



DECISION ON ADMISSIBILITY

Case no. CH/02/9517

Željko MATIJAŠEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 10 January 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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. The application was introduced on 13 March 2002. The applicant is currently serving a prison sentence in the Correctional Institution in Mostar.
2. The applicant and N.T. were found guilty by a judgment of the Municipal Court in Srebrenik of 9 July 2001 as co-perpetrators of the criminal offence of aggravated theft under Article 274 paragraph 2 subparagraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina (the "Criminal Code") in conjunction with Article 23 of the Criminal Code. The Court sentenced the applicant to one year and six months of imprisonment, and confiscated the objects used in the commission of the criminal offence.
3. The applicant appealed against the judgment requesting a shorter prison sentence. On 20 August 2001 the Cantonal Court in Tuzla issued its decision refusing the applicant's appeal as ill-founded and upholding the judgment of the Municipal Court in Srebrenik of 9 July 2001.
4. On 2 November 2001 the applicant submitted a request for the protection of legality against the judgment of the Municipal Court in Srebrenik of 9 July 2001 and the judgment of the Cantonal Court in Tuzla of 20 August 2001. The applicant requested that the court review the judgment of 9 July 2001 in respect of the legal qualification of the offence. He submitted that he should be charged with the criminal offence of appropriation of movable objects belonging to others under Article 279 paragraph 2 of the Criminal Code rather than the criminal offence of aggravated theft. The applicant alleges that the request has not been dealt with yet.

II. COMPLAINTS

5. The applicant alleges that the court violated Article 359 paragraph 4, Article 360 paragraph 1 and Article 361 paragraph 1 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina. He requests the Chamber to establish the correct facts in his case and to establish a violation of the law. He also requests the Chamber to order courts of the Federation of Bosnia and Herzegovina to reopen the criminal proceedings, which would include changing the qualification of the criminal offence, thereby resulting in a reduction of the length of his prison sentence. The applicant alleges a violation of his right to a fair hearing as protected by Article 6 of the European Convention on Human Rights (the "Convention").
6. The applicant also alleges that he was subjected to mistreatment when he was apprehended and he requests the Chamber to establish the disciplinary responsibility of the policemen Edin Moranjkić and Dževad Musić of the Police Administration Office in Srebrenik. The applicant alleges a violation of his right to freedom from torture and inhuman and degrading treatment as protected by Article 3 of the Convention.

III. OPINION OF THE CHAMBER

7. 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."
8. The Chamber notes that the applicant complains that both the Municipal Court in Srebrenik and the Cantonal Court in Tuzla wrongly assessed the facts pertaining to his case and misapplied the law. The Chamber further notes that the applicant did not complain about it to the Cantonal Court in Tuzla. Article 6 of the Convention 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.

9. As to the applicant's claim that his right to freedom from torture and inhuman and degrading treatment has been violated, the Chamber notes that the applicant has failed to substantiate his allegations, in particular the applicant failed to provide the Chamber with any documentation supporting his claim including medical evidence or specification. Therefore, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application, in this part, is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel