



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/11146**

**Kristijan BOTIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 October 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President  
Mr. Jakob MÖLLER  
Mr. Mehmed DEKOVIĆ  
Mr. Vitomir POPOVIĆ  
Mr. Mato TADIĆ

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. The application was introduced on 12 June 2002.
2. On 22 October 2001 the applicant was found guilty by the Cantonal Court of murder pursuant to Article 171 paragraph 1 of the FBiH Criminal Code and he was sentenced to twelve years imprisonment. In its judgement, the Court further decided to recognise the time he spent in custody pending trial (from 19 October 2000 to 22 October 2001) as part of the sentence of imprisonment and to confiscate his gun (used for the commission of the murder).
3. The applicant filed an appeal against the judgement claiming that there were substantive violations of the Criminal Code and the Law on Criminal Procedure and that the establishment of the facts was wrong and incomplete.
4. On 13 March 2002, the Supreme Court issued a judgement by which, *inter alia*, it accepted partly the appeal and changed the judgement of the Cantonal Court, reducing the imprisonment sentence from twelve to eleven years.
5. The applicant requests that the Chamber help him to contest the judgements of the Cantonal Court and the Supreme Court. He argues that the facts taken into account were wrong and that there was a plot between the police and the prosecution authorities against him. He alleges that the Court rejected important allegations from the defence, and he requests the Chamber to check his allegations and issue a judgement acquitting him. The applicant complains that his rights under Article 6 of the European Convention on Human Rights have been violated.

## **II. OPINION OF THE CHAMBER**

6. 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."
7. The Chamber notes that the applicant complains that both the Cantonal and Supreme courts wrongly assessed the facts pertaining to his case. 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 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 court 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.

## **III. CONCLUSION**

8. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE**

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Viktor MASENKO-MAVI  
Acting President of the Second Panel