



PARTIAL DECISION ON ADMISSIBILITY

Case no. CH/99/3196

Avdo and Esmā PALIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA**

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

Mr. Viktor MASENKO-MAVI, Acting 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)(c) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The application was brought before the Chamber by Ms. Esmā Palić in her own right and on behalf of her husband, Mr. Avdo Palić, in accordance with Article VIII(1) of the Agreement, which provides in relevant part, that “the Chamber shall receive ... from any person ... acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights ...”.

2. The applicant’s husband was a military commander of the Army of the Republic of Bosnia and Herzegovina in the Žepa enclave. In July 1995, when in that area intensive fighting between government troops and Serb forces was going on, Mr. Palić was negotiating under an UN safety guarantee the “safe evacuation of civilians”. On 27 July 1995 Mr. Palić was arrested in front of the present UN soldiers and monitors and taken into the direction of General Ratko Mladić’s command position.

3. As of this date, Mr. Palić is registered as a missing person. His wife and their children do not know what has happened to Mr. Palić ever since.

II. COMPLAINTS

4. On behalf of her husband, Ms. Palić alleges a violation of his right to liberty and to family life as well as of all his civil rights. In case that he is not alive, she complains that he was deprived of his right to life and of the right to be buried in dignity.

5. In her own right, Ms. Palić complains that she and her children suffer severely under the uncertainty of the whereabouts of Mr. Palić and asserts a violation of “the right to know about the fate of one’s husband and father”. She asks that those responsible for the disappearance are indicted before the International Criminal Tribunal for the former Yugoslavia. Ms. Palić furthermore claims to be entitled to compensation from the Republika Srpska for the mental distress suffered.

6. In addition to directing her application against the Republika Srpska the applicant also indicated Bosnia and Herzegovina as respondent Party without any further specification.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 18 November 1999 and registered on the same day. On 27 December 1999 the case was transmitted only to the Republika Srpska since the Chamber could not find any indication of responsibility of the State of Bosnia and Herzegovina. The Republika Srpska sent observations on 24 February 2000. Further submissions of the applicant were received on 17 January and 13 April 2000. The Chamber deliberated on the case on 9 December 1999 and on 13 May, 7 June and 6 July 2000. On the latter date it adopted the present decision.

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 incompatible with the Agreement.

9. The Chamber notes that Ms. Palić has directed the present application against both Bosnia and Herzegovina and the Republika Srpska as respondent Parties. However, having regard to the instant complaints and taking into account 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 attributed to Bosnia and Herzegovina.

10. The Chamber therefore concludes that the application is incompatible *ratione personae* with the Agreement within the meaning of Article VIII(2)(c) thereof insofar as it is directed against Bosnia and Herzegovina. Accordingly, this part of the application is to be declared inadmissible.

11. However, the Chamber retains the application in so far as it is directed against the Republika Srpska for further consideration on its admissibility and merits.

V. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE IN SO FAR AS IT IS DIRECTED AGAINST BOSNIA AND HERZEGOVINA.

(signed)
Anders MÅNSSON
Registrar of the Chamber

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