



DECISION ON ADMISSIBILITY

Case no. CH/02/12214

Vehid DŽENANOVIĆ

against

THE FEDERATION OF BOSNIA AND HERCEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
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. FACTS AND COMPLAINTS

1. The applicant was sentenced to four and one-half years of imprisonment by the 20 October 2000 judgement of the Cantonal Court in Zenica, because he committed the criminal offence of "grave offences against safety of public transportation". This judgement established that the applicant, as the owner and the director of the company, put into service a defective bus without a proper license, thereby causing a traffic accident resulting in 44 deaths and 11 injured passengers.

2. The Cantonal Prosecutor and the applicant both appealed against the above-mentioned judgement on 20 November 2002 and 28 November 2002, respectively, which appeals went to the Supreme Court of the Federation of Bosnia and Herzegovina. The Supreme Court issued a judgement on 14 November 2001, refusing the appeals as ill-founded. On 5 April 2002, the applicant submitted a request for the protection of legality. There is no information in the case file indicating whether a judgement on this request has been issued.

3. On the applicant's request, the Municipal Court in Zenica issued a procedural decision on 10 April 2002, postponing enforcement of the applicant's sentence until 10 October 2002. The decision reasons that the applicant's sentence has been postponed to allow him to accomplish an important business project with foreign partners by which he may achieve significant business results, as he faces the payment of compensation to the families of the deceased passengers.

4. The applicant claims that the Cantonal Prosecutor's Office refused to initiate proceedings against the bus driver in the accident. Such proceedings could show that other persons are responsible for the accident. He also alleges that the Court refused to examine correctly the responsibility of the competent Ministry for Transportation and Communications in relation to insufficient maintenance of the roads. Finally, the applicant points out that by such proceedings of the Court and the Prosecutor's Office, injustice has been done to him.

5. The applicant alleges that his rights protected under Article 6 of the European Convention on Human Rights have been violated and that he has been discriminated against in relation to other persons responsible for the criminal offence at issue.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was submitted to the Chamber on 5 September 2002 and registered on the same day. The applicant is represented by Almin Dautbegović, a lawyer.

7. The applicant requested the Chamber to order the respondent Party, as provisional measure, to prohibit the enforcement of the judgement until the Chamber's final decision in the case. On 6 September 2002, the Chamber decided not to order the provisional measure requested.

III. OPINION OF THE CHAMBER

8. 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."

9. The Chamber notes that the applicant complains that the Municipal and Cantonal Courts 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

courts 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.

IV. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel