DECISION ON ADMISSIBILITY

CASE No. CH/99/2142

Stipo VARIVODA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 April 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
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) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Croat origin. On 3 September 1996 he was convicted of having killed his wife by the Doboj High Court sitting in Tešanj and sentenced to 8 years of imprisonment. The applicant appealed against this judgement to the Supreme Court of the Federation of Bosnia and Herzegovina, but by decision of 2 December 1997 the Supreme Court confirmed the first instance judgement.

2. From 9 October 1995, i.e. the day after the killing of his wife, to 24 April 1996 the applicant was detained in Vitez. On the day of his release, he was arrested by police from Tešanj. The applicant alleges that in Vitez he served sentence for the same crime he was subsequently convicted for by the Court in Tešanj, and that he was released because he was found innocent. The judgment of 3 September 1996, however, reflects that the applicant was held in custody in Vitez as a person suspected of a serious offence and released because the time-limit for custody in the absence of an indictment had expired.

3. The applicant also alleges that the High Court in Tešanj delayed the transmission of his appeal to the Supreme Court for more than a year. This allegation is certainly ill-founded, as from the Supreme Court judgment it can be ascertained that the prosecution submitted its brief in reply to the appeal already on 30 June 1997, i.e. less than ten months after the first-instance judgment.

4. The applicant further alleges that he received the Supreme Court judgment only after two and a half years (from which date is unclear) through the Federation Ombudsmen to which he had applied. However this allegation is to be understood, on 13 January 1999 the applicant was aware of the Supreme Court judgment, as can be seen from a letter he sent to the Chamber on that date.

5. The applicant finally alleges that the finding of the court expert proved that his wife had died under the influence of poison and not of the blows inflicted by the applicant. The Supreme Court judgment examined the applicant's complaints against the medical evidence and confirmed the High Court's findings also in this point.

II. COMPLAINTS

6. The applicant appears to claim that he was convicted and imprisoned twice for the same crime. He therefore appears to claim a violation of Article 4 of Protocol No. 7 to the Convention. He also claims that the High Court in Tešanj wrongly assessed the evidence before it and delayed his appeal.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was received by the Chamber on 7 May 1999 and registered on 10 May 1999. A provisional file had been opened on 30 April 1999 after letters from the applicant had been received on 22 January and 24 March 1999.

IV. OPINION OF THE CHAMBER

8. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

A. The alleged violation of the applicant's right to a fair trial within reasonable time

9. As to the applicant's allegation that the domestic courts wrongly established the facts of his case, the Chamber recalls that, in accordance with the well-established jurisprudence of the European Court of Human Rights in this respect, it is generally for the domestic courts to assess the evidence

before them. Confirming this principle, 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 apparent that the evaluation of the evidence by the domestic court is grossly inadequate, devoid of the appearance of fairness and has patently lead to a miscarriage of justice, 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, paragraph 80-82). The applicant has not substantiated his allegation that in his case the evaluation of the evidence lead to a miscarriage of justice. This complaint is accordingly manifestly ill-founded.

10. The applicant also complains that the first-instance court delayed the transmission of his appeal to the Supreme Court for more than a year and that he received the Supreme Court judgment only after two and a half years. As stated above, both these allegation are certainly ill-founded in fact and therefore inadmissible under article VIII(2)(c) of the Agreement.

B. The alleged violation of the right not to be tried or punished twice for the same offence

11. The applicant complains that he is currently serving a sentence for a crime on account of which he had already been imprisoned and subsequently released because his innocence was established. This allegation, if proved correct, would raise serious issues under Article 4 paragraph 1 of Protocol No. 7 to the Convention, which reads:

> "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State".

12. The Chamber notes, however, that the first instance judgment of 3 September 1996 states that in Vitez the applicant was in custody during preliminary investigations. After six months he was released because the time-limit for custody in absence of an indictment had been reached. The applicant's trial by the High Court in Tešanj was his first and only trial on account of the killing of his wife. Moreover, the judgment of 3 September 1996 gives the applicant credit for the time spent in custody in Vitez. Therefore, the Chamber finds that also this part of the application is manifestly ill-founded.

V. CONCLUSION

13. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel