



DECISION ON ADMISSIBILITY

Case no. CH/01/8351

Asima LPUZANOVIĆ

against

FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 February 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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 FACTS

1. The applicant is currently serving an 8-year criminal sentence for murder in the Correctional Institution in Bihać, which was pronounced to her by a valid judgement of the Cantonal Court in Bihać.

2. The applicant has been convicted for murder of her husband. She complains that the Cantonal Court in Bihać wrongfully established the facts and circumstances, arguing that she acted in legitimate self-defense because she was maltreated and physically abused by her husband every day, as well as on that critical date. The applicant also claims that the Cantonal Court did not properly assess the findings and opinions of the expert psychiatrists and the testimony of the ballistics expert. The applicant claims the Court was obliged to consider this defense because it follows from the statements of witnesses, as well as from other evidence, that the applicant acted in legitimate self-defense.

3. The Cantonal Court in Bihać rendered three judgments in this case (on 13 November 1997, 10 April 2000, and 26 March 2001). The Supreme Court invalidated the first two judgements, twice returning the case for reconsideration. By a judgement of 27 August 2001, the Supreme Court upheld the third judgement of the Cantonal Court in Bihać of 26 March 2001, and accepted the conclusion of the Cantonal Court in Bihać that the applicant had acted with specific intent.

II. ALLEGED VIOLATIONS

4. The applicant complains of a violation of her right to defense in a criminal trial. Moreover, since she was erroneously convicted, she further claims she was deprived of her rights to freedom of movement, life, work, and any other rights of which an imprisoned person is deprived.

III. RELEVANT DOMESTIC LAW:

5. The applicant relies on the following provision from Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette no. 43/98), concerning Article 10, the defense of necessity.

Criminal Code of Federation of Bosnia and Herzegovina, Article 10:

- 1) An act committed in state of necessity is not considered a criminal offence.
- 2) A defense is considered to be necessary if it is absolutely necessary for the defender to avert a coinciding illicit attack from himself or from another, and which is proportionate to the attack.
- 3) If the perpetrator exceeds the limits of necessary defense, the court may reduce the punishment, and if she/he exceeded the limits because of extensive excitement or fear caused by the attack, the court may decide to remit the punishment.

IV. OPINION OF THE CHAMBER:

6. 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."

7. The Chamber notes that the applicant complains that the courts, Cantonal Court Bihać and Supreme Court of Federation Bosnia and Herzegovina, wrongly assessed the facts pertaining to her case and misapplied the law. The Chamber recalls that it has stated on several occasions that it is not within its competence to substitute its own assessment of the facts and application of the law to that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the court failed to act fairly as required by Article 6 of the Convention. 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 this the application inadmissible.

V. CONCLUSION

8. 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