



REPORT

PUBLISHED ON 25 May 1998

in

CASE No. CH/97/35

Mirjana MALIĆ

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 14 May 1998 with the following Members present:

Michèle PICARD, President
Manfred NOWAK, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jakob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Vitomir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the amicable resolution concluded by Mirjana MALIĆ and the Federation of Bosnia and Herzegovina, registered under Case No. CH/97/35;

Adopted the following Report in accordance with Article IX of the Human Rights Agreement (hereinafter "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rule 44 of its Rules of Procedure (hereinafter "Rules").

I. THE FACTS

1. The facts of the case, as they appear from the parties' submissions, the documents in the Chamber's case file and statements made by the parties at the Chamber's hearing are not generally in dispute and may be summarised as follows:
2. The applicant is a citizen of Bosnia and Herzegovina of Serbian descent. She worked as an associate professor at the Faculty of Dental Medicine (hereinafter "Faculty") of the University of Sarajevo until 2 May 1992 when she stopped working due to war-related circumstances. In a decision dated 11 July 1992 the Faculty terminated her employment effective 23 May 1992 for the reason of her absence without leave for more than 20 working days. On 20 July 1992 she appealed against this decision to the Dean of the Faculty but did not receive any response.
3. On 23 February 1996 the applicant brought a complaint before the Ombudsman of the Federation of Bosnia and Herzegovina (hereinafter "Federation Ombudsman") that she had been discriminated against in her right to work and economic independence by the Faculty's termination of her employment and failure to respond to her request for re-employment, although others, who were of Bosniak descent, were reinstated. The Federation Ombudsman investigated the complaint and concluded that the case raised serious issues of discrimination based on national origin because the Faculty had, since the end of the war, re-employed four professors of Bosniak descent but had not re-employed the applicant.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina (hereinafter "Ombudsperson") on 15 January 1997, in accordance with Rule 37 (b) of her Rules of Procedure, at the request of the Federation Ombudsman. After the office of the Ombudsman submitted a letter authorising it to represent the applicant in the proceedings before the Chamber, the case was registered by the Chamber on 7 March 1997.
5. On 6 June 1997 the Chamber considered the case and decided to request additional information from the Federation Ombudsman regarding the details of the applicant's claim that she had been discriminated against in her right to work. The Federation Ombudsman responded with additional information by letter of 1 July 1997.
6. On 8 August 1997 the Chamber considered the case and decided to request certain further information from the applicant in accordance with Rule 49 (3) (a) of its Rules, and also to give notice of the application to the respondent Party and invite it to submit written observations on the admissibility and merits of the application in accordance with Rule 49 (3) (b). The Chamber fixed a time limit of 26 August 1997 for the applicant and 9 September 1997 for the respondent Party. Additional information received from the applicant was transmitted to the respondent Party on 29 August 1997. No information was received from the respondent Party.
7. On 13 November 1997 the Chamber advised the applicant and the respondent Party that it intended to decide on the admissibility of the case at its next session on the basis of documents in the case file. On 5 December 1997 the Chamber declared the application admissible in so far as it relates to alleged violations of the applicant's rights since 14 December 1995. On the same date the Chamber decided to hold a public hearing on the merits of the case.
8. A hearing on the merits of the application was held in Sarajevo on 18 February 1998. There appeared before the Chamber:

Ms. Mirjana Malić, applicant

Ms. Vera Jovanović, Federation Ombudsman, representative of the applicant

Ms. Vesna Jankijević-Pjaca, Deputy Federal Attorney, agent of the respondent Party

Ms. Merdžana Škaljić, Advocate practising in Sarajevo, counsel to the Agent

9. Following the hearing the Chamber reached the provisional conclusion that the possibilities for an amicable resolution to the matter had not yet been exhausted. It decided, on the basis of Article IX (1) of the Agreement, to invite the applicant and the respondent Party to reopen discussions between them and to negotiate in good faith with a view to reaching an amicable resolution. The Chamber also informed the parties that the Chamber would proceed to issue a decision on the merits if no amicable resolution was reached, or if a resolution was reached which the Chamber found unacceptable.

10. On 19 March 1998 the parties met in the offices of the Chamber's Registry with the objective of reaching an amicable resolution. At their request, the Chamber appointed the Registrar of the Chamber to assist them. At the close of discussions, the parties agreed to inform the Chamber of any final resolution by 2 April 1998.

11. On 3 April 1998 the parties submitted a Declaration on the Amicable Resolution of the Case between the Parties (hereinafter "Declaration") dated 1 April 1998 providing the terms of the amicable resolution reached.

12. On 4 April 1998 the Chamber deliberated on the Declaration. It decided to adopt a Report on the amicable resolution during its May 1998 session.

III. RESOLUTION REACHED

13. The Declaration, which is included in the present Report at the request of its signatories, was signed by Ms Vera Jovanović, Federation Ombudsman, Ms Vesna Pjaca-Jankijević, Deputy Federal Attorney, and Prof. Dr Mirjana Malic, applicant, on 1 April 1998. It provides as follows:

"DECLARATION ON THE AMICABLE RESOLUTION OF THE CASE BETWEEN THE TWO PARTIES

Drawn up in Sarajevo 1 April 1998;

WE:

Prof. Dr. Mirjana Malić from Sarajevo, as the applicant in the proceedings before the Human Rights Chamber for Bosnia and Herzegovina,

Vera Jovanović, Ombudsman of the Federation of Bosnia and Herzegovina, as the applicant's authorised representative before the Chamber,

Vesna Jankijević-Pjaca, Deputy Federal Attorney for Bosnia and Herzegovina, Agent of the Federation of Bosnia and Herzegovina and the University of Sarajevo Faculty of Dental Medicine, as the respondent Parties,

Hereby we, the parties and authorised representatives in the proceedings before the Human Rights Chamber for Bosnia and Herzegovina, registered as Case No. CH/97/35, in accordance with our personal beliefs and in compliance with the authority of law,

DECLARE

1. The Federation of Bosnia and Herzegovina University of Sarajevo Faculty of Dental Medicine shall, through a procedure of its Executive Body represented by the Dean of the Faculty, immediately issue a procedural Decision by which Decision No. 01-06-642/92 of the University Medical Centre and Faculty of Dental Medicine and its clinics in Sarajevo dated 11 July 1992 on the "termination of the employment of Dr. Mirjana Malić, Associate Professor of the Department of Dental Diseases effective 23.05.1992" will be annulled.

2. The Executive Body, represented by the Dean of the Faculty, shall immediately issue a Decision by which Prof. Dr. Mirjana Malić will be offered employment and working duties as an Associate Professor at the Department of Dental Diseases effective 23 May 1992 with the associated rights and obligations on the basis of law and the regulations of the University of Sarajevo Faculty of Dental Medicine.
3. The University of Sarajevo Faculty of Dental Medicine shall regulate all obligations concerning the payment of contributions to the Pension Fund on behalf of Prof. Dr. Mirjana Malić and all other obligations provided by law in respect to the realisation of her right to a pension, and shall also regulate all other obligations concerning the recording of her years of continuous service into her workbook and other official documents of the Faculty of Dental Medicine, without any interruption since the beginning of her employment.
4. The Faculty of Dental Medicine shall enable Prof. Dr. Mirjana Malić to perform her duties, her lecturing and her scientific research work under the same conditions provided for all employees with identical qualifications and experiences, without any obstructions. She shall be given opportunities for regular promotion in respect to her pre-war professional position.
5. The Faculty shall immediately issue all of the above-stated Procedural Decisions and Decisions, with no right of petition, make them public and deliver them to Prof. Dr. Mirjana Malić, in order that the validity and enforcement of those Decisions will commence on the day of their issuance.
6. Prof. Dr. Mirjana Malić shall accept these Decisions and Procedural Decisions immediately after delivery of the aforementioned Decisions, with no right of petition, so that their validity and enforcement can be established.
7. Prof. Dr. Mirjana Malić shall, immediately after the validity of the decisions is established, begin performing her working duties and lecturing at the Faculty for Dental Medicine in accordance with the provisions of her profession and regulations in respect to labour relations.
8. Prof. Dr. Mirjana Malić declares that after delivery of the Procedural Decision concerning the above stated items of the amicable resolution no issues will be raised on her behalf, nor will she claim any other pecuniary redress.
9. The signatories to this Declaration acknowledge that this Declaration constitutes the amicable resolution of this case before the Human Rights Chamber for Bosnia and Herzegovina, and expresses the parties' will and the adequate protection of their rights within the scope of human rights.
10. The parties and their representatives kindly request the Human Rights Chamber, in accordance with Rule 44 (5) of the Chamber's Rules of Procedure, to recognise the amicable resolution concluded by the mediation of the Chamber, after it takes effect, as identical to a final decision of the Chamber, and to make the Declaration public.
11. If one of the parties does not fulfil the obligations set forth in the Declaration within the fixed time limits, it will be subject to penal sanctions ordered by the Chamber."
14. Under Rule 44 (1), an amicable resolution of a case must be based on the respect for the rights and freedoms referred to in the Agreement. Under Rule 44 (5), an amicable resolution concluded by the intervention of the Chamber has legal force equivalent to a final decision of the Chamber.
15. The Chamber finds that the Declaration is based on the respect for the rights and freedoms referred to in the Agreement, as required by Article IX of the Agreement and Rule 44 of the Rules of Procedure. In this regard, the Chamber takes particular note of paragraph 4 of the Declaration, which

provides that the applicant will perform her duties “under the same conditions provided for all employees with identical qualifications and experiences.”

16. However, the Chamber notes that it does not have jurisdiction to award penal sanctions in the case that a party fails to fulfil its obligations set forth in the Declaration within the fixed time-limits. Nevertheless, the Chamber reserves the right to take further steps in accordance with Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina should the parties fail to comply with the Declaration. The Chamber further observes that, although the Declaration refers to the University of Sarajevo Faculty of Dental Medicine as one of the “respondent Parties” in the present proceedings, it is only the Federation of Bosnia and Herzegovina which has that status. This is not altered by the fact that the Faculty has assumed obligations under the Declaration.

17. On this understanding, the Chamber approves the terms of the amicable resolution as provided for in the Declaration.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber