



DECISION ON ADMISSIBILITY

Cases nos. CH/01/7100, CH/01/7101 and CH/01/7102

Nenad PALAČKOVIĆ, Miroslav BUZAKOVIĆ and Novica STOJANOVIĆ

against

THE REPUBLIKA SRPSKA

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. Vitimir POPOVIĆ
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned applications 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

1. By the judgement of the First Instance Court in Banja Luka dated 24 October 1996, the applicants were declared guilty of the criminal offence of murder and “heavy robbery” and sentenced to 20 years imprisonment.
2. By its procedural decision dated 23 May 1997, the Second Instance Court in Banja Luka, while deciding upon the applicants’ appeal against the First Instance Court judgement, set aside the judgement and returned the case for reconsideration. By the same procedural decision, the Second Instance Court was recognised as the competent court to decide on the reconsideration in the first instance.
3. On 15 July 1999, the Second Instance Court in Banja Luka issued its judgement finding the applicants guilty and sentencing each of them to 20 years of imprisonment for all the charges.
4. On 13 July 2000, the Supreme Court of the Republika Srpska rejected the appeal of Novica STOJANOVIĆ and partially recognised the appeals of Miroslav BUZAKOVIĆ and Nenad PALAČKOVIĆ. The Supreme Court altered the operative part of the judgement dated 15 July 1999 against the defendants Miroslav BUZAKOVIĆ and Nenad PALAČKOVIĆ by finding them guilty of the act of an intentional murder committed during the course of a “heavy robbery”. None the less, the Supreme Court judgement sentenced each of the applicants to 20 years of imprisonment.
5. On 11 April 2001, the Supreme Court of the Republika Srpska, while deciding in the third instance, fully rejected the appeals of Novica STOJANOVIĆ and Miroslav BUZAKOVIĆ and partially recognised the appeal of Nenad PALAČKOVIĆ in relation to the qualification of the legal act and the decision on sentencing. Nevertheless, the Supreme Court found that the sentence of imprisonment for 20 years was correctly determined.
6. On 26 June 2001, the applicants initiated proceedings before the Constitutional Court of Bosnia and Herzegovina, requesting it to acquit them of charges or to abrogate the previous verdicts and to return the case for reconsideration. These proceedings are still pending.

II. COMPLAINTS

7. The applicants claim that their right not to be subjected to torture or to inhuman or degrading treatment or punishment (Article 3 of the European Convention on Human Rights), right not to be held in slavery or servitude (Article 4 of the Convention), right to liberty and security of person (Article 5 of the Convention), right to fair and public hearings in civil and criminal proceedings and other rights related to criminal proceedings (Article 6 of the Convention), and right to respect for private and family life and correspondence (Article 8 of the Convention) were violated.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The applications were introduced on 7 March 2001 and registered on the same day.
9. On 22 May 2001 the Chamber transmitted the applications to the respondent Party for its observations on the admissibility and merits with respect to Articles 5 and 6 of the Convention.
10. In its observations, dated 30 July 2001, the respondent Party opined that the applications should be declared inadmissible as manifestly ill-founded.
11. On 13 September 2001 the applicants submitted their reply observations in which they express their opinion opposite to the respondent Party’s position.

IV. OPINION OF THE CHAMBER

12. 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.”

13. The Chamber notes that the applicants complain that the courts wrongly assessed the facts pertaining to their cases 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 court failed to act fairly as required by Article 6 of the Convention.

14. The Chamber notes that the applicants also raised complaints under Articles 3, 4, 5, and 8 of the Convention. However, the Chamber has not received evidence, which would indicate that applicants were “subjected to torture, inhuman, or degrading, treatment or punishment” or that the applicants’ position during the proceedings was of a character that would constitute a breach of Article 4 of the Convention. Further, the Chamber finds that the applicants were arrested and kept in detention in accordance with the relevant national law. Therefore, the Chamber finds that the applicants’ allegations as to violations of their rights as protected by the above-mentioned Articles of the Convention have not been substantiated.

15. Thus, the Chamber finds that all the relevant proceedings before the domestic organs occurred in accordance with relevant national law. Therefore, the Chamber finds that the applications do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the applications are manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the applications inadmissible.

V. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

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