



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1220

Vidosav DUJAKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, as the Second Panel on 9 July 1999 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. Leif BERG, 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

1. On 2 October 1995 the applicant caused a car accident in Banja Luka, by driving his bus on the left side of the road. In the accident Mr. Boško Kudra was injured and his car was damaged. On 5 September 1997 the Municipal Court in Banja Luka found that the applicant had endangered the safety of public traffic and caused injury and damage. The applicant was convicted on 5 September 1997 and sentenced to seven months' imprisonment.

2. During the proceedings before the court the applicant requested the examination of an expert to be appointed by the applicant. The court refused the request and examined the record made at the investigation immediately after the accident. The court found that there was no need to hear a court expert since the investigation report, the report of a traffic expert made at the spot of the accident and the medical report done by an expert doctor were sufficient for the reconstruction of the events. The court also found that hearing a court expert would prolong the proceedings unnecessarily.

3. On 3 October 1997 the applicant appealed against the decision of 5 September 1997. On 4 December 1997 the Regional Court issued a decision partially accepting the applicant's appeal and reducing his sentence from seven to five months' imprisonment. In all other respects the first instance decision was confirmed.

4. On 12 January 1998 the applicant filed a request for extraordinary reconsideration of the decision of 4 December 1997. In this request the applicant requested that the decision of 4 December 1997 be invalidated and that the case be re-examined as he had not been allowed to examine an expert before the Municipal Court. On 10 June 1998 the Supreme Court of Republika Srpska passed a decision refusing the request of the applicant. On 24 August 1998 the applicant asked the President of the Republika Srpska for an amnesty. There has been no reply to date.

5. On 9 October 1998 the applicant requested the renewal of the proceedings, but this request has not been decided upon to date.

II. COMPLAINTS

6. The applicant complains that his right to defend himself and to have a fair trial before the Municipal Court has been violated. He complains about not having had the opportunity to summon experts before the court.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 13 October 1998 and registered on the same day.

IV. OPINION OF THE CHAMBER

8. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

9. The Chamber notes that in the present case the applicant has only complained about the refusal by the court of his request that an expert be examined. The reasons given by the Municipal Court of first instance for refusing the applicant's request have been accepted by the Regional Court and the Supreme Court.

10. The Chamber recalls that the European Court and Commission of Human Rights have held that the right of an accused person to examine experts falls within the scope of Article 6(3)(d) of the European Convention on Protection of Human Rights and Fundamental Freedoms ("the Convention") (see e.g. *Baragiola v. Switzerland*, Decision of 21 October 1993, Decisions and Reports Vol. 75, pp. 126). Notwithstanding the contrary opinion of the applicant, this provision does not necessarily require the attendance and examination of every witness requested by the accused. Its essential aim is the achievement of equality of arms in the proceedings. The competent national courts are left a

certain margin to decide upon the relevance of proposed evidence, insofar as this is compatible with the concept of a fair trial (see e.g. *Engel and others v. the Kingdom of Netherlands*, European Court of Human Rights, judgement of 8 June 1976, Series A no. 22, pp. 38, para. 91)

11. The Chamber finds that the present case does not appear to raise a question of unfairness, as the domestic court appears to have made a reasonable assessment as to what evidence to accept. The domestic courts appear to have given adequate reasons for denying the applicant's request for the hearing of an expert.

12. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel