



DECISION ON ADMISSIBILITY

Case no. CH/99/2381

Andrej BOGOJEVIĆ

against

THE REPUBLIKA SRPSKA

and

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 9 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. He was detained until 6 April 1996, without ever being brought before a court or other judicial authority. He claims that during his detention he was physically and mentally maltreated.

2. On 9 September 1998 the applicant, together with eight other persons, initiated proceedings before the Court of First Instance in Banja Luka against the Republika Srpska and the Federation of Bosnia and Herzegovina. In these proceedings he claims 52,000 Convertible Marks (*Konvertibilnih Maraka*) for damage he suffered during his detention. According to the information available to the Chamber, there have been no developments in these proceedings to date.

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 6 October 1999 and registered on the same day.

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.

1. The application as against the Republika Srpska

6. The Chamber notes that the applicant was detained by armed forces of the Federation of Bosnia and Herzegovina. Accordingly, the Republika Srpska cannot be considered to be responsible for this detention. Accordingly, the application is declared inadmissible as manifestly ill-founded as against the Republika Srpska insofar as it concerns the detention of the applicant.

7. The applicant initiated proceedings against both respondent Parties before the Court of First Instance in Banja Luka in September 1998. There have, according to the information available to the Chamber, been no developments in these proceedings to date. The Chamber considers that, in view of the complex issues raised in the applicant’s proceedings, the length of time that has so far elapsed is not excessive. In addition, there is no indication that the conduct of the applicant’s proceedings to date has been other than in accordance with his rights as protected by the Agreement.

8. Therefore the application, insofar as it is directed against the Republika Srpska, is to be declared inadmissible as manifestly ill-founded.

2. The application as against the Federation of Bosnia and Herzegovina

9. The Chamber notes that the applicant has not initiated any proceedings against the Federation of Bosnia and Herzegovina, or any of its organs, before the courts of that entity. The Chamber cannot, on the basis of the information available to it, find that this remedy would have

been other than effective in the applicant's case. Assuming that these proceedings would be 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 6 April 1996, the date of the applicant's release from detention. He did not apply to the Chamber until 6 October 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.

10. Accordingly, the Chamber decides not to accept the application, insofar as it is directed against the Federation of Bosnia and Herzegovina, on the ground that the applicant has failed to comply with the requirements of Article VIII(2)(a) of the Agreement.

V. CONCLUSION

11. 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