 October 1999 the Registry sought certain further information from the applicant concerning his application, which was received on 16 November 1999

IV. OPINION OF THE CHAMBER

5. 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) of the Agreement. According to Article VIII(2)(a), the Chamber shall take into account, amongst other things, whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted and whether the application has been filed within six months from the date on which the final decision on the matter was taken. If no effective remedy is available, the six-month period starts to run on the day when the alleged violations of the applicant's rights ended.

6. The Chamber notes that the applicant has initiated domestic proceedings against various organs of the respondent party before the courts in Sarajevo. These proceedings are currently pending since June 1999. Assuming that the proceedings in question are an effective remedy capable of providing adequate redress for the applicant's complaint, they are a remedy which the applicant should exhaust, but he has failed to do so. If, however, this remedy is incapable of remedying the matters the applicant complains of, the above mentioned six-month time-limit started to run on the date when the alleged violations ended, i.e. on 27 January 1996, the date of the applicant's release from detention. He did not apply to the Chamber until 22 June 1999, almost three and a half years later. He has not shown that there are any special circumstances in this case, which would justify a departure from the six-month rule.

7. Accordingly, the Chamber decides not to accept the application, on the ground that the applicant has failed to comply with the requirements of Article VIII(2)(a) of the Agreement.

V. CONCLUSION

8. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel