



## **DECISION ON THE ADMISSIBILITY**

of

**CASE No. CH/96/30**

**Sretko DAMJANOVIĆ**

against

**the Federation of Bosnia and Herzegovina**

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 11 April 1997 with the following members present:

Peter GERMER, President  
Dietrich RAUSCHNING  
Rona AYBAY  
Vlatko MARKOTIĆ  
Želimir JUKA  
Mehmed DEKOVIĆ  
Giovanni GRASSO  
Manfred NOWAK  
Vitomir POPOVIĆ  
Viktor MASENKO-MAVI

Andrew GROTRIAN, Registrar  
Olga KAPIĆ, Deputy Registrar

**Having considered** the Application by Sretko DAMJANOVIĆ against the Federation of Bosnia and Herzegovina submitted on 13 December 1996 under Article VIII paragraph 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and **registered** on 13 December 1996 under Case No. CH/96/30;

**Takes the following decision** on the admissibility of the Application under Article VIII paragraph 2 of Annex 6 to the General Framework Agreement.

## **I. THE FACTS**

1. The facts of the case as submitted by the applicant's representative may be summarised as follows:
2. The application was initially presented by Ranka Đukić the applicant's sister, who is resident in the Republika Srpska. It relates to her brother Sretko Damjanović who is held in prison in Sarajevo under sentence of death. He has authorised his sister to apply to the Chamber on his behalf by letter of authority submitted to the Chamber on 3 April 1997.
3. The applicant was convicted by a District Army Court in 1993 of genocide and crimes against the civilian population. He was sentenced to death. On 30 July 1993 the High Court in Sarajevo altered the factual basis of the conviction but upheld the death sentence. The conviction, as upheld by the High Court, was for the murder of two brothers named *Blekić* and also for the murder of a third person, named *Ramiz Krso*. It is alleged that the only evidence against the applicant consisted of false statements obtained from him and a co-accused by force.
4. According to his representative, the applicant's defence lawyer has discovered that the *Blekić* brothers are alive and well and, further, that two other persons have been accused of the murder of *Ramiz Krso* in other proceedings. On the basis of these facts the defence lawyer has applied to the High Court in Sarajevo for a review of the proceedings.

## **II. COMPLAINTS**

5. In the application to the Chamber the applicant's representative submits that there is a danger that the death sentence on the applicant will be carried out. She maintains that he was very badly treated in the proceedings against him and that his human rights were violated in a most arrogant way. She therefore submits this application and suggests that the Chamber should order, as a provisional measure, the release of the applicant from prison or the postponement of the execution of the death penalty until the end of the proceedings in the request for review.

## **III. PROCEEDINGS BEFORE THE CHAMBER**

6. The application was received by the Chamber on 13 December 1996. On 16 December 1996 the President of the Chamber decided, under Article X paragraph 1 of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rule 36 of the Chamber's Rules of Procedure, to order the respondent Party to secure that the death sentence on the applicant was not carried out pending the Chamber's consideration of the case. This decision was communicated to the Agent of the respondent Party on the same day. By letter of 19 December 1996 the Minister of Justice of the respondent Party made certain observations on the case.
7. The case was considered by the Chamber at its session from 3 to 7 February 1997. It decided in accordance with Rule 49 (3) (a) of its Rules of Procedure to invite the respondent Party to submit written observations (a) on the admissibility of the case under Article VIII paragraph 2 of the Agreement and (b) on the merits of the case. The Chamber requested the respondent Party to make observations in particular on the question whether the carrying out of the death penalty on the applicant would be compatible with Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and with Article 2 of the Convention itself. It also requested the respondent Party to comment on the question whether the Army Court which convicted the applicant was to be regarded as a "court" for the purposes of Article 2 paragraph (1) of the Convention and to give certain information regarding its composition and procedures.

8. The Chamber also decided to maintain in force the order for provisional measures made by the President.

9. In accordance with Rule 51 of its Rules of Procedure the Chamber fixed a time limit expiring on 18 March 1997 for submission of the respondent Party's observations. No response to the invitation to submit observations has been received from the respondent Party.

#### IV. OBSERVATIONS OF THE RESPONDENT PARTY

10. The only observations received from the respondent Party are those set out in the letter of 19 December 1996 from the Minister of Justice. In that letter he draws attention to the provisions of Articles 400-411 of the Law on Criminal Procedure governing the procedure in requests for the re-opening of criminal proceedings. He also points out that under Article 4 of the Law on Amnesty (O.G. Fed. B & H, No.9/96), amnesty cannot be granted for acts such as genocide, war crimes and crimes against humanity, which are the acts the applicant was charged with.

#### V. THE LAW

11. The present application was initially submitted to the Chamber by Ranka Đukić, who complained that her brother, Sretko Damjanović, was in danger of execution and also complained of his treatment in the proceedings which led to his conviction. The Chamber therefore notes that it is now clear, from the letter of authority signed by Mr. Damjanović which has been submitted, that Ranka Đukić is acting as the representative of her brother rather than presenting as application in her own right. The Chamber therefore considers it appropriate to treat Mr. Damjanović as the applicant in the case notwithstanding that his sister is named as the applicant in the initial application.

12. Before considering the case on its merits the Chamber must decide, pursuant to Article VIII paragraph 2 of the Human Rights Agreement, whether to accept the case, taking into account the admissibility criteria there set out.

13. The Chamber first notes that the complaints put forward relate in part to the alleged bad treatment of the applicant in the proceedings which led to his conviction in 1993 and thus relate to events which are alleged to have occurred before 14 December 1995, when the Agreement came into force. In accordance with generally accepted principles of law the Agreement cannot be applied retroactively, (see Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision of 13 September 1996). The Chamber must therefore confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date. In so far as the applicant complains that he is threatened with execution his complaints are within the Chamber's competence *ratione temporis* and are not incompatible with the Agreement for the purposes of Article VIII paragraph 2 (c) of the Agreement. The complaints relating to the proceedings which led to his conviction and sentence in 1993 may also be relevant to the question whether the carrying out of the death sentence would now be compatible with the Agreement. The Chamber does not therefore consider that her allegations regarding those proceedings should be excluded from consideration at the present stage.

14. As to the applicant's complaint concerning the possible carrying out of the death sentence, the Chamber observes that under Article II paragraph 2 (a) of the Human Rights Agreement it has jurisdiction to consider alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the Protocols thereto.

Article 2 paragraph (1) of the Convention provides as follows:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

The effect of this provision is modified by Protocol No. 6 to the Convention, which provides *inter alia* as follows:

**“Article 1.**

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

**Article 2.**

A State may make provision in its law for the death penalty in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.”

15. The Chamber observes that under the above-quoted provisions of Protocol No. 6, the carrying out of a death penalty would be unlawful under Article 1, unless it were established that it had been carried out in accordance with a law within the scope of Article 2 of the Protocol. In the present case the respondent Party has not sought to argue that the carrying out of the death penalty imposed on the applicant’s brother would be justified under Article 2 of the Protocol and in these circumstances the Chamber finds that a serious question arises as to whether such action would be compatible with Protocol No. 6 and the Agreement.

16. Furthermore, in the Chamber’s opinion, even if the carrying out of the death penalty was compatible with Article 2 of Protocol No. 6 to the Convention, it would still be necessary to consider whether it was compatible with Article 2 of the Convention itself. The Chamber points out that under the latter provision a death penalty may only be carried out if it was imposed by a “court”. The European Court of Human Rights has held that certain requirements of independence, impartiality and procedural fairness are inherent in the very notion of a “court” under the Convention, (see e.g., Eur. Ct. H.R., *Belgian Vagrancy Case*, Series A. No. 12). In the present case the Chamber considers that it may be relevant, in considering whether the carrying out of the death penalty would be lawful under Article 2 to take into account whether the standards of procedural fairness laid down in Article 6 of the Convention were met in the proceedings which led to the applicant’s conviction. However, questions which the Chamber has addressed to the respondent Party in relation to the composition and procedures of the Army Court which convicted the applicant have not been answered. In these circumstances a serious issue also arises, in the Chamber’s view, as to whether the carrying out of the death penalty would be compatible with Article 2 of the Convention either alone or in conjunction with Article 6 of the Convention.

17. The Chamber further notes that the applicant has been held under sentence of death since 1993. It recalls that in the case of *Souring v. the United Kingdom* (1989, Series A No. 161) the European Court of Human Rights held that “the circumstances relating to a death penalty” including in particular the length of time spent by a convicted person under sentence of death, might give rise to an issue under Article 3 of the Convention, which prohibits *inter alia* any “inhuman or degrading treatment or punishment”. In the present case, taking into account the length of time for which the applicant has been held under sentence of death and the other circumstances of the case, including the applicant’s alleged ill-treatment since the Agreement came into force has been compatible with Article 3 of the Convention.

18. The Chamber therefore considers that the complaints concerning the possible carrying out of the death sentence on the applicant and the treatment he has received raise serious issues under the provisions it has referred to.

19. The respondent Party has not suggested that any “effective remedy” is available to the applicant or her brother for the purposes of Article VIII paragraph 2(a) of the Agreement. In this connection the Chamber notes that the proceedings for review which are pending in the High Court

appear to be concerned with the merits of the conviction in the light of new evidence. It has not been demonstrated that the High Court would consider as such the question whether the carrying out of the death penalty would be compatible with the Agreement if the conviction were upheld. In these circumstances the Chamber finds that it has not been established that any effective remedy exists and that there is no ground for rejecting the application under Article VIII paragraph 2 (a) of the Agreement.

20. No other ground of inadmissibility is established and the application must therefore be declared admissible.

For these reasons the Chamber, without prejudging the merits, unanimously:

**DECLARES THIS APPLICATION ADMISSIBLE**

(signed) Andrew GROTRIAN  
Registrar of the Chamber

(signed) Peter GERMER  
President of the Chamber