DECISION ON ADMISSIBILITY

Case no. CH/02/8674

Milisav KOVAČ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-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.   INTRODUCTION

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1.   The applicant is a citizen of Bosnia and Herzegovina of Croat origin. On 13 June 2001 he was convicted as an accomplice, along with Ž. G., by the Municipal Court in Stolac for inflicting grievous bodily harm that resulted in the victim's death under Article 177 paragraph 5 of the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 43/98). The applicant was sentenced to 7 years of imprisonment and Ž. G. was sentenced to 8 years of imprisonment. The Stolac Municipal Prosecutor appealed this decision and on 6 November 2001, the Cantonal Court in Mostar raised the sentence of both parties to 9 years.

2.   The applicant states that criminal procedures have been substantially violated in the proceedings, because the court did not accept his version of events as to his involvement and that the factual background would be significantly different if it had accepted them.

II.   PROCEEDINGS BEFORE THE CHAMBER

3.   The application was introduced before the Chamber on 11 January 2002 and registered on the same day. The applicant is represented by Mehmed Šator, a lawyer practising in Mostar. In his application, the applicant requested the Chamber, as a provisional measure, to suspend his sentence of imprisonment he is serving in the Zenica Correctional Institution. On 4 March 2002 the Chamber decided not to order the provisional measure requested.

III.   COMPLAINTS

4.   The applicant alleges violations of his right to a fair trial as guaranteed under Article 6(1) of the Convention.

IV.   OPINION OF THE CHAMBER

5.   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 to petition."

6.   The Chamber notes that the applicant complains that the Municipal Court wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for 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 the application inadmissible.

V.   CONCLUSION

7.   For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)	(signed)
Ulrich GARMS	Giovanni GRASSO
Registrar of the Chamber	President of the Second Panel