



Boumediene, et al. v. Bosnia-Herzegovina

Application No. 38703/06, 40123/06, 43301/06, 43302/06, 2131/07 and 2141/07

Country: Bosnia-Herzegovina

Region: Europe

Year: 2006

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Diet and nutrition, Health care and health services, Mental health, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Freedom of religion, Right to due process/fair trial, Right to liberty and security of person, Right to life

Facts

Six individuals took their case to the European Court of Human Rights against Bosnia and Herzegovina for failing to assist them during their removal to and detention at Guantanamo Bay.

Lakhdar Boumediene, Hadj Boudelaa, Mustafa Ait Idir, Mohamed Nechla, Belkacem Bensayah and Saber Lahmar were all detained at Guantanamo Bay on suspicion of having planned a terrorist attack against the United States and United Kingdom embassies in Sarajevo. Local police in Bosnia and Herzegovina arrested the six Applicants, and the relevant national authorities stripped of their citizenship and residence, banned from entering the country, and removed them to Guantanamo Bay at the request of the United States.

The Applicants challenged their detention before the courts of Bosnia and Herzegovina. In 2002 and 2003, the Human Rights Chamber, a domestic court that later became the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina (the HRC), found numerous violations of the European Convention on Human Rights (ECHR), and issued orders preventing the forcible removal of the applicants. As a result, the relevant administrative authorities quashed the decision banning the Applicants from entering the country. The Applicants were nonetheless removed.

The United States refused to release the Applicants from Guantanamo Bay, despite several requests by the authorities in Bosnia and Herzegovina subsequent to the HRC decisions. It did, however, allow an official from Bosnia and Herzegovina's Ministry of Justice to visit the four of the Applicants and ask 15 pre-approved questions, most of which related to their activities in Bosnia and Herzegovina rather than their welfare. In response to the one question that related to their welfare, the Applicants complained of not receiving adequate medical attention. In 2006, the HRC issued a further ruling criticizing the passive approach of the authorities to the Applicants' situation.

The Applicants challenged Bosnia and Herzegovina's failure to comply with the HRC's rulings before the European Court of Human Rights (the Court). They contended violations of articles 1, 2, 3, 5, 6, 9 of the ECHR, and article 1 of Protocols 6 and 13 to the ECHR. These provisions covered the right to life, freedom from torture or inhuman or degrading treatment or punishment, freedom from arbitrary detention, fair trial rights, freedom of religion, and the abolition of the death penalty, as well as the jurisdictional scope of the ECHR.

Decision and Reasoning

The Court declared the applications inadmissible. It considered that the Bosnia and Herzegovina authorities had made repeated requests to the United States government to repatriate the Applicants starting from only a week after the first HRC ruling, had restored the ability of the Applicants to return to Bosnia and Herzegovina once released, and had done all they could to provide assistance to the Applicants while in detention, given the strict limitations that the United States imposed on access to prisoners to Guantanamo. As such, it considered the applications to be "manifestly ill-founded", and dismissed them.

In light of this finding, the Court did not consider the jurisdictional issues raised by the fact that the Applicants had been removed to the United States before the entry into force of the ECHR in Bosnia and Herzegovina, or the issue of whether or not the authorities would have had a duty to intervene under the Convention absent the HRC rulings.

Decision Excerpts

As to the Government's alternative argument, the Court notes that the BH authorities made repeated interventions vis-à-vis the US authorities (see, in particular, paragraphs 26, 42, 49 and 50 above), the first of which was made only one week after the first decision of the Human Rights Chamber concerning this matter. They thereby clearly demonstrated their unequivocal commitment to repatriating the applicants, a point that was endorsed by the applicants' representative (see paragraph 45 above). Para. 63.

Lastly, the Court is aware of the finding of the domestic Human Rights Commission in this matter (see paragraph 46 above). However, taking into consideration subsequent developments and, in particular, the assurances obtained by the BH authorities that the applicants would not be subjected to the death penalty, torture, violence or other forms of inhuman or degrading treatment or punishment (see paragraphs 49 and 50 above), the Court concludes that Bosnia and Herzegovina can be considered to be taking all possible steps to the present date to protect the basic rights of the applicants, as required by the domestic decisions in issue. Para. 67.

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