



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/8700**

**Mustafa ŠANTA**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 September 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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## **I. FACTS AND COMPLAINTS**

1. The applicant is presently serving a prison sentence of 12 years in the Correctional Institution in Zenica.
2. By a judgment of the Cantonal Court in Sarajevo on 4 April 2000, the applicant was convicted of the criminal offence of murder under Article 171 paragraph 2 of the Criminal Code of the Federation of Bosnia and Herzegovina, for which he was sentenced to 13 years imprisonment, and of the criminal offence of grievous bodily injury under Article 177 of the Criminal Code of the Federation of Bosnia and Herzegovina, for which he was sentenced to one year imprisonment. Therefore, by applying the provisions on concurrence of criminal offenses, the Cantonal Court sentenced him to a compound sentence of 13 years and 8 months imprisonment.
3. The applicant, through his lawyer, filed an appeal, which was considered by the Supreme Court of the Federation of Bosnia and Herzegovina, for substantial violations of the provisions governing the criminal procedure, violations of the Criminal Code, and wrongfully and incompletely established factual background. It appears from this appeal that the defense tried to prove that the Cantonal Court failed to assess that the applicant acted in accordance with the defence of necessity, that the judgment lacked sufficient motivation, and that the expert findings were neglected. Also, the defense submitted that it follows from the statements of certain witnesses that the applicant acted in accordance with the defense of necessity. The applicant further complained that the Cantonal Court did not motivate or mention in its judgment why it refused the defense proposals to conduct a re-enactment of the events and to perform an expert neuro-psychiatric analysis of the applicant to establish his psychiatric condition.
4. After a session held in the presence of the accused (*i.e.*, the applicant) and his defense lawyer, the Supreme Court issued a judgment altering the legal qualification given by the Cantonal Court and sentencing the applicant for the criminal offence of murder to 12 years imprisonment.
5. In his application to the Chamber, the applicant raises identical arguments as he did in his appeal against the judgment by the Cantonal Court. He argues that the judgment is based upon contradictory statements of witnesses. He further argues that the Court did not accept any defense proposals during the proceedings, and breached Article 359 paragraph 1(4) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina.

## **II. ALLEGED VIOLATIONS OF HUMAN RIGHTS**

6. The applicant alleges that he was subjected to inhuman and humiliating treatment during the criminal proceedings resulting in his conviction and that this treatment affected his physical and psychological condition. He further alleges that his right to freedom and security of person, right to a fair hearing in civil and criminal proceedings, and other rights in relation to the criminal proceedings have been violated.

## **III. PROCEEDINGS BEFORE THE CHAMBER**

7. The application was submitted to the Chamber on 17 January 2002 and registered on the same day. The applicant requested the Chamber, as a provisional measure, to examine his allegations and to vacate the judgments and enable him to have a fair trial.
8. On 8 April 2002, the Chamber decided to reject the applicant's request for provisional measures.

#### 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: ... (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 courts wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the European Convention on Human Rights 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 courts 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.

#### V. CONCLUSION

11. 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