



DECISION ON ADMISSIBILITY

Case No. CH/01/7686

Ibrahim MAKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 November 2001 with the following members present:

Mr. Jakob MÖLLER, Acting President
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) and Article VIII (3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 9 July 2001 and registered the same day. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to suspend his prison sentence until the Chamber decided on his application. This request for a provisional measure was refused by the President of the Second Panel on 18 July 2001. The applicant renewed his request for an order of provisional measure on 24 October 2001. The renewed request was refused by the President of the Second Panel on 30 October 2001.

2. On 17 August 2000 the applicant was sentenced by the Cantonal Court in Bihać to one year and six months imprisonment for the criminal offense of attempted murder. The judgment of the Cantonal Court was based on the applicant's oral testimony, the victim's statement and the statements of four other eye-witnesses. The applicant lodged an appeal with the Supreme Court of the Federation of Bosnia and Herzegovina, which on 5 April 2001 gave a decision confirming the Cantonal Court's judgments.

3. The applicant complains that the courts decided his case without properly considering the facts and without hearing the witnesses he proposed, thereby violating Article 6 of the Convention.

II. OPINION OF THE CHAMBER

4. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept ... and 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."

5. The Chamber recalls that the right of an accused person to obtain the examination of witnesses on his behalf is protected by Article 6 paragraph 3 (d) of the European Convention on Human Rights. This provision does not afford an absolute right of the accused to have examined each witness proposed by him. Its essential aim is the achievement of equality of arms in the proceedings. It is first and foremost for the national courts to decide upon the questions of admission and evaluation of evidence. They are left a certain margin to decide upon the relevance of proposed evidence, insofar as this is compatible with the concept of a fair trial (case no. CH/99/2481, *Bencuz*, paragraph 7, decision on admissibility of 8 February 2000, Decision January – July 2000). The Chamber finds that the present case does not appear to raise a question of unfairness, as the domestic courts appear to have made a reasonable assessment as to what evidence to accept, in particular as to what witnesses to hear.

6. Regarding the applicant's allegation that the hearing of other witnesses he proposed at trial would have led to a different outcome, the Chamber notes that it is not normally its task to substitute its own assessment of the facts for that of the competent domestic courts (case no. CH/00/4128, DD "*Trgosirovina Sarajevo (DDT)*", paragraph 13, decision on admissibility of 6 September 2000, Decisions July - December 2000). In the present case, moreover, the Chamber notes that Supreme Court of the Federation of Bosnia and Herzegovina examined the reasoning of the Cantonal Court and found that it was based on an adequate assessment of the facts. This finding does not appear unreasonable or arbitrary.

7. That being so, the Chamber finds that the case discloses no appearance of a violation of the rights guaranteed under Article 6 of the Convention. It follows that the application is inadmissible in part for being manifestly ill-founded, in part *rationae materiae* and may be rejected, in accordance with Article VIII(2)(c) of the Agreement.

III. CONCLUSION

8. For these reasons, the Chamber, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

(signed)

Ulrich GARMS
Registrar of the Chamber

(signed)

Jakob MÖLLER
Acting President of the Second Panel