



DECISION ON ADMISSIBILITY

Case no. CH/99/3100

Kabaš KRASNIĆI

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 June 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Ulrich GARMS, 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. On 25 October 1999 the applicant was put in pre-trial detention in accordance with a procedural decision of the Cantonal Court in Sarajevo (KI-235/99). He was suspected to have committed fraud, namely being involved in large losses of money which led to the bankruptcy of the SAB Bank, as prohibited under Article 282, paragraph 2, of the Criminal Code of the Federation of Bosnia and Herzegovina. This decision was delivered to the applicant on 25 October 1999.

2. The applicant's lawyer appealed against this decision. The appeal was refused as ill-founded by the Cantonal Court of Sarajevo on 29 October 1999.

3. The Cantonal Court of Sarajevo issued a procedural decision to open a pre-trial investigation against the applicant. This procedural decision is dated 25 October 1999. The applicant alleges, without substantiation, that this procedural decision was issued only on 2 November 1999 and back-dated.

4. On 5 November 1999 the applicant was released from pre-trial detention in accordance with a procedural decision of the Cantonal Court of Sarajevo. The Chamber has not received further information from the applicant or the Respondent Party about the stage of the criminal proceedings against the applicant.

II. COMPLAINTS

5. The applicant complains that the decision of the investigative judge to open a preliminary examination was not delivered to him immediately and therefore the respondent Party has violated his rights under Articles 5, 6, 7 and 13 of the European Convention on Human Rights (Convention). He also alleges discrimination on the ground of his Albanian origin.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 3 November 1999 by the applicant's wife, Mrs. Behka Krasnići, and registered the same day.

7. On 2 November 1999 the applicant's lawyer requested, as a provisional measure, that the applicant would be released from detention to enable him to conduct his defence. The Chamber rejected this request for a provisional measure on 5 November 1999.

8. The Chamber transmitted the case to the Federation of Bosnia and Herzegovina as the respondent Party under Articles 5 and 6 of the Convention and under Article II(2)(b) of the Agreement. On 7 January 2000 the Chamber received the observations of the Federation of Bosnia and Herzegovina. On 11 February 2000 the Chamber received the reply of the applicant to those observations including a compensation claim. These comments and the compensation claim were then sent to the Federation of Bosnia and Herzegovina, that made additional observations on 16 March 2000.

IV. OPINION OF THE CHAMBER

9. 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."

10. The applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the

Chamber on its own motion find any such evidence. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina.

11. Article 151 paragraph 1 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina reads as follows:

“ When the investigative judge receives the petition for conduct of a preliminary examination, he shall examine the records, and if he concurs in the petition, he shall order that a preliminary examination be conducted; the decision to that effect should contain the data referred to in Article 150, paragraph 3 of this law. The order shall be delivered to the competent prosecutor and to the accused and to his defense counsel.”

12. This Article, which deals exclusively with the issue the applicant is complaining about, does not specify a time limit for delivering the order to the accused and his counsel. Even if the order had been handed to the applicant, as he states, only on 2 November 1999, this would not be contrary to the aforementioned Article 151 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina. Insofar as the applicant claims that he has a right to immediately receive a procedural decision to open an investigation, the Chamber notes that there is no such right protected under domestic law, nor under the Convention. The Chamber hereby notes that the applicant is not claiming that he was not informed of the charges brought against him.

13. Insofar the applicant alleges a violation of his rights under Articles 6, 7 and 13 of the Convention, the Chamber notes that the applicant did not substantiate these complaints. The applicant also failed to substantiate his claim that he has been discriminated against due to his Albanian origin.

14. 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.

15. Since compensation will only be granted if the Chamber finds a violation, the applicants' claim for compensation will not be taken in consideration.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously:

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel