



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/11995**

**Sead HODŽIĆ and Irfan LJEVAKOVIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 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. INTRODUCTION**

1. The applicants are citizens of Bosnia and Herzegovina of Bosniak origin.
2. The second applicant, Irfan Ljevaković, has been charged with the criminal offence of preparation of criminal acts of terrorism under Article 146, the criminal offence of espionage under Article 147(1) and the criminal offence of abuse of office under Article 358(3) of the Criminal Code of the Federation of Bosnia and Herzegovina. He has been held in detention since 30 April 2002.
3. The first applicant, Sead Hodžić, is the legal representative of the second applicant in the criminal proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina (the "Supreme Court").
4. By its procedural decision of 19 July 2002, the Supreme Court accepted the request of the Deputies of the Federal Prosecutor to hear the first applicant as a witness in the pre-trial investigation with regard to a document sent by a co-accused in the criminal proceedings, Bakir Alispahić, the former Director of the Agency for Investigation and Documentation (the "AID") on 14 March 1996 to the Ministry of Justice and General Administration of the Republic of Bosnia and Herzegovina (the "Ministry"). The first applicant was at that time the Secretary of the Ministry, and he had received the document in his professional capacity. The Office of the Federal Prosecutor wished to question the first applicant about whether he had informed the Minister, Hilmo Pašić, of the contents of the document. The investigating judge initially denied the application to summon the first applicant as a witness in the pre-trial proceedings, and he requested the Ministry of Civil Affairs and Communications (the successor to the Ministry of Justice and General Administration of the Republic of Bosnia and Herzegovina) to submit the requested documentation. However, the Ministry of Civil Affairs and Communications was unable to locate the relevant documentation, and, as a result, the Panel of Judges of the Supreme Court adopted the proposal to call the first applicant as a witness.
5. Subsequently, by the procedural decision of the Supreme Court of 22 July 2002, in accordance with Article 65(2) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, the first applicant's function as defence counsel of the second applicant in the criminal proceedings before the Supreme Court was terminated. In its reasoning the Supreme Court noted that the provisions of Article 65(2) of the Code of Criminal Procedure prevented defence counsel from appearing once summoned as a witness in the main trial, and by analogy, the same control could be applied to the pre-trial proceedings as well. The second applicant was consequently appointed *ex officio* legal representation by the same decision.
6. On an unknown date the second applicant filed an appeal against the procedural decision of the Supreme Court of 22 July 2002, stating that it had incorrectly applied Article 65(2) of the Code of Criminal Procedure. He complained that his right to defence counsel had been violated. On 29 July 2002 the Supreme Court rejected the applicant's appeal as ill-founded because it had correctly applied Article 65(2) as this provision applied to the proceedings as a whole. As to the claim that the second applicant's right to defence counsel had been violated, the Supreme Court recalled that the applicant had been appointed *ex officio* legal representation and he also had the right to appoint counsel of his own choosing.

## **II. COMPLAINTS**

7. The first applicant complains that his right to peaceful enjoyment of possessions as guaranteed under Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention") has been violated as he is not able to realise an adequate fee for the professional services he has rendered. He further complains that his right to work, to have a free choice of profession and to fair and favourable conditions of work as guaranteed under Article 23(1) of the Universal Declaration of Human Rights and under Article II(3)(b) of the Constitution of Bosnia and Herzegovina have been violated.

8. The second applicant complains that his right to defend himself through legal assistance of his own choosing as guaranteed under Article 6(3)(c) of the Convention and Article 14(3)(b) of the International Covenant on Civil and Political Rights has been violated. He further claims that Article 26 of the International Covenant on Civil and Political Rights has been violated as persons are to be treated equal before the law and to have equal protection with no discrimination.

### **III. PROCEEDINGS BEFORE THE CHAMBER**

9. The application was submitted on 2 August 2002 and registered the same day. Both applicants requested that the Chamber order the respondent Party, as a provisional measure, to enable the first applicant to freely perform without obstruction his function as defence counsel of the second applicant in the criminal proceedings before the Supreme Court. On 6 September 2002 the First Panel decided not to order the provisional measure requested.

10. The Chamber deliberated on the admissibility of the application on 6 September and 11 October 2002 and on the latter date adopted the present decision.

### **IV. OPINION OF THE CHAMBER**

11. 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.”

#### **A. Right to possessions**

12. The Chamber notes that the first applicant’s complaints concern his right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. The economic interests of running a business may be rights that fall within the protection of this provision. However, the protection is restricted to circumstances where it is possible to lay a claim to the property or possession concerned. In this case, it does not appear that the first applicant has such an enforceable right to realise the fees about which he complains. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application, in this respect, 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.

#### **B. Discrimination in the enjoyment of various rights**

13. Both applicants allege that they have been discriminated against in the enjoyment of their rights to be treated equally before the law and to have equal protection with no discrimination under Article 26 of the International Covenant on Civil and Political Rights. However, the Chamber finds that the facts of this case do not indicate that the applicants have been the victims of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement, including “sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. It follows that the application in respect of discrimination 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 as well.

#### **C. Right to work**

14. The Chamber notes that the first applicant complains that his right to work, to have a free choice of profession and to fair and favourable conditions of work under Article 23(1) of the Universal Declaration of Human Rights has been violated. However, the Universal Declaration of Human Rights is not a binding treaty and it is not among the international instruments listed in the Appendix to the Agreement which may be applied by the Chamber in connection with alleged or apparent discrimination under Article II(2)(b) of the Agreement. Therefore, the Chamber is not competent to

consider allegations of violations of provisions of the Universal Declaration of Human Rights. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

**D. Right to legal representation**

15. The Chamber recalls that the applicant's right, as an accused, to legal representation under Article 6(3)(c) of the Convention is not an absolute right, and the European Court of Human Rights has held that the national authorities may place certain restrictions on the right of the accused to legal representation of his choice. In the present case the first applicant is to be called as a witness in the pre-trial stage of the proceedings. As a result of this, there would be a conflict of interest between his duty to the court and his duty to his client. The Supreme Court would therefore be justified in preventing the first applicant from appearing as both witness and legal representative in the same proceedings. Moreover, the fact that the Supreme Court appointed *ex officio* the second applicant other legal representation and it has not prevented him from appointing alternative legal representation of his own choosing satisfies the requirement of Article 6(3)(c) of the Convention. Therefore, the Chamber finds that the application in this respect does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore also decides to declare this part of the application inadmissible.

**V. CONCLUSION**

16. For these reasons, the Chamber, by 6 votes to 1,

**DECLARES THE APPLICATION INADMISSIBLE.**

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Hasan Balić

### **DISSENTING OPINION OF MR. HASAN BALIĆ**

I disagree with the decision of the majority of the Chamber that the applications of Messrs. Sead Hodžić and Irfan Ljevaković are inadmissible. My disagreement is based on the following facts:

Mr. Sead Hodžić is a lawyer and this is the only profession he earns material funds from to support his family. In order to practice this profession he had to go through a rigorous education system. When he obtained that right such a right may be denied to him only on the grounds provided by law. In the present case, Article 65 paragraph 2 of the Code on Criminal Procedure provides that a person proposed to be heard as a witness "at the main hearing" may not act as a lawyer in the proceedings. Mr. Hodžić has been proposed by the Public Prosecutor to be interrogated as a witness in the pre-trial investigation which has been conducted for several months and where several investigating actions have been carried out. This was the reason why the investigating judge issued the decision determining termination of Mr. Hodžić's function as the defence lawyer of Irfan Ljevaković. Such a procedural decision was confirmed by the Supreme Court of the Federation of Bosnia and Herzegovina taking the stand that this provision should be applied to the proceedings as a whole (see paragraph 6). The Chamber has found, in its conclusion number 15, that the right of the applicant Ljevaković and the right of his defence lawyer Mr. Hodžić is not an absolute right under article 6(3)(c) of the Convention referring to the case-law of the European Court of Human Rights according to which domestic authorities may place certain restrictions on the right of the accused to legal representation of his choice. I agree with this conclusion but only under the condition if the law or some other regulation provides such possibility. In the present case such a possibility does not exist as the legislator has precisely defined its position towards the main hearing. An investigation is not a main hearing and the broad interpretation of this regulation, where the whole proceedings are included, may make possible misuse of an individual's rights by the prosecutor and judges representing so the violation of the right to a fair trial, within the meaning of Article 6 of the Convention, but such a right belongs to the applicant Ljevaković and his defence lawyer. A logic result of this is the violation of applicant Hodžić's right to work and his right to possessions. Therefore, I cannot agree with my colleagues who have accepted that valid reasoning is found in paragraph 14 because although the Universal Declaration on Human Rights has the force of declarative legal source its legal standards and principles are binding. This is why my legal opinion is different from that of my colleagues according to which the Chamber is not competent to protect principles of the Declaration. In my opinion the right to work is one of the basic human rights, which enjoys its protection before the Chamber for Human Rights. This is even more so if the right to possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention and Article 6(3)(c) of the Convention, in conjunction with Article II(2)(b) of the Agreement, comes out of this right. And with regard to both applicants, the right to a fair hearing before an independent and impartial tribunal and Article 6(3)(c) of the Convention, in conjunction with Article II(2)(b) of the Agreement, that is the right to be defended before the court through assistance of a defence lawyer of one's own choosing, are conditions for a fair trial.

(signed)  
Hasan Balić