



DECISSION ON ADMISSIBILITY

Case no. CH/02/11176

Mehmed TOKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 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. INTRODUCTION

1. The application was submitted on 17 June 2002 and registered on the same day. The applicant complains about a procedural decision of the Municipal Court in Gračanica ordering that the security measure of mandatory psychiatric treatment and custody in a health institution be applied against him.

2. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to postpone the enforcement of the valid procedural decision. On 4 November 2002 the Chamber rejected provisional measure requested.

II. STATEMENT OF FACTS

3. Criminal proceedings were conducted against the applicant for the criminal act of illicit possession of weapons and explosive substances under Article 348(1) of the Criminal Code of the Federation of Bosnia and Herzegovina. The Municipal Court in Gračanica held a public hearing in the applicant's case, which was attended by the applicant and his defence lawyer.

4. On 14 November 2001 the Municipal Court in Gračanica issued a procedural decision ordering the applicant, as a security measure, to undergo mandatory psychiatric treatment and custody in a health institution. This decision was based on forensic expert findings that the applicant is suffering from "permanent mental illness" and that "during the commission of the criminal act and even today he suffers from total diminished responsibility and he is dangerous to his surroundings".

5. The applicant and his lawyer lodged appeals against the mentioned procedural decision. On 28 January 2002 the Cantonal Court in Tuzla issued a procedural decision rejecting the appeals and confirming the first instance procedural decision of 14 November 2001.

6. The applicant filed an extraordinary legal remedy – a request for the protection of legality – against the second instance judgment, but he has not received a decision on his request.

7. On 17 May 2002 the Municipal Court in Lukavac, as the competent court, ordered the applicant to be taken to a health institution on 31 May 2002 for execution of the pronounced security measure.

II. COMPLAINTS

8. The applicant complains that the competent courts wrongly established the facts in his case because his mental health is good and there is no need for him to be kept in isolation; therefore, his right to a fair trial in criminal proceedings as guaranteed by Article 6 of the Convention has been violated. The applicant also considers that his right to liberty and security of person as guaranteed by Article 5 of the Convention, as well as his right to liberty of movement and freedom to choose his residence under Article 2 of Protocol No. 4 to the Convention, have been violated.

III. OPINION OF THE CHAMBER

9. 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."

10. The Chamber notes that the applicant complains that the competent courts wrongly assessed the facts pertaining to his case. Article 6 of the Convention guarantees the right to a fair trial. 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 this part of 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.

11. With respect to the applicant's claims that his right to liberty and security of person and his right to freedom of movement are restricted by his detention in the health institution, the Chamber notes that there is no evidence that the courts failed to act in accordance with the applicable law in ordering the security measure. Therefore, the Chamber finds that these parts of the application do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. 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 these parts of the application inadmissible as well.

IV. CONCLUSION

12. For these reasons, the Chamber, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

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