



DECISION ON ADMISSIBILITY

Case no. CH/02/10844

Milan NOŽINIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 June 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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 to Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS AND COMPLAINTS

1. On 2 November 1998 the First Instance Court Novi Grad issued a judgement pronouncing the applicant guilty and sentencing him to punishment of imprisonment for 4 years. The applicant was pronounced guilty of committing a criminal offense of attempted murder under Article 31 of the Criminal Code of the Republika Srpska in relation to Article 19 of the Criminal Code of the Republika Srpska.
2. The applicant filed an appeal against the judgement of the First Instance Court Novi Grad. Deciding upon the applicant's appeal, the District Court Banja Luka issued on 13 April 2000 a procedural decision accepting the appeal, annulling the first instance judgement and returning the case to the First Instance Court Novi Grad for renewed proceedings.
3. On 1 February 2002 the First Instance Court Novi Grad issued a judgement pronouncing the applicant guilty and sentencing him to punishment of imprisonment for 2 years for committing the criminal offense of attempted murder.
4. The applicant appealed against the First Instance Court judgement. On 19 September 2002 the District Court Banja Luka issued a decision rejecting the applicant's appeal and confirming the first instance judgement.
5. The applicant filed a request for review of the judgement by the First Instance and District Courts. On 2 December 2002 the Supreme Court of the Republika Srpska issued a judgement rejecting the request for review of the judgement as ill founded.
6. The applicant complains that his rights to fair hearing and other rights related to criminal proceedings have been violated. The applicant complains that the Court has mistakenly assessed the evidence presented, especially statements of witnesses, and that the Court has mistakenly assessed that the applicant wanted to deprive the injured part of his life, when he did everything possible in order to prevent the injured person to die. The applicant also complains that the Court assessed as an aggravating circumstance the fact that he had been sentenced before, although the applicant had been sentenced before for a criminal offence of forgery of a document and that sentence was erased from the record.

II. PROCEEDING BEFORE THE CHAMBER AND COMPLAINS

7. The application was introduced before the Chamber on 17 December 2002.
8. The applicant requested as a provisional measure that the Chamber annul the judgements by the First Instance Court and the District Court and to renew the proceedings and to prevent the enforcement of the judgement until the proceedings before the Chamber have been ended. On 5 May 2003 the Second Panel decided to reject applicant's request.

III. OPINION OF THE CHAMBER

9. 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."
10. The Chamber notes that the applicant complains that the First Instance Court Novi Grad and District Court Banja Luka wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the European Convention on Human Rights ("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. 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 the application inadmissible.

IV. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel