



DECISION ON ADMISSIBILITY

Case no. CH/01/7669

Mirsad KUDUZović

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 October 2001 with the following members present:

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

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. INTRODUCTION

1. The applicant works as a private trader in Gradačac, Federation of Bosnia and Herzegovina. By final and binding court judgment he was sentenced to a six month prison sentence for the criminal offence of forging money. The applicant requested the Chamber to issue an order for a provisional measure ordering the respondent Party to postpone his serving the sentence, which was scheduled for 19 September 2001, until the Chamber decides on his case.

II. FACTS

2. By judgment of the Cantonal Court in Tuzla of 4 October 1999 the applicant was found guilty of the criminal offence of forging money. This judgment convicted the applicant to a conditional sentence of six months, not to be carried out unless the applicant commits a new criminal offence in the following two years.

3. The applicant and the Cantonal Prosecutor appealed to the Supreme Court of the Federation of Bosnia and Herzegovina against the Cantonal Court's judgment. On 28 November 2000, the Supreme Court passed a judgment rejecting the applicant's appeal as ill-founded, while it granted the Cantonal Prosecutor's appeal. By its judgment, the Supreme Court modified the first instance judgment of the Cantonal Court in the decision on punishment so as to convict the applicant to an unconditional prison sentence of six months.

4. Against the Supreme Court's judgment of 28 November 2000 the applicant filed an extraordinary legal remedy, a request for the protection of legality. On 16 May 2001 the Supreme Court rejected this request.

5. Pursuant to the procedural decision of the Municipal Court in Gradačac of 19 March 2001 the applicant is obliged to report to the Correctional Facility in Tuzla on 19 September 2001 to start serving the prison sentence of six months.

III. COMPLAINTS

6. The applicant complains of an infringement of his right to a fair trial and of the principle of the presumption of innocence and relies on Article 6 paragraphs 1 and 2 of the European Convention on Human Rights. In particular, he claims that the courts did not correctly evaluate the evidence which was presented in the course of the proceedings, and that the courts should not have given credence to certain evidence, as, for instance, the testimony of an accomplice.

IV. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 3 July 2001 and registered on the same day. On 14 September 2001 the President of the Chamber decided not to order the provisional measure requested. On 12 October 2001 the Chamber considered the case and adopted the following decision.

V. OPINION OF THE CHAMBER

8. 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)(c), the Chamber shall dismiss any application, which it considers incompatible with the Agreement, manifestly ill-founded, or an abuse of the right of petition.

9. The applicant complains that the courts wrongly established the facts pertaining to his case and misapplied the law. The applicant also appears to be asking the Chamber to re-instate the proceedings and suspend the decisions of the courts.

10. The Chamber recalls that the European Court of Human Rights has stated that it is not within its competence to substitute its own assessment of the facts to that of the national courts (see e.g. the *Dombo Beheer B.V. v. the Netherlands* judgment of 27 October 1993, Series A no. 274, pp. 31-32, paragraph 31). The same principles apply to proceedings before the Chamber regarding domestic courts (see e.g. case no. CH/00/4128, *DD"Trgosirovina" Sarajevo (DDT)*, decision on admissibility adopted on 6 September 2000, paragraph 13, Decisions July-December 2000). Accordingly, it is not within the province of the Chamber to determine whether national authorities and courts erred in finding the applicant guilty for the criminal offence of forging money.

11. Furthermore, there is no indication that the proceedings in the case have violated the applicant's procedural rights under Article 6 of the Convention.

12. Accordingly, the Chamber decides not to accept the application, partly for being outside the Chamber's jurisdiction *ratione materiae* and partly for being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

VI. CONCLUSION

13. 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