# DECISION ON ADMISSIBILITY AND MERITS
**(delivered on 12 May 2000)**

**Case no. CH/98/724**

**Dragan MATOVIĆ**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 April 2000 with the following members present:

Mr. Giovanni GRASSO, Acting President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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) and Article XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

## I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent from Bijeljina, Republika Srpska. He is currently in prison in Bijeljina. On 31 January 1993 he was arrested for the murder of two persons. On 30 December 1993 the Military Court in Bijeljina found the applicant guilty and sentenced him to death. After six years of appeals, decisions quashing conviction and sentence, renewed convictions and death sentences, on 22 November 1999 the Supreme Court of Republika Srpska commuted the death sentence into a twenty years prison sentence.

2. The application raises issues under Article 6 of the European Convention on Human Rights, while the matter under Article 1 of Protocol No. 6 to the Convention and Article 2 paragraph 1 of the Convention is solved.

## II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was brought before the Chamber through the Organisation for Security and Cooperation in Europe ("OSCE") on 26 June 1998 and registered on the same day. Additional information was submitted by the OSCE on 10 July 1998. The applicant is represented by Ms. Nadežda Milošević practising in Bijeljina.

4. On 17 July 1998 the Chamber decided to transmit the case to the respondent Party for observations on the admissibility and merits. There was no response from the respondent Party.

5. On 19 October 1998 the Chamber informed the applicant that the respondent Party had not submitted any observations. The applicant was in turn invited to submit any further written observations, but did not do so.

6. On 16 June 1999 both parties were requested to submit further information and relevant documents. On 30 June 1999 a reply by the respondent Party was received. A letter from the applicant was received on 5 July 1999.

7. The Chamber deliberated on the admissibility and merits of the case on 10 June, 9 July and 7 September 1999 and on 10 and 11 February 2000 and 6 April 2000. It adopted the present decision on the latter date.

## III. ESTABLISHMENT OF THE FACTS

### A. Particular facts of the case

8. The facts of this case are essentially not in dispute and may be summarised as follows. As to the facts in paragraph 13 the Chamber has relied on information supplied by the OSCE.

9. By a judgement of the Military Court in Bijeljina of 30 December 1993 the applicant, who at the time of the crime held the rank of "junior sergeant in reserve", was convicted of having murdered two persons and sentenced to death. The Court relied on Article 36 paragraph 2(6) of the Criminal Law of Republika Srpska – special part.

10. On 26 August 1994 the Supreme Military Court in Sarajevo annulled the decision of the Military Court, sent back the case to the latter court for re-trial and ordered that an expert opinion on the mental state of the accused at the time of the criminal acts, an autopsy of one of the victims and an opinion by a ballistic expert be obtained.

11. On 11 February 1997 the Military Court in Bijeljina, at the conclusion of the renewed proceedings, again sentenced the applicant to death.

12. In May 1997 the applicant appealed to the Supreme Military Court in Zvornik against the

judgment of 11 February 1997. The appeal was received by the Supreme Military Court on 9 July 1997.

13. In a meeting with the OSCE on 12 February 1998, the judge of the Supreme Military Court handling the case indicated that the Court wished to impose a prison sentence longer than was possible under the law as it stood. The delay in the proceedings was due to the fact that the new Criminal Law of the Republika Srpska, which would allow for a penalty heavier than 15 years imprisonment in lieu of the death penalty, had not yet been adopted. In a meeting with the OSCE in June 1998, the Supreme Military Court stated that commuting the sentence to 15 years imprisonment would be too light a sentence for a crime of that gravity, and that the Court would wait for a change of the law, providing for a longer term of imprisonment. The President of the Supreme Military Court added that another reason for the failure to consider the applicant's case was the limited resources the Court.

14. However, on 6 April 1999 the Supreme Military Court in Zvornik confirmed the judgment of the Military Court in Bijeljina of 11 February 1997. It reasoned that in the applicant's case the death penalty was in accordance with Article 2 of Protocol No. 6 to the Convention because the crime in question had been committed during the war.

15. The applicant appealed against the sentence, asking that the death sentence be commuted to a sentence of imprisonment. On 22 November 1999 the Supreme Court of Republika Srpska accepted the appeal and commuted the death sentence to a twenty years prison sentence. It stated:

> "in the present legal situation, it is not possible to sentence someone to the death penalty for such a criminal act. It is forbidden by the provisions of the European Convention on Human Rights, which has to be applied according to the provisions of Article II paragraph 2 of the Constitution of Bosnia and Herzegovina, which entered into force on 14 December 1995. That is the main reason for which this Court accepted the appeals, modified the first and second instance judgments in the part of the decision on sentences, and instead of the death penalty sentenced the convicted persons to a sentence of 20 years imprisonment..."

## B. Relevant domestic law

### 1. Continuation of laws enacted prior to the General Framework Agreement

16. Under Article 2 of Annex II to Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement, all laws, regulations and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution of Bosnia and Herzegovina enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina.

### 2. The Law on Military Courts

17. Article 1 of the Law on Military Courts, which entered into force on 8 January 1994 (Official Gazette of the Republika Srpska – hereinafter "OG RS" – nos. 27/93 and 8/96) reads, insofar as relevant, as follows:

> "Ordinary military courts have competence to adjudicate criminal offences of military personnel and certain criminal offences of other persons under this law."

18. Article 11 paragraph 1(4) reads, insofar as relevant, as follows:

> "Military courts are competent to try ... professional non-commissioned officers and officers ..., students of military schools and members of the reserve army while serving under compulsory orders in respect of all criminal offences ..."

19. Article 20 paragraph 1(1) reads as follows:

> "The Supreme Military Court decides upon appeal against decisions of military courts in

cases provided by the law."

20. Article 76 reads as follows:

"Military courts shall bring to an end the first instance proceedings, in accordance with previously provided competence in all cases in which the indictment took effect."

### 3. The Law on Regular Courts

21. The Law on Regular Courts (OG RS no. 22/96), Article 22 paragraph 3(a), reads as follows:

"The Supreme Court is competent to decide upon appeals against the second instance judgments of the Supreme Military Court if the judgment imposes the death penalty or imprisonment of 20 years or if it confirms the first instance judgment pronouncing such penalty."

### 4. The Criminal Law of the Republika Srpska

22. The Criminal Law of the Republika Srpska - special part (OG RS nos. 15/92, 4/93, 17/93, 26/93, 14/94 and 3/96), Article 36 paragraph 2 reads, insofar as relevant, as follows:

"Imprisonment of at least ten years or the death penalty shall be imposed on a person who:
....
(6) commits two or more murders of the first degree."

23. The Criminal Law of the Republika Srpska (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 44/76, 34/84, 74/87, 57/89, 38/90, 45/90; and OG RS nos. 12/93, 19/93, 26/93, 14/94 and 3/96), Article 38 reads, insofar as relevant, as follows:

"1. The punishment of imprisonment may not be shorter than fifteen days nor longer than fifteen years.
2. For crimes which carry the death penalty, the court may also pronounce a sentence of twenty years imprisonment.
...."

The combined effect of these two provisions is that if a person is found guilty of two first degree murders he can be convicted to between ten or fifteen years imprisonment or the death penalty. The latter may be commuted into a twenty-year prison term.

## IV. COMPLAINTS

24. The applicant complains that the infliction of the death penalty violated Article 1 of Protocol No. 6 to the Convention and Article 2 paragraph 1 of the Convention.

25. The applicant also alleges that the proceedings before the Military Court in Bijeljina, concluded on 30 December 1993, were not conducted properly and that the judges who adjudicated the case did so erroneously, under political pressure and influence of bribes. He further alleges that, during the entire criminal proceedings, his human rights were violated by newspaper interviews given by judges, representing him as being criminal, "Ustaša" and maniac. Finally, he complains that the proceedings before the courts have not been conducted with reasonable speed.

## V. SUBMISSIONS OF THE PARTIES

26. The respondent Party did not make any submissions regarding the admissibility or the merits of the application. In its letter of 30 June 1999 it explained the legal grounds on which the applicant

was judged by military courts and submitted the relevant judgments in the case.

27. The applicant maintains his complaints.

## VI. OPINION OF THE CHAMBER

### A. Admissibility

28. Before considering the application on the merits the Chamber shall take into account the admissibility criteria set out in Article VIII of the Agreement.

#### 1. The Chamber's competence *ratione temporis*

29. The Chamber notes that the applicant's complaints relate in part to his conviction in 1993 and thus to events which occurred before 14 December 1995, when the Agreement entered into force. In accordance with generally accepted principles of law the Agreement cannot be applied retroactively (see case no. CH/96/1, *Matanović*, decision on admissibility of 13 September 1996, Decisions on Admissibility and Merits 1996-1997). The Chamber must 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 (see case no. CH/97/30, *Damjanović*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997). In so far as the applicant complains that his rights have been violated after 14 December 1995 his complaints are within the competence of the Chamber *ratione temporis* and are not incompatible with Article VIII(2)(c) of the Agreement.

30. The Chamber finds no other reasons to declare the application inadmissible. It concludes therefore that the application should be accepted and examined on its merits in so far as it relates to violations of the applicant's human rights which are alleged to have occurred or have been threatened to occur since the Agreement came into force on 14 December 1995.

#### 2. Matter solved within the meaning of Article VIII(3) of the Agreement

31. According to Article VIII(3) of the Agreement, the Chamber may at any point decide to strike out an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the case. In all these situations, however, a decision to strike out an application must be consistent with the objective of respect for human rights.

32. In the present case, the Chamber notes that, on 22 November 1999, the Supreme Court of the Republika Srpska accepted the applicant's appeal and commuted the death sentence into a twenty-year prison sentence. Therefore, any violation of the applicant's right to life and not to be subjected to the death penalty was remedied.

33. Accordingly, the Chamber concludes that this part of the application has been resolved. In these circumstances it is no longer justified to continue the examination of this part of the case. Moreover, such an outcome would not be inconsistent with the objective of respect for human rights.

### B. Merits

34. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by Republika Srpska of its obligations under the Agreement.

35. Article 6 paragraph 1 of the Convention, in so far as relevant, provides as follows:

> "In the determination of .... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law."

### 1. Impartial tribunal

36. The applicant alleges that, during the proceedings, judges who took part in his case at first and second instance made statements in the press to the effect that the applicant was a criminal, "Ustaša" and maniac.

37. The Chamber invited the applicant to provide evidence of these allegations. The applicant's representative replied in a letter of 5 July 1999 that such statements had been published in the press at all stages of the criminal proceedings. She listed newspapers in which they had been published. She committed to provide the Chamber with the newspaper articles and other necessary evidence within a short time-limit.

38. Neither the applicant nor his representative, however, offered any such evidence, nor did they explain why they were not in a position to do so. The Chamber cannot find any evidence as to a lack of impartiality of the court on its own motion.

39. The Chamber finds therefore that there has been no violation of the applicant's right to a trial before an impartial tribunal.

### 2. Fair trial

40. The applicant submits that, in the renewed first instance proceedings, the president of the Court committed numerous errors in order to justify the infliction of the death penalty. He submits that the sketch of the scene of the crime was made incorrectly, that the whole incident was erroneously reconstructed and that the presentation of evidence by the court was incorrect.

41. In accordance with well-established jurisprudence of the European Court on Human Rights, the Chamber has previously held that it is not within its province to substitute its own assessment of the facts for that of the domestic courts (see case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 10, Decisions August-December 1999). Only where it is alleged or apparent that the evaluation of evidence by the domestic court has been grossly inadequate and devoid of the appearance of fairness, the Chamber might examine the establishment of the facts by the domestic court (see case no. CH/98/638, *Damjanović*, decision on admissibility and merits delivered on 11 February 2000, paragraphs 80-82). In the present case, the Chamber cannot on the evidence presented to it, find that there were any such deficiencies in the domestic proceedings. Thus it sees no reason to examine the establishment of the facts by the domestic courts.

42. The Chamber finds therefore that there has been no violation of the applicant's right to a fair trial.

### 3. Length of proceedings

43. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The Chamber finds that, considering its competence *ratione temporis,* it can assess the length of the proceedings only after 14 December 1995. It may, however, take into account what stage the proceedings had reached and how long they had lasted before that date.

44. In the present case, the renewed proceedings had lasted already fourteen months when the Agreement entered into force. The first instance proceedings were concluded on 11 February 1997 by the pronouncement of the death penalty against the applicant. The proceedings before the second instance, the Supreme Military Court of the Republika Srpska, were initiated by the applicant's appeal on 9 July 1997 and the judgment was issued on 6 April 1999. The third instance proceedings were concluded before the Supreme Court of the Republika Srpska on 22 November 1999. To sum up, the proceedings in the criminal case lasted, after 14 December 1995, three years and eleven months.

45. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case (see e.g. case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with reference to the corresponding case-law of the European Court).

46. The Chamber is of the opinion that this is indeed a complex case considering the seriousness of the committed crime and the sentence pronounced. In the course of the first instance proceedings the court was presented with various evidence: such as psychiatric expertise, exhumation attempts, ballistic expertise, reconstruction of the incident, for which it needed a certain period of time to consider. Nevertheless, the Chamber recalls that the case was pending before the Supreme Military Court from 9 July 1997 to 6 April 1999, i.e. for about one year and nine months. Apparently, the delay before this Court was due to the fact that it was awaiting amendments to the Criminal Law of the Republika Srpska (see paragraph 13 above). Also, the President of the Supreme Military Court referred to the limited resources at the Court's disposal. The Chamber considers that none of these explanations justifies the length of proceedings before that Court, despite the relative complexity of the case. Instead, having regard to the time the case was pending before the Supreme Military Court and the overall length of the proceedings, the Chamber finds that the case was not examined within a reasonable time.

47. The Chamber finds therefore that there has been a violation of Article 6 paragraph 1 of the Convention in relation to the length of the criminal proceedings against the applicant.

## VII. REMEDIES

48. In accordance with Article XI(1)(b) of the Agreement, the Chamber must next address the question which steps should be taken by the respondent Party to remedy the established breaches of the Agreement. With regard to this, the Chamber shall consider orders to cease and desist, pecuniary compensation and provisional measures.

49. The Chamber notes that in accordance with its order for organisation of the proceedings in the case the applicant was entitled to claim compensation. He did not do so.

50. The Chamber notes that it has found a violation of the applicant's right to a trial within a reasonable time. Having in mind that in the course of the proceedings before the Chamber, the criminal proceedings were ended before the national court by the issuance of a final decision commuting the death sentence into twenty years' imprisonment, and that the applicant receives full credit for the time spent in detention before the decision of the Supreme Court, the Chamber considers that the finding of a violation of the applicant's rights as guaranteed by Article 6 paragraph 1 of the Convention constitutes a sufficient remedy.

## VIII. CONCLUSIONS

51. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible the application under Article 6 of the European Convention on Human Rights in so far as it relates to events after 14 December 1995;

2. unanimously, to declare inadmissible the application in so far as it relates to events before 14 December 1995;

3. unanimously, to strike out the part of the application relating to alleged violations of Article 2 paragraph 1 of the Convention and Article 1 of Protocol No. 6 to the Convention;

4. unanimously, that there has been no violation of Article 6 paragraph 1 of the Convention regarding the applicant's right to a fair trial before an impartial tribunal;

5. unanimously, that the criminal proceedings against the applicant was not concluded within a reasonable time and that there has been a violation of Article 6 paragraph 1 of the Convention in this respect, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement; and

6. unanimously, that the finding of a violation of the applicant's rights in the present decision constitutes an adequate remedy.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
Acting President of the Chamber