



DECISION ON ADMISSIBILITY

Case no. CH/01/8479

Abdulah DELIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 February 2002 with the following members present:

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

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 to the Chamber on 26 November 2001. The applicant is of Bosniak origin and a member of Democratic Action Party (SDA). He was elected several times and served as an appointed high official of the Živinice Municipality.

2. In 1990 the applicant served as a Committee member of the Živinice Municipality Parliament. In 1994-1997 he served as a member of the Živinice Municipal Council ("the Council") and he was appointed to the unpaid position of President of the Živinice Council. In April 2000 he was elected once again and served as a member of the Živinice Municipal Council. Throughout these mandates, the applicant had immunity status.

3. On 28 June 2001 the applicant was indicted by the Tuzla Cantonal Prosecutor Office for the criminal acts of forging official documents under Article 368(1) in conjunction with abuse of office or official authority under Article 358(3) of the Criminal Code of the Federation of Bosnia and Herzegovina. He allegedly committed these criminal acts in 1997 and 1999. The criminal proceedings concerned his alleged involvement in illegal proceedings related to state-owned land.

4. The applicant claims that because of his immunity status the criminal proceedings could neither be initiated nor conducted against him. In order to clarify the question of the applicant's immunity the Cantonal Court in Tuzla postponed the hearing before it. On 16 November 2001, the Council issued a decision stripping the applicant of his immunity status so that the criminal proceedings against him could be continued.

5. The applicant complains that his right to immunity and his right to personal security have been violated. In addition he complains that the election system and the rule of law are endangered and that his right to perform his role as a member of the Council, according to constitutional order has been violated. The applicant points out that he has no other legal remedy according to Article 291(2) of the Law of Criminal Procedure of the Federation of Bosnia and Herzegovina (O.G. FBiH No. 43/98)

II. REQUEST FOR PROVISIONAL MEASURES

6. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to suspend the criminal proceedings against him until the Chamber has decided upon his application. On 7 January 2002 the Chamber decided not to order the provisional measure requested.

III. OPINION OF THE CHAMBER

7. 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."

8. As to the applicant's complaints that his right to immunity has been violated, that his right to perform his role as a member of the Council according to constitutional order has been violated and that the election system and the rule of law are endangered, the Chamber notes that these are not rights which are included among the rights and freedoms guaranteed under the Agreement. The Chamber also notes that the applicant's immunity was removed in accordance with domestic law and that the applicant did not complain about the indictment of 28 June 2001, except with respect to the part of the indictment concerning his status of immunity. Furthermore, as there is no evidence of alleged or apparent discrimination with respect to these rights, the Chamber cannot consider them under any of the agreements or instruments annexed to the Agreement. It follows that this part of 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 this part of the application inadmissible.

9. As to the applicant's complaint of a violation of his right to personal security the Chamber notes that the applicant failed to substantiate his allegations that the pending proceeding before the domestic court has been conducted in illegal manner, nor can the Chamber of its own motion find any evidence of such a violation. Therefore, the Chamber finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that this part of 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 as well.

IV. CONCLUSION

10. 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