



Bosnia and Herzegovina complied with its Convention obligation to investigate a war disappearance case

In today's Chamber judgment in the case [Palić v. Bosnia and Herzegovina](#) (application no. 4704/04), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

No violation of Article 2 (right to life), 3 (prohibition of inhuman or degrading treatment) or 5 (right to liberty and security) of the European Convention on Human Rights.

The case concerned the disappearance during the war in Bosnia and Herzegovina of a military commander leading one of the local forces at the time.

Principal facts

The applicant, Esmā Palić, is a citizen of Bosnia and Herzegovina who was born in 1967 and lives in Sarajevo (Bosnia and Herzegovina). Her husband, Avdo Palić, was a military commander of one of the local forces (ARBH) during the war which started there in 1992.

On 27 July 1995, after the opposing local forces (VRS) had taken control of that area, Avdo Palić went to negotiate the terms of surrender of his forces, and disappeared. Ms Palić attempted numerous times to find out about his fate from official sources, without success

Starting in September 2000, steps were taken by several national institutions to establish what had happened to Avdo Palić. The Human Rights Chamber, a domestic human rights body set up by the 1995 Dayton Peace Agreement, concluded after a hearing that he had been a victim of enforced disappearance. The Chamber found a breach of the right to life, the prohibition of ill-treatment or unlawful detention of the European Convention on Human Rights. It also ordered Republika Srpska, one of the two entities of Bosnia and Herzegovina, to immediately investigate fully Avdo Palić's disappearance, to keep his wife informed of the results of the investigation, and to either release Mr Palić, if still alive, or hand his remains to his wife. The Chamber also awarded around 33,000 euros (EUR) for non-pecuniary damages to Ms Palić.

The authorities of Republika Srpska paid the monetary compensation and, between 2002 and 2009, carried out a number of investigative acts in order to fully implement the Human Rights Chamber's decision. Following in particular the setting up, work and conclusions of two ad hoc commissions between 2006 and 2009, it was established that Avdo Palić had been captured by the VRS forces, held in a military prison and then disappeared on the night of 4 September 1995. As a result, one person suspected of

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

involvement in Avdo Palić's disappearance was handed over to the International Criminal Tribunal for former Yugoslavia, and international arrest warrants were issued in respect of two other suspects who had, in the meantime, settled in Serbia and had been given Serbian citizenship. The remains of Avdo Palić were located, exhumed and passed onto his wife who buried him with military honours in August 2009.

Complaints, procedure and composition of the Court

Relying on Articles 2, 3 and 5 Esmā Palić complained that Bosnia and Herzegovina failed to investigate the disappearance and death of her husband and that she had suffered as a result for many years.

The application was lodged with the European Court of Human Rights on 27 January 2004.

Judgment was given by a Chamber of seven, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Lech **Garlicki** (Poland),
David Thór **Björgvinsson** (Iceland),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland),
Mihai **Poalelungi** (Moldova), *judges*,
Faris **Vehabovic** (Bosnia and Herzegovina), *ad hoc Judge*,

and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

Admissibility

The Court noted in particular that Avdo Palić had disappeared and died before the ratification of the Convention by Bosnia and Herzegovina on 12 July 2002. While, under international law, situations which had ceased to exist before the date of the entry into force of the Convention in respect of any State did not bind that State, in respect of unresolved cases of disappearances, the obligation to investigate effectively remained for as long as the individual was not accounted for. Avdo Palić's disappearance had not been accounted for by 12 July 2002 and investigative work had continued well beyond that date. Consequently, the application was admissible.

Further, the usual rule, according to which applicants were expected to lodge their applications before the Court within six months of the final domestic judicial decision, did not apply to cases of alleged continued violations. However, applicants could not wait indefinitely before turning to the Court. Esmā Palić had lodged her application before the Court in 2004. At that time, she could have still realistically expected to see an investigation carried out at national level, given that significant efforts were being made to locate her husband. Consequently, her application was admissible.

Finally, the Court recalled that applicants were not required to apply to the Constitutional Court of Bosnia and Herzegovina if they had appealed before the Human Rights Chamber. The Court decided to examine the question of whether Esmā Palić could still claim to be a victim together with the merits of the case.

Article 2

The Court recalled that the obligation to investigate was not one of result but of means. It then observed that despite the initial delays, the investigation had finally identified the remains of Avdo Palić. That had been a significant achievement in itself, given that more than 30,000 people had gone missing during the war in Bosnia and Herzegovina. The prosecution authorities had been independent, and although there had been some concern in relation to one of the members of one of the ad hoc investigative commissions that had not influenced the conduct of the ongoing criminal investigation. In addition, after a long and brutal war, Bosnia and Herzegovina had had to make choices in terms of priorities and resources. All that considered, since there had been no substantial period of inactivity after 2005 on the part of the national authorities, the investigation had been sufficiently prompt, independent and thorough to be considered effective for the purposes of the Convention.

Accordingly, there had been no violation of Article 2.

Article 3

The Court acknowledged that disappearances of people imposed a harsh burden on their relatives who did not know what had happened to their loved ones. The national authorities had established that Esma Palić's husband had been a victim of a forced disappearance, had found several Convention violations, and had paid her compensation. While she had no doubt suffered and continued to suffer, the authorities' reaction to her case could not be equated with inhuman or degrading treatment.

Accordingly, there had been no violation of Article 3.

Article 5

The Court found no violation of Article 5 given that the national authorities had carried out an effective investigation into Avdo Palić's disappearance.

Separate opinion

Judge **Bratza** and judge **Vehabovic** expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention