



DECISION ON ADMISSIBILITY

Case no. CH/99/2729

Gordana IVANOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 May 2003 with the following members present:

Mr. Hasan BALIĆ

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING

Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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. INTRODUCTION

1. The application was introduced on 26 July 1999. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to issue an order prohibiting the investigative judge who performed the insight investigation and the doctor who performed the autopsy after the death of her father, from exercising their functions until the termination of the proceedings aimed at establishing their responsibility. On 4 March 2003, the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS

2. The applicant states that on 14 August 1997, her father died at the age of 77. The Public Security Service notified the applicant that her father had died on the promenade public bench of natural causes. However, the applicant considers that her father's death was surrounded by circumstances, which were left unexplained to her and her family.

3. The applicant states that her father's corpse, after the insight investigation, was transported to the Clinical Centre in Tuzla, where the autopsy was performed, and she saw her father's corpse only the day afterwards. The applicant points out that, because they were in a hurry to perform the autopsy of the corpse and also because none of the family members was present during the identification, she has doubts in relation to the circumstances of her father's death.

4. The applicant states that due to a series of illegal actions related to establishing the cause of her father's death, on 17 September 1997, she filed criminal charges with the Cantonal Public Prosecutor's Office in Tuzla, through the Municipal Prosecutor's Office, against the investigative judge who performed the insight investigation and the doctor who performed the autopsy. On 1 December 1997, the Municipal Prosecutor's Office sent a reply to the applicant informing her that her criminal charges were rejected because there were circumstances that excluded criminal prosecution due to the lack of criminal offence elements. This reply stated that the applicant could, within eight days, raise an indictment with the Municipal Court in Tuzla.

5. On 17 December 1997, the applicant submitted to the Municipal Court in Tuzla a request to open an investigation against the investigative judge who performed the insight investigation after her father's death and the doctor who performed the autopsy. On 9 October 1998, the Municipal Court in Tuzla issued a procedural decision terminating the investigation against the above-mentioned persons. The Municipal Court's procedural decision states that, at the moment of the investigation on the spot, the investigative judge did not have any reliable evidence or facts to establish the natural death of the applicant's father. Consequently, his decision to perform an autopsy was completely founded and in accordance with the law, because, according to the Court, there was no basis to allege that the investigative judge had committed a criminal offence – a violation of law by the judge. In addition, the doctor who performed the autopsy was required to execute the court order by giving his findings and opinion about the cause of death of the applicant's father. On 16 October 1998, the applicant filed an appeal to the Cantonal Court in Tuzla against the procedural decision of the Municipal Court in Tuzla. On 5 November 1998, the Cantonal Court issued a procedural decision rejecting the applicant's appeal as ill-founded.

6. On 21 January 1999, the applicant submitted a proposal to file a request for protection of legality to the Federal Public Prosecutor, through the Municipal Court in Tuzla. By the procedural decision of 26 February 1999, the Municipal Court in Tuzla rejected this request as unallowed. The applicant filed an appeal against this procedural decision on 16 March 1999. On 5 April 1999, the Federal Prosecutor's Office informed the applicant that it found no legal basis to file a request for protection of legality.

7. In the submission of 15 October 1999, the applicant informed the Chamber that the Cantonal Court issued a procedural decision on 10 May 1999 in relation to her appeal of 16 March 1999. This procedural decision of the Cantonal Court stated that the court annulled the procedural decision of the Municipal Court in Tuzla of 26 February 1999 for reasons that the court had to take into

account *ex officio*. In its reasoning, the Cantonal Court states that in this case the request for protection of legality was not filed by an unauthorised person, because the applicant did not file the request for protection of legality, but rather, through the Municipal Court in Tuzla, she submitted a proposal to the Federal Prosecutor to file a request for protection of legality.

8. The Chamber has no further information on these proceedings.

9. The applicant points out that, by such actions, the authorities failed to investigate correctly the circumstances that led to her father's death.

III. OPINION OF THE CHAMBER

10. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

11. The Chamber notes that the applicant complains that the authorities failed to investigate the circumstances leading to her father's death. In this connection, the Chamber finds that the applicant did not substantiate her allegations. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

IV. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel