DECISION ON ADMISSIBILITY

Case no. CH/99/2629

Mehmed NURKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 December 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application 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. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina living in Lukavac, Federation of Bosnia and Herzegovina. On 14 November 1994 his son, M.N., was killed in combat as a soldier of the Army of Bosnia and Herzegovina. After M.N.'s death and burial, a friend of the applicant's son, Ms. A.B., instituted proceedings against the applicant, claiming that M.N. was the father of her child M.B., born on 28 July 1995.

2. The Municipal Court in Lukavac determined by judgment of 29 January 1997 that M.N. was the father of M.B. This decision was confirmed, against the applicant's appeals, by the Cantonal Court in Tuzla on 3 June 1997 and by the Supreme Court of the Federation on 22 February 1999.

3. The applicant argues that the courts omitted to compare his son's blood type with the child's in order to determine whether his son could really be M.B.'s father, thereby failing to consider obviously decisive evidence. However, in the first instance judgment there is no trace of a request for such a test. The second instance judgment rejected the request to carry out the test as manifestly ill-founded, on the ground that no comparison of the blood could be carried out as the alleged father was long dead. The Supreme Court stated that no such evidence was necessary, as the first instance court had correctly relied on witness testimony indicating that M.N. was M.B.'s father.

II. COMPLAINT

4. The applicant complains that the courts refused to take into consideration decisive evidence. The Chamber will construe this as a complaint of violation of his right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

5. The application was submitted to the Chamber on 25 June 1999 and registered on the same day.

IV. OPINION OF THE CHAMBER

6. 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. Pursuant to Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application which it considers incompatible with the Agreement.

7. The applicant complains that, by failing to take certain evidence in proceedings concerning the alleged paternity of his late son, the courts violated his right to a fair trial. Article 6 of the Convention, protecting that right, insofar as relevant to the case at hand reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ...".

8. The Chamber notes that it is open to question whether the proceedings complained of concerned "the determination of the applicant's civil rights and obligations", considering that the subject matter of the suit against the applicant was whether his son was the father of M.B.

9. However, the Chamber need not solve this question. It recalls that, according to the European Court of Human Rights, national legislators and courts enjoy a wide margin of discretion as regards the admission and evaluation of evidence. In the *Lüdi* case (*Lüdi v. Switzerland* judgment of 15 June 1992, Series A no. 238, p. 20, paragraph 43; see also *Vidal v. Belgium* judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, paragraph 33, and *Dombo Beheer B.V. v. the Netherlands* judgment of 27 October 1993, Series A no. 274, p. 18, paragraph 31) the Court stated:

> "...as a general rule it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings, considered as a whole, including the way in which the evidence was submitted, were fair".

10. The same principle applies to proceedings before the Chamber. The Chamber notes that the Supreme Court of the Federation rejected the applicant's request for further evidence on the ground that the evidence before the lower courts had been sufficient to decide the case. The applicant has not made any allegations that this conclusion was reached as a result of proceedings that were not fair within the meaning of Article 6 paragraph 1 of the Convention, nor do any reasons to doubt the fairness of those proceedings emerge from the case-file.

11. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel