



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/9365**

**Tufik HAMZIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 July 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 applicant worked as a tradesman in a shop of a company in mixed-ownership dd “Promet” from Kladanj since 1983. On 18 September 1996, the judge of the then Higher Court in Tuzla issued a procedural decision initiating an investigation against the applicant and ordering his detention for one month. On 18 October 1996, the same Court’s Panel extended the applicant’s detention for a month by a procedural decision. On 11 November 1996, the Higher Public Prosecutor’s Office in Tuzla brought charges against the applicant for having committed criminal offenses of embezzlement (Article 227 paragraph 3 in conjunction with paragraph 1 KZ RBiH) and forgery of official documents (Article 236 paragraph 2 KZ RBiH). Because the accused had allegedly obtained illegal gain, could be sentenced to 10 years in prison, and posed a risk of harassment to his community if left at liberty, the Higher Court in Tuzla issued a procedural decision of 12 November 1996 ordering the continued pre-trial detention of the applicant for an unlimited duration. The applicant was detained until 27 November 1996. The applicant was subsequently convicted to 1 year and 5 months in prison by the Tuzla Cantonal Court.

2. On 13 November 1998 the applicant appealed to the FBiH Supreme Court, alleging both procedural and substantive deficiencies in the first instance decision. Reviewing the facts, the Supreme Court affirmed the lower court’s judgment as legal and properly issued.

3. On 10 October 2000 the applicant filed a request for the protection of legality with the FBiH Supreme Court, through the Tuzla Cantonal Court, claiming that the Law on Amnesty (“Official Gazette F BiH”, no. 48/49) should apply to his case and that he should be released pursuant to the law. The Tuzla Cantonal Court, where the applicant also filed a petition seeking the application of the Law on Amnesty, declared that the FBiH Supreme Court was the proper venue for pursuing the amnesty claim. The Supreme Court rejected the applicant’s request on 29 August 2001, noting that the last illegal activity of the applicant fell outside of the period covered by the Law on Amnesty, making it inapplicable to the applicant’s case.

4. The applicant began serving his prison sentence on 15 March 2002 at the Correctional Institution of Zenica.

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

5. The applicant claims that the respondent Party has violated his rights to a fair hearing and to liberty of movement. In particular, the applicant alleges that domestic courts incorrectly assessed the facts and applied the law. The application also alleges that pursuant to the Law on Amnesty (“Official Gazette F BiH”, no. 48/49) his conviction should have been vacated and his case returned to the first instance court for a new decision, releasing him.

## **III. OPINION OF THE CHAMBER**

6. 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 to petition.”

### **A. Fair Trial**

7. The Chamber first considers the applicant’s claim that he was denied a fair trial, in violation of his rights under Article 6 of the Convention. The Chamber notes that the applicant complains that the Tuzla Cantonal Court misapplied the law when it convicted him of embezzlement and forgery of official document. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasion 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 1, Decisions August-December 1999, and case no. CH/00/4128, *DD “Trgosirovina” Sarajevo (DTT)*, 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. The applicant's allegation that his trial was influenced by illicit pressures is also unsubstantiated. It follows that this part of the application is manifestly ill-founded.

**B. Freedom of movement**

8. The Chamber next considers the applicant's claim that the restrictions on his freedom of movement, resulting from his detention, were a violation of his human rights. On the information submitted by the applicant it appears that the applicant's deprivation of liberty was in accordance with the law and compatible with Article 5 of the Convention. Consequently, the Chamber decides to declare this complaint also inadmissible as manifestly ill-founded.

**C. Application of the Law on Amnesty**

9. The Chamber notes that the applicant complains that his right to be amnestied has been violated. The right to amnesty is not included among the rights and freedoms guaranteed under the Agreement or the instruments listed in the Annex to the Agreement. It follows that this part of the application is incompatible *ratione materiae* within the meaning of Article VIII(2)(c).

**IV. CONCLUSION**

10. For the foregoing reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel