



DECISION ON ADMISSIBILITY

Case no. CH/01/7924

Mirza TRAVNIČANIN

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 January 2002 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-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 introduced on 24 September 2001. The applicant had been assigned to the position of the Federal Trade Inspector in the Ministry of Trade of the Federation of Bosnia and Herzegovina until he was convicted of a criminal offence. The courts hearing the case, the Municipal Court II and the Cantonal Court in Sarajevo, found the applicant guilty of abuse of office or official authority. The applicant was sentenced to serve two years imprisonment. Additionally, as a “security measure”, he was prohibited from carrying out all duties related to supervisory inspection for two years from the date his criminal sentence became effective. The Cantonal Court in Sarajevo, in deciding upon the applicant’s appeal, specifically considered it dangerous that the applicant perform the duties of inspector for the specified period, pointing out that he had acted intentionally in committing the criminal offence as he did it while he served as the inspector.

2. The applicant claims that his sentence was too severe for the criminal offence he had committed because he acted under “objectively unfortunate circumstances” rather than “consciously”. He asks the Chamber to remove the failures in the investigative procedure, the judgement, and/or the decision on review of the procedure. He further asks the Chamber to pronounce a more objective and milder punishment of one-year imprisonment.

3. On 9 and 21 November 2001 the applicant submitted letters to the Chamber informing it that he was in the hospital for kidney surgery from 31 October to 9 November 2001, and after his release from the hospital, he has been undergoing additional medical treatment. According to the applicant, the life conditions in prison are not appropriate for his present health condition, which will deteriorate if he starts serving the criminal sentence that was pronounced upon him by the unjust and unfounded judgement. The applicant complains that serving his sentence would violate his rights to life and health, and he asks the Chamber to protect those rights.

II. OPINION OF THE CHAMBER

4. 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.”

5. The Chamber notes that the applicant complains that the Municipal Court II and the Cantonal Court in Sarajevo wrongly assessed the facts pertaining to his case and misapplied the law. The Chamber recalls that it has stated on several occasions that it is not within its 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). Accordingly, the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible.

III. CONCLUSION

6. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO,
President of the Second Panel