



DECISION ON ADMISSIBILITY

CASE No. CH/99/2625

Mirsad SULJOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 September 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Rona Aybay
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. On 20 May 1999, by judgement No. K-22/96 of the Cantonal Court in Goražde, the applicant was convicted of murder and sentenced to eight years in prison. This sentence was later reduced by the Supreme Court of the Federation of Bosnia and Herzegovina to six years. The applicant, who claims to be innocent, is currently serving his prison sentence in Correctional Facility in Goražde.

II. FACTS

2. On 2 March 1994, in accordance with the procedural decision Kr:5/94 of the investigative judge of the District Military Court of Goražde, the applicant was taken into pre-trial detention. According to the procedural decision the pre-trial detention should have ended on 17 March 1994.

3. On 17 March 1994 a panel of three judges of the District Military Court in Goražde, with judge Hilmo Vučinić presiding, prolonged the detention until 16 April 1994. The panel followed the reasoning of the District Military Prosecutor, namely that the investigation had not yet been completed.

4. On 16 April 1994 the same panel of judges of the District Military Court in Goražde, again with judge Hilmo Vučinić presiding, ordered the applicant's release.

5. On 20 May 1999 by judgement No. K-22/96 of the Cantonal Court in Goražde the applicant was sentenced to 8 years of imprisonment. The presiding judge of the trial was the same judge Hilmo Vučinić.

6. On 16 July 1999 the applicant appealed against the judgement. On 17 February 2000 the Supreme Court of the Federation of Bosnia and Herzegovina in Sarajevo issued a decision reducing the prison sentence from eight to six years. This decision was based on the fact that the applicant had never been convicted before and also that proceeding took several years without the applicant's fault.

7. On 24 August 2001 the Chamber received a letter of the applicant in which he informs the Chamber that a criminal investigation was carried out against a witness in the trial against the applicant before the Cantonal court in Goražde for giving false statement on the trial.

III. COMPLAINTS

8. The applicant complains of a violation of his right to a fair trial as provided for in Article 6, paragraph 1 of the European Convention on Human Rights. In particular, the applicant claims that the first instance court was not impartial for the reason that the presiding judge, Mr. Hilmo Vučinić, conducted all proceedings, from the investigation until the final decision. He further alleges that even if he had committed the crime a proper investigation would have shown that it was an act of self-defence.

9. The applicant also complains of a violation of Article 3 of the European Convention alleging that during the court proceedings before the Cantonal Court in Goražde he was humiliated and debased. For the applicant this humiliation consisted in the fact that he had to repeatedly answer the same allegedly unimportant questions which were devised to distract attention from the important facts of the case.

IV. PROCEEDINGS BEFORE THE CHAMBER

10. The application was submitted to the Chamber on 22 June 1999 and registered on 29 June 1999. The applicant is represented by his authorised lawyer.

V. OPINION OF THE CHAMBER

11. Before considering the merits of the case the Chamber must decide whether to accept it, 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.

A. The complaint of lack of impartiality

12. The Chamber recalls that “the mere fact that a judge has already taken decisions before trial cannot in itself be regarded as justifying anxieties about his impartiality. What matters is the scope and nature of the measures taken by the judge before the trial” (European Court of Human Rights, *Saraiva de Carvalho v. Portugal*, judgment of 22 April 1994, Series A, no. 286, p.38, paragraph 35). An indication for lack of impartiality of the judge could be that he must base his pre-trial decision on “a very high degree of clarity as to the question of guilt” (European Court of Human Rights, *Hauschildt v. Denmark*, judgment of 24 May 1989, Series A no. 154, p.22-23, paragraph 52).

13. The Chamber notes that judge Hilmo Vulčinić was not the investigative judge in the pre-trial proceedings against the applicant and thus not being involved in the investigation itself. Judge Hilmo Vulčinić’s role in the pre-trial proceeding was limited to the fact that he presided over the “panel of judges” that decided to extend and then to end the applicant’s pre-trial detention.

14. According to Article 21 (6) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, the “panel of judges” bases its decision on the case-file taking into account the recommendation of the investigative judge. It therefore does not need to have a high degree of clarity as to the question of guilt of the defendant when deciding upon the pre-trial detention.

15. 5. In addition, the Chamber notes that it is not normally its task to substitute its own assessment of the facts for that of the competent domestic courts (case no. CH/00/4128, DD “*Trgosirovina Sarajevo (DDT)*”, paragraph 13, decision on admissibility of 6 September 2000, Decisions on Admissibility and Merits July - December 2000). In the present case, moreover, the Chamber notes that Supreme Court of the Federation of Bosnia and Herzegovina examined the reasoning of the Cantonal Court and found that it was based on an adequate assessment of the facts. This finding does not appear unreasonable or arbitrary. Under these circumstances, the applicant’s fear that the judge lacked impartiality cannot be regarded as objectively justified. A violation of Article 6 paragraph 1 of the Convention could therefore not be established. It follows that this complaint is manifestly ill-founded in respect to lack of impartiality.

B. The complaint about a lack of fair trial

16. In regard to the applicant’s complaint about the wrong establishment of the facts, the Chamber notes that it is not normally its task to substitute its own assessment of the facts for that of the competent domestic courts (case no. CH/00/4128, DD “*Trgosirovina Sarajevo (DDT)*”, paragraph 13, decision on admissibility of 6 September 2000, Decisions on Admissibility and Merits July - December 2000) and that it is up to the national courts to assess evidence. Moreover, the findings of the Cantonal Court in Goražde and of the Supreme Court of the Federation of Bosnia and Herzegovina do not appear unreasonable or arbitrary and the claims of the applicant are unsubstantiated. The Chamber thus finds the applicant’s claim in regard to lack of fair trial manifestly ill-founded.

C. The complaint of the violation of the Article 3 of the Convention

17. In regard to the applicant’s complaint of a violation of Article 3 of the Convention, The Chamber notes that the applicant did not substantiate his claim. Moreover, from the applicants statement it does not appear that any humiliation or debasement of the applicant occurred which reached the threshold level required by Article 3. Therefore the complaint is manifestly ill-founded.

VI. CONCLUSION

18. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed) Ulrich GARMS
Registrar of the Chamber

(signed) Michele PICARD
President of the Chamber