



DECISION ON ADMISSIBILITY

Case no. CH/00/6555

Esad DOLIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 September 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 Articles VIII(3)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 6 December 2000. On 3 February 2000 the Cantonal Court in Bihać convicted the applicant of robbery and intentional deprivation of life in conjunction with robbery, pursuant to Article 277 paragraph 2 of the Criminal Code of the Federation of Bosnia and Herzegovina. The applicant was sentenced to 20 years in prison.

2. The applicant and two co-perpetrators submitted an appeal to the Supreme Court of the Federation of Bosnia and Herzegovina against the judgement of the Cantonal Court. On 8 June 2000 the Supreme Court issued a judgement decreasing the applicant's sentence to 15 years of imprisonment and leaving the rest of the first instance judgement unchanged.

3. The applicant now alleges violations of Articles 5 and 6 of the European Convention on Human Rights. The applicant claims that several procedural irregularities were present during his trial. He alleges that he was not allowed to attend his own trial and that his lawyer improperly advised him to remain silent, thereby hindering his ability to prove his innocence. These issues were not raised in the applicant's appeal to the Supreme Court. In addition, the applicant claims that the Cantonal Court misinterpreted the facts and wrongly found him guilty of criminal acts committed by his co-defendants.

II. OPINION OF THE CHAMBER

4. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ... (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."

5. The Chamber notes that in the proceedings before the domestic courts the applicant failed to raise either in form or in substance the complaint that is now being made to the Chamber. In particular, the applicant never appealed against the alleged procedural breaches during his trial, such as the denial of right to participate in the proceedings and ineffective assistance of counsel. The Chamber therefore decides to declare this part of the application inadmissible for failure to exhaust domestic remedies.

6. The Chamber notes that the applicant also complains that the Cantonal Court in Bihać wrongly assessed the facts pertaining to his case. 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 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 this part of the application inadmissible too.

III. CONCLUSIONS

7. 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