



DECISION ON ADMISSIBILITY

Case no. CH/02/12413

Ratko MILOVANOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 February 2003 with the following members present:

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

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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 5 November 2002. The applicant complains of a violation of his right to a fair trial and requests the Chamber to annul his conviction for murder and to enable the renewal of the court proceedings.

II. FACTS

2. By the verdict of the Bijeljina District Court of 12 March 1998, the applicant was found guilty of the criminal offence of murder and sentenced to 12 years of imprisonment.

3. The applicant, through his defence lawyer, timely filed an appeal against this judgment with the Supreme Court of the Republika Srpska. The District Public Prosecutor also filed an appeal with the Supreme Court. On 18 May 1999, the Supreme Court issued a judgment by which it accepted the applicant's appeal, set aside the Bijeljina District Court judgment of 12 March 1998, and returned the case to the first instance court for renewed proceedings.

4. On 21 March 2000, in the renewed proceedings, the Bijeljina District Court issued a judgment once again finding the applicant guilty of the criminal offence of murder committed out of unscrupulous revenge and sentenced him to 12 years of imprisonment.

5. The applicant, through his defence lawyer, and the District Public Prosecutor filed appeals against this judgment with the Supreme Court of the Republika Srpska. On 26 March 2001, the Supreme Court issued a judgment by which it partly accepted the applicant's and the District Public Prosecutor's appeals. The Supreme Court modified the first instance judgment in the legal assessment of the offence and in the conviction insofar as it decided that the applicant committed the criminal offence of murder and sentenced him to 14 years of imprisonment.

III. COMPLAINTS

6. The applicant alleges that his complete case, from the very beginning of the investigation, was conducted incompetently. The applicant points out that the investigative judge had not passed his proficiency exam and the judge of the Bijeljina District Court was also not qualified.

7. The applicant further alleges that due to the judgment of the Supreme Court of the Republika Srpska of 26 March 2001, he filed a proposal to file a request for the protection of legality, which was refused by the procedural decision of 17 December 2001. According to the applicant, during the proceedings witnesses who could testify to his benefit were not allowed to testify, whereas witnesses who testified to his detriment were summoned to testify. He also alleges that the court was not impartial.

8. The applicant states that his right to a fair trial before an independent and impartial tribunal has been violated. The applicant requests the Chamber to issue an order annulling the judgment of the Supreme Court of the Republika Srpska of 26 March 2001 and ordering the renewal of the proceedings by an impartial court which will not favour one party in the proceedings but which will act exclusively on the basis of the facts and evidence.

IV. 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: (a) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken."

10. The Chamber notes that the application was lodged on 5 November 2002. It finds that the final decision for the purposes of Article VIII(2)(a) of the Agreement was issued by the Supreme court of the Republika Srpska on 26 March 2001. This date is more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

11. 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