



DECISION ON ADMISSIBILITY

Case no. CH/00/4033

Ilija SIMAKOVIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 July 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. Manfred NOWAK
Mr. Miodrag PAJIĆ
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)(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 of Serb origin. He alleges that on 11 May 1994 his son, Mr. Vitomir Simaković, was captured by units of the Army of the Republic of Bosnia and Herzegovina and subsequently kept in custody in a prison in Tuzla. On 5 February 1995 he was killed near the front-line in the Municipality of Brčko.

II. COMPLAINT

2. The applicant alleges a “violation of his rights under Annex 6 to the Agreement” due to the fact that he has not received the mortal remains of his son.

III. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 1 February 2000 and registered on 7 February 2000.

IV. OPINION OF THE CHAMBER

4. 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 incompatible with the Agreement or manifestly ill-founded.

5. The Chamber notes that the applicant has directed his application against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina as respondent Parties. Having regard to the responsibilities of the institutions of Bosnia and Herzegovina according to Article 3 paragraph 1 of the Constitution of Bosnia and Herzegovina, the Chamber finds that no responsibility can be attached to Bosnia and Herzegovina. The application is therefore incompatible *ratione personae* insofar as it is directed against Bosnia and Herzegovina.

6. The applicant complains that he has not received the mortal remains of his son. The Chamber notes firstly that the death of the applicant's son allegedly occurred before the entry into force of the Agreement. Noting that the applicant has not made any specific complaint directly related to the death of his son, the Chamber considers *proprio motu* that this issue is outside the Chamber's competence *ratione temporis*.

7. Nevertheless, the case could raise an issue under Article 8 of the European Convention on Human Rights if the applicant showed that the respondent Party is in possession of the body and unreasonably refuses to hand it over to the applicant. However, the applicant has not substantiated that the Federation is arbitrarily withholding his son's body from him or withholding from him information concerning its whereabouts. Therefore, the Chamber finds that the applicant has not sufficiently substantiated this complaint. Consequently, it must be rejected as manifestly ill-founded.

8. Accordingly, the Chamber decides not to accept the application, partly for being incompatible with the Agreement and partly for being manifestly ill-founded.

V. CONCLUSION

9. For these reasons, the Chamber, by 8 votes to 5,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
Acting President of the Chamber