

Comment submitted by the OHR Legal Department concerning the request of the applicant in Case No. U-13/02

Case number U -13/02

Appeal of Mr Ante Jelavic

Comments made by the Legal Department of the Office of the High Representative

Chronological background

1. By a Decision of the High Representative of Bosnia and Herzegovina allocating jurisdiction for the investigation, prosecution and trials *inter alia* of certain incidents of violence and intimidation in the Federation of Bosnia and Herzegovina to the Cantonal Prosecutor and Cantonal Court of Sarajevo, issued on 27 April 2001 (101/01, Official Gazette of the FBH 20/01), it was provided:

1. *The competent court for conducting investigations into, and first instance trials of, perpetrators of all criminals acts arising from the following events:*

- Acts of incitement, intimidation and violence (including conduct amounting to offences against official duty or other responsible duty) against persons, property and the public peace perpetrated between approximately 00 and 24.00 on Friday the 6th April 2001, at or near the premises owned or occupied by the Hercegovacka Banka in Mostar (Herzegovina – Neretva Canton), Grude (West Herzegovina Canton), Medjugorje (West Herzegovina Canton), Siroki Brijeg (West Herzegovina Canton),

Posusje (West Herzegovina Canton) and Tomislavgrad (Herzegovina-Bosnia Canton) or otherwise related to the appointment of the Provisional Administrator of the Hercegovacka Banka occurring at these and other location;

- Act of the bombing of a vehicle, that took place between approximately 00 and 04.00 on Wednesday 10th April 2001, at Trn in Siroki Brijeg (West Herzegovina Canton);
- Acts of incitement, intimidation and violence (including conduct amounting to offences against official duty or other responsible duty) against persons, property and public peace wherever carried out within the Federation of Bosnia and Herzegovina which had or have as their object support for the so-called Declaration on Croat Self-governance.
- Acts constituting offences against the constitutional establishment of the Federation of Bosnia and Herzegovina which have as their object support for the so-called Declaration on Croat Self-governance.

shall be the Cantonal Court of Sarajevo, with the exception only of criminal acts foreseen in Article 3 (3) of the Law on Amendments to the Law on the Supreme Court of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 33/99) in respect of which the Supreme Court of the Federation of Bosnia and Herzegovina is competent pursuant to that Law.

2. The Cantonal Prosecutor of Canton Sarajevo and the Office thereof shall be the competent prosecutor/prosecuting authority to conduct the prosecution of perpetrators of all criminal acts automatically prosecuted and arising from the aforementioned events, with the exception of criminal

acts foreseen in Article 3 of the Law on Amendments to the Law on the Federal Prosecutor's Office (Official Gazette of the Federation of Bosnia and Herzegovina, No. 33/99) in respect of which the Federal Prosecutor is competent pursuant to that Law.

3. A municipal or cantonal prosecutor and the Office thereof or a municipal or cantonal court that would otherwise be competent under the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina or other relevant Federal or Cantonal Law to prosecute, or to conduct investigation or first instance trial against perpetrators of criminal acts as referred to in numbered Paragraph 1 of this Decision, is required to comply with this Decision and, in the event that the prosecution, or investigation or trial has already been initiated prior to the date hereof, to transfer the case forthwith to the Prosecutor of the Canton of Sarajevo or to the Office thereof or to the Cantonal Court of Sarajevo as applicable under the relevant procedural rules.

4. All law enforcement agencies throughout the Federation of Bosnia and Herzegovina are obliged to assist the Prosecutor of Canton Sarajevo and the Office thereof in the discovery and prosecution of perpetrators of criminal acts referred to in numbered Paragraph 1 of this Decision.

2. The High Representative in so providing, specifically stated that he did so in the exercise of the powers vested in him by Article V of Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina. The High Representative went on to state that he had considered *inter alia* Article II 2. and Article II 3. (e) of the Constitution of Bosnia and Herzegovina which provide that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms set forth in the

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, including "the right to a fair hearing in ... criminal matters, and other rights relating to criminal proceedings".

He further stated that he had borne in mind that in order to hold a fair hearing, the conduct of a full, timely, efficient and comprehensive pre-trial investigation was indispensable. He went on to recognize that in criminal proceedings every endeavor must be made to ensure that all facts are, so far as can be achieved, safely and accurately established.

He explained that he had considered the importance of guaranteeing the implementation of the basic principles of criminal procedure as required by Chapter I, Article 1 through 19 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 43/98) and that he had in mind the object of implementing the principle of legality of criminal prosecution as required by Article 16 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 43/98).

He further noted the vital importance both to the State and to the Federation of Bosnia and Herzegovina of ensuring that the rule of law was strengthened and followed.

3. On 30 July 2001 (as appears from the pleaded Answer/Reply dated 6 and 13 February 2002 of the Cantonal Prosecutor's Office in Sarajevo, signed by the Cantonal Prosecutor, Mr. Mustafa Besic), the said Office submitted a request for the conduct of an investigation, among others, against the said Mr Jelavic on the basis of a reasonable suspicion that he had committed the criminal offence of endangering, under Article 139 of the Criminal Law of the Federation of Bosnia and Herzegovina, the territorial integrity thereof, and, in addition, the criminal offence of undermining military and

defensive power under Article 144 thereof..

4. The said request was duly accepted by the Sarajevo Cantonal Court and on 16 November 2001 the said Court issued a decision on the conduct of such investigation. (No. KI 234/01).

5. Thereafter, on 18 December 2001, the Council of the Cantonal Court rejected an appeal against the said Decision which was affirmed accordingly. (No. KV-645-01).

6. Thereafter on 31 December 2001 an appeal was lodged before the Constitutional Court of Bosnia and Herzegovina pursuant to Article 14 of the Rules of Procedure of the said Constitutional Court. The said appeal sought interim measures in terms of Article 75 of the Rules of Procedure of the said Constitutional Court.

7. The pleading in support of such appeal contended *inter alia* that the right of the appellant to a fair trial had been violated as provided for in Article 6 of the European Convention on Human Rights since the investigation would not be conducted before the competent court.

8. In the said "Answer" dated 6 February 2002, it was submitted that the appeal was unfounded.

Firstly it was contended that the Cantonal Court of Sarajevo had real and territorial jurisdiction taking into consideration the said Decision of the High Representative.

Secondly it was submitted that even in the absence of the said Decision the said Cantonal Court had such jurisdiction to try the criminal offences alleged, based on Articles 139 and 144 of the Criminal Code and Article 22 paragraph 2 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina.

Following other submissions it was finally submitted that the appellant's complaint based on Article 6 of the European

Convention on Human Rights was unfounded since there had been no arbitrary transfer of jurisdiction, trial in Sarajevo was consistent with the said Article 22, and the Decision of the High Representative merely confirmed this Article. Furthermore the Criminal Procedure Code of the Federation of Bosnia and Herzegovina included provision for transfer of territorial jurisdiction.

9. By a document dated 13 February 2002, signed by the Investigating Magistrate Mr. Idriz Kamenica, and lodged with the Constitutional Court, the opinion was given that the appeal of Mr. Jelavic was ill-founded.

10. At its session held on 25 and 26 February 2002, the Constitutional Court issued a temporary measure suspending the execution of the decisions in the said criminal proceedings.

11. By a letter from the Head of the Legal Department of the Office of the High Representative, Mr. Ian Campbell, dated 15 March 2002, and addressed to the President of the Constitutional Court, it was stated that the Office of the High Representative was aware that in the background to the application by the appellant in the said matter, reference may have been made to the High Representatives' said decision of 27th April 2001 transferring certain cases to the Sarajevo Cantonal Court.

The letter continued:

"If it transpires during the deliberations of the Court that the HR Decision is material to the case under consideration, the Court should be aware that the OHR is available to make comments for the assistance of the Court. However if the Court is satisfied that the Decision is not material to its deliberations then such comments would not be necessary."

12. No reply was received to the said letter.

13. On the 10th and 11th May 2002 the Constitutional Court in

its last session of the first composition of the Court considered several appeals, and pursuant thereto announced in a press release that by a majority of votes it had, among other Decisions, granted the appeal of the said Mr. Jelavic.

14. By a letter dated 14 May 2002 addressed to the President of the Constitutional Court, the Head of the Legal Department of the Office of the High Representative wrote:

“I have today read certain press reports to the effect that the High Representative’s Decision was indeed considered by the Court. If this is so it would of course be without precedent for the Court to have made a ruling which touched on a decision of the High Representative without providing his Office with the opportunity to present its comments.”

15. In her reply dated 17 May 2002, the President of the Court confirmed that the Legal Department letter above referred to dated 15 March 2002 had indeed been forwarded to the reporting judge and all other judges. She explained that the Court had not however requested the comments of the High Representative as he was not a party to the proceedings, the appeal having been lodged against the decision of the Cantonal Court.

The said letter concluded by stating that the decision of the Court itself had not been edited by the Editorial Commission nor had it been approved by the reporting judge.

16. By a letter dated 22 May 2002 from the Head of the Legal Department to the President of the Court it was stated:

“Press reports indicate that the Decision of the High Representative dated 27 April 2002 was indeed material to the case concerned before the Constitutional Court in the sense conveyed in my letter to you dated 15 March 2002.

Of course as to the individual case relating to an appeal by Mr Ante Jelavic against an individual act of the Cantonal Court, the Office of the High Representative was not and is

not specifically involved. However as to the principles upon which it was proper for the Court to decide the case, the Office of the High Representative is indeed, if press reports be right as to what transpired, acutely involved.

I note from your letter that the decision of the Court itself has not been edited by the editorial commission nor approved of by the reporting judge. I further note from your letter that the decision will only be published after such editing and approval.

The position taken by the Office of the High Representative is that there would appear to have been a significant failure on the part of the Court to appreciate that the Office of the High Representative should indeed have been invited at the very least to make its comments as *amicus curiae* on the case before the Court came to its decision. This has been the practice always adopted in the past.

Fortunately the decision not having been finalised it is evident that the court may still remedy this important defect by reviewing or altering its decision either under rule 67 or rule 68 of the Rules of Procedure of the Constitutional Court.

Bearing in mind the fact that rule 67 cannot be utilised once the decision or ruling is dispatched by the court, I hereby convey to the Court by this letter, the request of the High Representative that no further steps be taken as to editing or approval until such time as the case can be re-opened to enable the matter to be re-heard, with comments at least available from all those, including the Office of the High Representative, with an interest in the matter.

Since it would seem, once again assuming press reports are correct, that the court reviewed a Decision of the High Representative made pursuant to the international mandate entrusted to him, it is clear that the Office of the High Representative does indeed have a sufficient, indeed the

strongest of interests in the case concerned, which was in the premises decided "per incuriam".

I would be very glad if you would confirm to me that the case will indeed be re-opened as indicated above, without the decision being dispatched.

17. In her reply dated 23 May 2002, the President of the Court stated that in relation to the above letter dated 22 May 2002, the small panel of the Constitutional Court of BiH composed of the President and Vice Presidents had held a session on 23 May 2002 at which it had concluded that in the terms of Article 67 Paragraphs 1 and 2 of the Rules of Procedure of the Constitutional Court of BiH, and in relation to Article 68 of the Rules of Procedure, it was necessary to send the request contained in the letter of the 22 May 2002 to the Court for a review [re-examination] of the adopted decision.

18. No further hearings of the Court have been listed since the matters aforesaid.

Preliminary observations by way of skeleton argument made on behalf of the Office of the High Representative in anticipation of a further and/or re-opened hearing by the Court.

19. Observations on behalf of the Office of the High Representative must in the nature of the instant case be preliminary, as the Office of the High Representative was not privy to submissions made and issues debated, if any, at the hearing on 10 and 11 May 2002. It would appear that had the Court decided to reject the appeal of Mr Jelavic, the issue as to jurisdiction could have been resolved (upon the basis of the written "Answer" of Cantonal Prosecutor Mr. Mustafa Besic) without reference to the Decision of the High Representative.

20. In the event that the Court, in the further or re-opened hearing, finds it necessary to consider the effect of the

aforesaid Decision of the High Representative, the first issue which may arise is as to the reviewability of that Decision by the Court.

21. The comments contained in this document as a whole are so made without making any admissions, express or implied, as to the jurisdiction and/or competence of the Court in respect of Decisions or actions of the High Representative or over the High Representative himself. They are also made without prejudice to any issue which might hereafter, in this or any other case, be raised before this or any other court in Bosnia and Herzegovina with reference to the jurisdiction and/or competence of this or any other court in Bosnia and Herzegovina concerning Decisions or actions of the High Representative or jurisdiction over the High Representative himself.

22. The argument in favour of non reviewability is based on the fact that the High Representative derives his/her mandate in respect of his/her activities in Bosnia and Herzegovina essentially from Annex 10 of the General Framework Agreement for Peace. The High Representative is, according to Article V of that Annex, the final authority in theatre regarding the interpretation of the Agreement on the civilian implementation of the peace settlement. The corollary of the foregoing is that actions and Decisions taken by the High Representative in theatre pursuant to his/her international mandate, are not subject to review by any of the domestic institutions of Bosnia and Herzegovina, including its Constitutional Court.²

23. In *The State Border Service Case* (U9/00) where the issue of the competence of the Constitutional Court to review a law imposed by the High Representative was in issue, the Court made a distinction between on the one hand, the exercise of the powers of the High Representative pursuant to his international mandate and, on the other hand, the exercise of his powers in circumstances where he substitutes himself for the domestic authorities of Bosnia and Herzegovina. In the

former case, the Constitutional Court acknowledged that such action could not be subject to review by any of the domestic institutions of Bosnia and Herzegovina, including the Constitutional Court.

24. The Court in its Decision stated:

II.5. "Taking into account the prevailing situation in Bosnia and Herzegovina, the legal role of the High Representative, as agent of the international community, is not unprecedented, but similar functions are known from other countries in special political circumstances Though recognised as sovereign, the States concerned were placed under international supervision, and foreign authorities acted in these States, on behalf of the international community, substituting themselves for the domestic authorities. Acts by such international authorities were often passed in the name of the States under supervision. Such situation amounts to a sort of functional duality: an authority of one legal system intervenes in another legal system, thus making its functions dual. The same holds true of the High Representative: he has been vested with special powers by the international community and his mandate is of an international character. In the present case, the High Representative – whose powers under Annex 10 to the General Framework Agreement, the relevant resolutions of the Security Council and the Bonn Declaration as well as the exercise of those powers are not subject to review by the Constitutional Court – intervened in the legal order of Bosnia and Herzegovina substituting himself for the national authorities. In this respect, he therefore acted as an authority of Bosnia and Herzegovina and the law which he enacted is in the nature of a national law and must be regarded as a law of Bosnia and Herzegovina.

II.6.....The Parliamentary Assembly is free to modify in the future the whole text or part of the text of the Law, provided that the appropriate procedure is followed.

25. This position was subsequently affirmed in the case of *The Law on the Court of Bosnia and Herzegovina* (U26/01). It may be noted in passing that the practice has been adopted of publishing all Decisions of the High Representative in the appropriate Official Gazette or Gazettes of Bosnia and Herzegovina, its Entities etc irrespective of the subject matter or type of Decision concerned.

26. Assuming without prejudice to the reservation expressed at paragraph 20 hereof the analytical correctness of the concept of functional duality, the issue arises as to how one analyses Decision 101/01 of the High Representative.

As far as the Office of the High Representative is concerned it is contended that Decision 101/01 has all the hallmarks of an exercise of the international mandate *simpliciter* on the part of the High Representative, as opposed to a "substitution".

The principal matters relied on are:

- a. No provision or requirement was made in the Decision for its adoption by the Parliament of the Federation of Bosnia and Herzegovina as a law of the Federation. Whereas this would not on its own be conclusive of the issue, the fact of the matter is that the Decision concerned was taken at a time when crucial issues of peace implementation were involved which the appropriate local authorities were neither ready to deal with nor capable of dealing with.
- b. It neither was nor is open to the Parliament of the Federation of Bosnia and Herzegovina to repeal or amend this Decision of the High Representative as would be the case were an ordinary law imposed by way of a process of "substitution".
- c. The Decision does not purport to amend the domestic law of the Federation but to override it in the

circumstances set out, in a normative manner based on the international mandate of the High Representative and thus in a manner which was not within the capacity of the Parliament of the Federation so to do. In other words while the domestic law is left intact, the obligation to obey the Decision comes from a superseding of this law by a Decision which acquires normative force from the international mandate alone.

- d. In addition certain inferences as to the legal/normative nature of Decision 101/01 are to be drawn from the analysis which follows of a further Decision of the High Representative (112/01) Enabling the Allocation of Court Cases to other Courts within the same Entity which was taken on 3 August 2001 and published in the Official Gazettes of BH 20/01, FBH 38/01 and RS 40/01 and which cross refers to Decision 101/01.

27. Decision No. 112/01 of the High Representative thus recalled in its preamble the said Decision of the High Representative number 101/01 (Official Gazette of the Federation of Bosnia and Herzegovina, No. 20/01) which, as hereinbefore set out, made provision for the allocation to the Cantonal Court of Sarajevo of investigations into, and first instance trials of, perpetrators of all criminals acts arising from the events and circumstances therein specifically referred to.

Decision 112/01 went on to consider that from time to time the interests of justice may require the High Representative to allocate to the Supreme Court, a Cantonal Court or other court or courts within the Federation of Bosnia and Herzegovina, the conduct of investigations into, and first instance trials of, criminal acts, and the alleged perpetrators thereof (in addition to and/or other than criminal acts arising from the events and circumstances referred to in the said Decision 101/01), notwithstanding the existence of any other law, regulation, rule or practice of

the Federation of Bosnia and Herzegovina otherwise applicable to criminal acts and the perpetrators thereof which come within the jurisdiction of the courts of the Federation of Bosnia and Herzegovina.

The Decision dealt in like manner in its preamble with the Republika Srpska before providing:

1. *Where the High Representative concludes, in the exercise of the powers vested in him by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, that the interests of justice require him to allocate to the Supreme Court, a Cantonal Court, or any other court or courts within the Federation of Bosnia and Herzegovina, or to the Supreme Court, a District Court, or any other court or courts within the Republika Srpska, the conduct of investigations into, and the first instance trial or trials of, a criminal act or acts and the alleged perpetrator or perpetrators thereof, the competent court shall be and remain the court specifically identified by the High Representative for this purpose by means of a Notice as hereinafter referred to;*
2. *As to the Federation of Bosnia and Herzegovina, the circumstances in which the High Representative may issue a Notice as aforesaid may include, but would normally be other than, those referred to in his Decision No. 101/01 relating to the Federation of Bosnia and Herzegovina only (Official Gazette of the Federation of Bosnia and Herzegovina, No 20/01);*
3. *Such allocation and bestowal of competency as hereinbefore referred to, shall take place notwithstanding the existence of any other law, regulation, rule or practice of the Federation of Bosnia and Herzegovina or of the Republika Srpska otherwise*

applicable to criminal acts and the perpetrators thereof;

- 4. Each and every Prosecutor (and the Office thereof), or court, who or which would otherwise be competent under the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (or other relevant Federal or Cantonal Law in force within the Federation of Bosnia and Herzegovina), or under the provisions of the Criminal Procedure Code of the Republika Srpska, to prosecute, or to conduct the investigation or the first instance trial of perpetrators of criminal acts as referred to in numbered Paragraph 1 of this Decision, is required to comply with this Decision and Notices issued under it by the High Representative, and shall transfer the case forthwith, under the relevant and applicable procedural rules, to the Prosecutor and/or to the Office and/or to the court identified by the High Representative as competent in the case or cases concerned;*
- 5. In the event that a prosecution, investigation or trial has already been initiated prior to the date of specific identification by Notice by the High Representative referred to in numbered paragraph 1 hereof, the Prosecutor and/or the Office thereof, and/or court concerned shall nevertheless transfer the case forthwith, under the relevant and applicable procedural rules, to the Prosecutor and/or to the Office and/or to the court identified by the High Representative as competent in the case or cases concerned;*
- 6. All law enforcement agencies throughout the Federation of Bosnia and Herzegovina in cases within the jurisdiction of the courts of the Federation of Bosnia and Herzegovina, and all law enforcement agencies throughout the Republika Srpska, in cases within the jurisdiction of the courts of the Republika Srpska, are*

obliged to assist the Prosecutor and the Office thereof to whom or to which such Notice hereinbefore referred to relates, in the discovery and prosecution of perpetrators of the criminal act or acts referred to in numbered Paragraph 1 of this Decision;

- 7. The High Representative shall, so long as the Decision herein remains in force, identify each and every case under numbered Paragraph 1 hereof to be allocated and/or transferred as aforesaid, by means of a Notice, in such form as shall be adopted by him at his sole discretion, and addressed to the Prosecutor(s), Prosecutors' Office(s) and court(s) concerned, identifying the criminal act or acts to which the Notice relates, and, if known, the alleged perpetrator(s) thereof;*
- 8. Each such Notice as may be issued by the High Representative as aforesaid shall have immediate and binding effect on the Prosecutor(s), Prosecutors' Office(s) and court(s) concerned, and shall itself be, and be deemed and treated for all purposes, to be issued in the exercise of the powers vested in the High Representative as hereinbefore referred to;*
- 9. Each and every court before which an alleged perpetrator appears, pursuant to such a Notice as aforesaid, shall take immediate steps to ensure that such alleged perpetrator is provided with a copy of such Notice.*

Finally it was stated that the Decision was not to be treated as authorising or permitting cases to be transferred for hearing from one or other of the Entities of Bosnia and Herzegovina to the other, nor as extending in any manner the duties discharged and/or jurisdiction exercised by the Prosecutors or Prosecutors' Offices or courts of the respective Entities within each such Entity over the other.

28. It is to be noted that Decision 112/01 is clearly of the same *genus* as Decision 101/01, and seemingly could not be

treated analytically on any basis as a “substitution” as there does not exist an Assembly or body with authority to enact law simultaneously at Entity level in each Entity. In Decision 112/01 the intended normative basis is in any event put more explicitly on the international level by virtue of the fact that Annex 10 is referred to not only in the preamble but also in numbered paragraph 1. In addition the same points in respect of interpretation arise as set out at paragraph 26 a)-c) above. *A fortiori* it would be beyond the competence of the domestic authorities to legislate by way of amendment to change the role or responsibility of the High Representative for implementation of the various aspects of that Decision as referred to variously under paragraph 26 (1)-(9) above. The proper inference to be drawn as to Decision 112/01 is that this comes within the unreviewable category of cases identified by the Constitutional Court in the *Border Service Case*. This in turn assists in coming to a like conclusion in respect of Decision 101/01 as indicated at paragraph 25 (d).

29. If, contrary to the above submissions, the Court should conclude that the said Decision 101/01 is indeed reviewable, the regime established by it, is it is submitted fully compliant with the European Convention on Human Rights and with the Constitution of Bosnia and Herzegovina.

30. As appears from the preambular provisions thereof (set out at paragraph 2 hereof), the fundamental purpose of the said Decision was, by means of the transfer of territorial jurisdiction in cases falling within the sensitive categories therein referred to, to ensure fair trial in each such case.

31. It should not be overlooked that the international community has placed upon the High Representative through Annex 10 to the General Framework Agreement for Peace the final authority in theatre as to interpretation of the Agreement on the civilian implementation of the peace settlement. The High Representative's conclusion as how best in the post war theatre a fair trial should be secured from a

territorial point of view must fall within the scope of such interpretation. By way of background one need only refer by way of example to the Special Report No. 348/97 of the Human Rights Ombudsperson on the Mostar incident of 10 February 1997 in which it was concluded in paragraph 69 that "the failure to carry out a proper investigation into the shootings in Mostar on 10 February 1997 and to conduct a proper trial consequent on that investigation was in violation of Articles 2 and 3 of the European Convention on Human Rights" to see that peace keeping concerns, where the High Representative is the final authority in theatre as aforesaid, are highly pervasive, even in issues such as trial venue.

32. In so far as reliance has been placed by the appellant on Article 6 of the European Convention on Human Rights, such reliance is in any event premature. The time to judge as to whether or not a fair trial has been provided is after the conclusion of the same. Clearly transfer of venue should not be arbitrary but the recitation of the provisions of Decision 101/01 set out in paragraphs 1) and 2) hereof make it quite clear that this is not so as provided for in that Decision.

33. These observations may of course be made available to all interested parties to the proceedings and to the court and are merely preliminary comments from the OHR. Further comments will follow in due course once the OHR legal department is duly notified as to the procedures which the court intends to adopt to permit comments and representations to be made by interested parties.