



DECISION ON ADMISSIBILITY

Case no. CH/99/2481

Novo BENCUZ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 February 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Andrew GROTRIAN, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

Mr. Anders MÅNSSON, 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. The applicant is citizen of Bosnia and Herzegovina. On 13 February 1998 the Court of First Instance in Gradiška sentenced him to one year and seven months in prison for having caused a traffic accident in which two persons were killed and two others injured. In finding the applicant responsible for the accident the court heard evidence from witnesses and an expert. The court's decision examines the circumstances of the accident in detail. The applicant's conviction was upheld by the Regional Court in Banja Luka on 21 April 1999.

2. On 8 November 1999 the Supreme Court of the Republika Srpska, rejected the applicant's request for a review of his conviction.

II. COMPLAINTS

3. The applicant complains that his right to a fair trial was violated before the Court of First Instance. He claims that the court rejected his allegation that certain evidence, such as photographs and drawings of the site of the accident, were missing. Further, he stated that the court refused to hear evidence from the witnesses proposed by him.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 22 December 1999 and registered on the same day. The applicant requested that the Chamber order the respondent Party, as a provisional measure, not to carry out the sentence of imprisonment. This request was rejected by the Chamber on 29 December 1999.

IV. OPINION OF THE CHAMBER

5. Before considering the merits of the application 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)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

6. The Chamber notes that in the present case the applicant complains about the way in which evidence was taken by the First Instance Court.

7. The Chamber recalls that the right of an accused person to examine witnesses falls within the scope of Article 6 paragraph 3(d) of the European Convention on Human Rights. This provision does not necessarily require the attendance and examination of every witness requested by the accused. Its essential aim is the achievement of equality of arms in the proceedings. It is first and foremost for the national courts to decide upon the questions of admission and evaluation of evidence. They are left a certain margin to decide upon the relevance of proposed evidence, insofar as this is compatible with the concept of a fair trial (see e.g. Eur. Court HR, *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, p. 38, paragraph 91).

8. The applicant claims that the Court of First Instance did not hear the witnesses he had suggested, but he has not presented any evidence (e.g. the record from the hearing) to confirm that. The Chamber finds that the present case does not appear to raise a question of unfairness, as the domestic court appears to have made a reasonable assessment as to what evidence to accept.

9. Accordingly, the Chamber decides not to accept the application, finding it manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel