



DECISION ON ADMISSIBILITY

Case nos. CH/02/8646, CH/02/8658 and CH/02/8685

Hamid BAHTO, Mirza JAMAKOVIĆ and Adil BABIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
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)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant, Hamid Bahto (hereinafter the “first applicant”), was a Brigadier General of the 81st Division in Goražde. The applicant Mirza Jamaković (hereinafter the “second applicant”) was the Minister of Internal Affairs for Canton Sarajevo. The applicant Adil Babić (hereinafter the “third applicant”) was an official of the Federation Ministry of the Interior. The three applicants have been charged with the illegal possession and transportation of weapons and ammunition from Sarajevo over Goražde to Peć in Kosovo. The weapons were allegedly smuggled for the Kosovo Albanians in the period of 1999 to mid 2001. By a procedural decision of the Supreme Court of the Federation of Bosnia and Herzegovina (hereinafter the “Supreme Court”) on 26 September 2001, it was ordered that the second and third applicants be detained in pre-trial custody. A further order was issued on 21 December 2001 ordering the pre-trial detention of the first applicant.

2. The case raises issues under Articles 5(1)(c), 5(3) and 6 of the European Convention on Human Rights (hereinafter the “Convention”).

II. FACTS

3. The first applicant was held in pre-trial detention having been charged with the illegal possession of firearms or explosive substances under to Article 348, paragraph 2 of the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 02/99 and 15/99, hereinafter the “Criminal Code”). By its procedural decision of 21 December 2001, the Supreme Court¹ ordered that the first applicant be detained in pre-trial custody for a period of one month in accordance with Article 183, paragraph 1, subparagraph 2 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98 hereinafter the “Code of Criminal Procedure”). The first applicant filed an appeal against this procedural decision on 22 December 2001. This appeal was denied by the Supreme Court on 25 December 2001.

4. The second applicant was held in pre-trial detention having been charged with the illegal possession of firearms or explosive substances under to Article 348, paragraph 2 of the Criminal Code and on 20 December 2001 the Supreme Court added charges of the criminal offence of the misuse of position and authorities under Article 358, paragraph 1 of the Criminal Code. By its procedural decision of 26 September 2001, the Supreme Court ordered that the second applicant be detained in pre-trial custody for a period of one month in accordance with Article 183, paragraph 1, subparagraph 2 of the Code of Criminal Procedure. On 27 September 2001 the second applicant appealed this procedural decision. The Supreme Court denied this appeal on 28 September 2001 as ill-founded. On 23 October 2001, by a procedural decision of the Supreme Court, the second applicant's pre-trial detention was extended for a further two months. On 29 October 2001 the second applicant filed a complaint against this procedural decision. The Supreme Court rejected this complaint on 31 October 2001 as ill-founded. On 24 December 2001, by a procedural decision, the Supreme Court extended the pre-trial detention for a further two months.

5. The third applicant was held in pre-trial detention having been charged with the illegal possession of firearms or explosive substances under to Article 348, paragraph 2 of the Criminal Code. By its procedural decision on 26 September 2001, the Supreme Court ordered that the third applicant be detained in pre-trial custody for a period of one month in accordance with Article 183, paragraph 1, subparagraph 2 of the Code of Criminal Procedure. On 27 September 2001, the third applicant appealed against this procedural decision. On 28 September 2001 the Supreme Court denied this appeal as ill-founded. On 23 October 2001, the Supreme Court extended the third applicant's pre-trial detention for a further period of two months and on 24 December 2001 the Supreme Court extended this detention for a further two months. The third applicant appealed against this decision and on 28 December 2001 the Supreme Court denied his appeal as ill-founded.

¹ Under Article 3, paragraph 2, subparagraph 5 of the Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina 20/01) the Supreme Court has jurisdiction to conduct investigations and trials in the first instance in matters concerning organised crime.

6. The Supreme Court ordered the pre-trial detention in accordance with Article 183, paragraph 1, subparagraph 2 of the Code of Criminal Procedure of the three applicants on the grounds that there is warranted suspicion that the applicants had committed the crimes they were to be charged with, there was a significant risk of flight and there was a warranted fear that the applicants might try to destroy, hide, alter or falsify evidence, or might attempt to influence co-conspirators or witnesses.

III. COMPLAINTS

7. The first applicant alleges specific violations of his rights guaranteed under Article 5(1) of the Convention and Article 9 of the International Covenant on Civil and Political Rights.

8. The second applicant alleges specific violations of his rights guaranteed under Articles 5(1)(c), 5(3) and 6 of the Convention.

9. The third applicant alleges specific violations of his rights guaranteed under Articles 5(1)(c), 5(3) and Article 6 of the Convention.

IV. PROCEEDINGS BEFORE THE CHAMBER

10. The application of the first applicant was introduced on 4 January 2002 and registered on the same day. He is represented by Asim Crnalić, a lawyer practising in Sarajevo. He requested that the Chamber order the respondent Party, as a provisional measure, to release him from pre-trial detention. On 22 January 2002, the President of the Second Panel decided not to order the provisional measure requested.

11. The application of the second applicant was introduced on 7 January 2002 and registered on the same day. He is represented by Ekram Galijatović, a lawyer practising in Sarajevo. He requested that the Chamber order the respondent Party, as a provisional measure, to release him from pre-trial detention. On 18 January 2002, the President of the Second Panel decided not to order the provisional measure requested.

12. The application of the third applicant was introduced on 15 January 2002 and registered on the same day. He is represented by Mustafa Bračković, a lawyer practising in Sarajevo. He requested that the Chamber order the respondent Party, as a provisional measure, to release him from pre-trial detention. On 4 February 2002, the Chamber decided not to order the provisional measure requested.

13. On 6 February 2002, the Chamber deliberated on the first and second applications and decided to join them. On 6 March 2002 the Chamber decided to join the third application and after further deliberations, adopted the present decision on 8 April 2002.

V. OPINION OF THE CHAMBER

14. 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) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted(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.”

15. In relation to the second and third applicants’ allegations of a violation of their right to an independent and impartial tribunal under Article 6 of the Convention, the Chamber notes that the applicants’ trial before the Supreme Court commenced in 26 February 2002 and has not been concluded. The Chamber therefore finds that these applicants’ complaints are premature, as the proceedings are still pending and once the first instance trial is concluded the applicants will have the possibility to file an appeal complaining about the composition of the court. Accordingly, the domestic

remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. In this respect, the Chamber decides to declare the respective applications inadmissible.

16. All of the applicants contend that their pre-trial detention was unjustified and illegal. In their applications they state that there is no possibility of the interference with evidence or witnesses as all evidence has been gathered and all witnesses heard in the investigation process. The applicants further contend that the grounds put forward by the Supreme Court are inconsistent with the Convention and domestic legislation. In support of his application that his pre-trial detention cannot be justified in accordance with Article 5(1)(c) of the Convention, the first applicant cites the judgement of the European Court of Human Rights in Strasbourg *Wemhoff v. Germany*, case no. 2122/64 judgement of 27 June 1968, Series A.7, paragraph 15, that if the only "...remaining reasons for continuing detention is the fear that the accused will abscond and thereby subsequently avoid appearing before trial, his release pending trial must be ordered..." However, the European Court and the European Commission have identified three further grounds in which pre-trial detention may be justified under the Convention: interference with the course of justice; the prevention of crime; and the preservation of public order. Nonetheless, the fear of absconding is a valid ground if the court gives consideration to individual characteristics such as assets and community ties of the accused (*Letellier v. France*, Eur. Court H.R. case no. 12369/86, judgement of 26 June 1991 Series A.207, paragraph 35). Furthermore, the applicants' complaints that domestic provisions on pre-trial detention are incompatible with the Convention are ill-founded. Article 183, paragraph 1 of the Code of Criminal Procedure (on 8 November 2001 the Decision of the Law of Amendments to the Code of the Criminal Procedure deleted Article 183 paragraph 1 and the former paragraph 2 is now to be referred to as paragraph 1) substantially reflects the position of the European Court of Human Rights as to the grounds on which pre-trial detention may be ordered.

17. The second and third applicants allege that their right to a trial within a reasonable time or to be released pending trial has been violated. The Supreme Court initially ordered the pre-trial detention of the third applicant on 26 September 2001 and the second applicant on 21 December 2001 and they have been kept in continuous detention during the entirety of the investigative process. Considering the complexity and the serious nature of the charges the applicants face, the Chamber finds that the applications fail to disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the applications are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the applications inadmissible, too.

18. The first applicant alleges that he has been discriminated against in the enjoyment of the right to liberty and security of person as provided under Article 9 of the International Covenant on Civil and Political Rights. However, the facts of this case and the manner in which he has pleaded his case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is manifestly ill-founded 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 as well.

V. CONCLUSION

19. For these reasons, the Chamber, unanimously,
DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel