



DECISION ON ADMISSIBILITY

Case no. CH/99/2687

Ervin BARIŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 January 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. STATEMENT OF FACTS

A. With respect to the applicant's criminal proceedings

1. On 31 December 1997 the Cantonal Court in Zenica found the applicant guilty of aggravated robbery, meaning that he committed robbery or "theft in the nature of robbery" while using a dangerous weapon (as described in Article 151 paragraph 1 of the Criminal Code of the Republic of Bosnia and Herzegovina, which is now Article 277 paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina). The judgment also found the applicant not guilty of attempted murder. The Cantonal Court sentenced the applicant to 3 years and 6 months imprisonment. Two other persons were convicted in the same judgment and sentenced to similar prison terms.

2. The crime for which the applicant was convicted calls for a prison term of at least 5 years, but the Cantonal Court found mitigating circumstances to allow it to be shorter, as allowed by Article 41 of the Criminal Code of the Federation of Bosnia and Herzegovina.

3. On 7 June 1998 the applicant appealed against the judgment of 31 December 1997 to the Supreme Court of the Federation of Bosnia and Herzegovina. The prosecuting attorney also appealed the judgment because of the length of the sentence and the finding of not guilty of attempted murder. Both sides appealed on the grounds of violations of the Code of Criminal Procedure, wrongly established facts, and the decision on sentencing.

4. On 13 January 2000 the Supreme Court refused both Parties' appeals and confirmed the Cantonal Court's judgment, stating that the Cantonal Court's judgment was properly reached.

5. On 17 May 2000, after it had rejected the applicant's appeal against the procedural decision refusing his petition for postponement of serving his prison sentence, the Municipal Court in Zenica summoned the applicant and ordered him to serve his sentence.

6. The applicant did not comply with the order of the Municipal Court; he did not appear to serve his sentence at the time when it was ordered. Consequently, he was placed on the "wanted list".

7. In September 2002, the applicant began to serve his sentence in the State penitentiary in Zenica.

8. In the meantime, criminal charges against P.G., who was involved in the gunfight but who appeared as an injured person in the applicant's trial, were rejected by the competent Cantonal Prosecutor in a decision of 15 June 2000. Thereafter, the applicant continued the criminal prosecution as a private prosecutor, and he initiated criminal proceedings against P.G. before the Cantonal Court in Zenica. These proceedings are still pending. The applicant states that if the Cantonal Court finds P.G. guilty of attempted murder, then the legal basis of the applicant's sentence will be called into question.

B. With respect to allegations of impartiality

9. The applicant alleges that he possesses a tape of a conversation between the judge who presided over his criminal proceedings and one of the co-accused persons. According to the applicant, it is possible to recognize what they are saying and "one can clearly hear the judge's conclusion", but the applicant did not state what the judge concluded. However, the applicant did not submit the tape to the Chamber because he stated that it is impossible to understand anything on it. On Chamber's request to submit any evidence that the judge in his case accepted bribes, the applicant has only reported some statements from his mother and brother, stating "under full moral and legal responsibility", that the judge asked for money and that the mother paid him altogether 1500 DEM to "save" her son.

10. The applicant brought criminal charges against the judge who sentenced him, accusing him of taking bribes. After the competent prosecutor rejected the charges, the applicant continued the prosecution as a private prosecutor and issued the indictment against the judge. The case is still pending before the competent Municipal Court in Zenica.

II. PROCEEDINGS BEFORE THE CHAMBER

11. The application was received by the Chamber on 12 July 1999 and registered on the same day.
12. On 7 June, 27 June, and 5 July 2000 the Chamber received further information from the applicant.
13. On 11 October 2000 the Chamber decided to transmit the application to the respondent Party for its observations on the admissibility and merits, in particular with respect to Article 6 of the European Convention on Human Rights (the "Convention").
14. On 18 December 2000 the respondent Party submitted its observations on the admissibility and merits of the application.
15. Between December 2000 and September 2002, the applicant submitted a great number of letters in which he repeated factual allegations contained in earlier submissions and offered additional information.
16. On 12 March 2002 the applicant requested the Chamber to order the respondent Party, as a provisional measure, to order the competent Municipal Court in Zenica and the Cantonal Court in Zenica to put out of force the decision ordering the applicant to serve his prison sentence while the court proceedings in the cases he continued as a private prosecutor against P.G. and the judge are still pending. On 18 March 2002, the President of the First Panel rejected the provisional measure requested.

III. SUBMISSIONS OF THE PARTIES

A. The applicant

17. The applicant alleges violations of his right to a fair trial, with respect to a fair trial before an independent and impartial tribunal under Article 6 paragraph 1 of the Convention, and with respect to the investigation by the police and prosecutors and the hearing of witnesses under Article 6 paragraphs 2 and 3 of the Convention.
18. The applicant alleges that the judge in his case asked his parents for money to make a regular court proceeding against him. He states that his family gave the judge presiding over the court proceedings money and presents and he also alleges that the judge was seen in public with a witness in the case. The applicant also complains that the Cantonal Court in Zenica wrongly assessed the facts of his case.

B. The respondent Party

19. Regarding the facts the Respondent Party strongly objects to the applicant's allegations that his right to fair hearing before independent and impartial tribunal was violated. The respondent Party substantiates its allegations by quoting the records of the investigation and court hearing in the first instance, as well as the reasoning of the judgements of first and second instance.
20. The respondent Party considers the application inadmissible. It notes that all the domestic remedies have not been exhausted because the applicant did not file any extraordinary remedy against the valid court decision.
21. Regarding the applicant's claim that some judges were unsuitable to perform their functions, the respondent Party notes that the applicant was entitled to submit such information to the Commission for the Selection and Appointing of Judges and Prosecutors, according to Article 5 paragraph 1 of The Law on Judge and Prosecutor Offices in Bosnia and Herzegovina.

22. The respondent party also notes that the applicant has not submitted any evidence to substantiate that the criminal proceedings against him were not conducted in accordance with the Agreement.

IV. OPINION OF THE CHAMBER

23. 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.”

24. The applicant complains that there has been an interference with his right to fair trial by an impartial and independent tribunal as protected by Article 6 of the Convention. However, from the facts and documents in case file, the Chamber cannot find any such violation because the applicant has failed to substantiate any of his allegations. 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 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.

25. The Chamber further 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 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 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 as well.

V. CONCLUSION

26. 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