



## **DECISION ON THE ADMISSIBILITY**

**CASE No. CH/98/1041**

**Esija KULOGLIJA**

**against**

**BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 13 March 1999 with the following members present:

Ms. Michèle PICARD, President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Želimir JUKA  
Mr. Andrew GROTRIAN

Mr. Leif BERG, 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 and 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. On 5 June 1993 the applicant's son was killed by a personnel carrier of the Egyptian Battalion of UNPROFOR in an car accident. According to statements of witnesses, the Police, a Court expert for traffic and as stated in the file of the District Prosecutor's Office in Sarajevo, the accident was caused by the fault of the driver of the vehicle.

2. In 1994 the applicant initiated proceedings against UNPROFOR before the Court of First Instance II in Sarajevo. On 5 January 1995 the court decided that the respondent had to pay to the applicant the sum of DEM 58.000 for compensation. On 15 August 1995 the applicant submitted a request to the same court for execution of the judgement. However, on 2 November 1995 the Court of First Instance II refused the applicant's request to execute the decision. The above mentioned court declared itself incompetent to deal with such a matter as it involved an international organization and the immunity of its employees. It referred to the 1946 United Nations Convention on the Privileges and Immunity of the UN and the Agreement between the Government of BiH and the UN of 15 May 1993 on the status of UNPROFOR. On 30 January 1997 the Cantonal Court in Sarajevo rejected the applicant's appeal for the same reasons. The applicant also addressed directly UNPROFOR and UNMIBH but was only offered a negligible sum for compensation.

## II. COMPLAINT

3. The applicant requests compensation for the death of her child.

## III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 30 October 1998 and registered on the same day. The applicant is represented by Meliha Filipović, a lawyer practising in Sarajevo.

## IV. OPINION OF THE CHAMBER

5. Before considering the case on its merits the Chamber has to decide whether to accept the case, 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.

6. The Chamber has jurisdiction for applications directed against the Parties of the Agreement, namely Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska. It is true that the present application is directed against Bosnia and Herzegovina so that the Chamber has jurisdiction *ratione personae*.

7. The applicant in this case requests compensation for the death of her son. However, pecuniary or other compensation may only be granted by the Chamber as a relief in case a violation of human rights has been found. In this case the applicant brings no explicit claim concerning a violation of her human rights. The case, therefore, appears to be incompatible *ratione materiae* with the Agreement.

8. The applicant could also be understood as alleging that the refusal to execute the decision granting her compensation violates her human rights. It is true that Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees to the applicant the right to a fair hearing before a tribunal established by law and protects her against arbitrary decisions. It is further recognized that the enforcement of a judgement must be regarded as an integral part of the "trial" for the purposes of Article 6 (see Case No. CH/96/28, *M. J. v. The Republika Srpska*, Decision of 3 December 1997, paragraph 35) so that the refusal to execute a given judgement could be considered a violation of Article 6 of the Convention.

9. The Chamber notes, however, that in the present case the competent domestic court refused the applicant's request for execution after it had in effect re-examined the points of law in the case as already adjudicated by the same court and found that it had no competence to deal with the case. The same is true for the Court rejecting the applicant's appeal. The present case hence differs from,

for example, the above-mentioned case *M.J. v. The Republika Srpska* in which such an examination had - albeit ordered - not taken place, and in which further requests for execution were kept pending before the court without a decision being taken. Thus, the refusal to execute the judgement in favour of the applicant as such does not violate Article 6 of the Convention.

10. Nor do the court's grounds for refusing the present applicant's request for execution appear arbitrary. Therefore, even if the case were to be compatible *ratione materiae* with the Agreement, an examination under Article 6 of the Convention does not disclose any appearance of a violation of this provision.

11. Accordingly, the Chamber decides not to accept the application, it being incompatible *ratione materiae* with the Agreement as far as relating to the claim for compensation, and otherwise manifestly ill-founded, within the meaning of Article VIII(2)(c) thereof.

## V. CONCLUSION

12. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

(signed)  
Leif BERG  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel