



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/663

Senad MUTAPČIĆ

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 15 October 1998 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice-President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
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 in Bosnia and Herzegovina;

Adopts the following decision pursuant Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The facts of the case, as they appear from the application and the documents submitted by the applicant, are as follows:
2. The applicant is a forensic technician and worked for the Cantonal Ministry of the Interior in Zenica. On 10 September 1996 the Head of the Criminal Police Department for State Security (CSB Zenica) initiated disciplinary proceedings against the applicant. On 8 September 1996 the applicant had allegedly pasted pre-election posters inside and in the surroundings of the Ministry building while still on duty, and had acted incorrectly towards a police officer. He had therefore violated his duties under Article 285 paragraph 1 of the Law on State Administration.
3. On 10 September 1996 the applicant was suspended from his duties until the end of the disciplinary proceedings. The applicant received 70 % of his monthly salary.
4. On the same day the Cantonal Ministry issued a press release with the above mentioned decision and its reasons. The applicant's behaviour was regarded as extremely unprofessional.
5. On 11 September 1996 the United List of BiH (SDP BiH, UBSD, HSS, MBO and the Republicans) issued a press release protesting against the "campaign" against the applicant and requesting the Head of CSB and the Ministry of Interior to annul the decision of 10 September 1996. They further stated that neither the above-mentioned decision nor the following press release had mentioned the fact that the applicant had pasted posters of Mr. Dragan Vikić, his colleague for many years, a police commander with an outstanding record and a candidate for the United List of BiH. The United list argued that if the applicant had pasted posters of a SDA candidate the penalty would not have been as strict. Near the pasted posters advertisements of the governing party (SDA) could be found, as well. Pasting posters of other candidates, in that area would have therefore been a normal thing to do.
6. On 17 September 1996 the applicant lodged a petition with the Head of CSB in Zenica to annul the decision of 10 September 1996 but allegedly received no answer.
7. On 23 September 1996 the applicant gave a statement at the legal Department of CSB. He pointed out that he had been performing his regular duties on 8 September. As he had posters of Dragan Vikić in his car he had pasted four of them on the two pillars in front of the entrance to the State Security Department of the Cantonal Ministry. Other posters had been placed on these pillars previously and nobody, not even the police officer on duty, had been opposed to that. In his case, however, two policemen came out of the building immediately after the Head of the State Security had arrived and ordered the applicant to stop pasting posters. One of the police officers allegedly offended the applicant and was talking negatively about Mr. Vikić. The applicant objected to such treatment. However, the police officer threatened the applicant with the knife he used for removing the posters. The applicant further stated before the legal department that those acts constituted an attack against himself as a member of the League of Social Democrats and against a candidate of the United List of Bosnia and Herzegovina.
8. On 8 October 1996 the Ombudsman of the Federation of Bosnia and Herzegovina requested the Head of the State Security in Zenica to confirm which criminal offence had led to the suspension of the applicant under Article 285 paragraph 1 of the Law on State Administration (Official Gazette of the RBiH 26/93). According to this legal provision, a serious violation of duties is defined as a criminal act, such as misusing one's position, or an act which damages the reputation of the respective administrative body and renders the service of the person for the administrative body impossible.
9. In its response, the Cantonal Ministry of Interior stated that only official signs of the State could be placed in the relevant premises and not propaganda material of political parties and that therefore the applicant had violated his professional duties.
10. On 4 March 1997 the Federal Minister of the Interior found the applicant guilty of violating his professional duties by pasting pre-election posters in and close to the premises of CSB Zenica, by

behaving incorrectly towards a police officer and by addressing media (Oslobodenje and others) without permission of his superiors. Articles had been published by the applicant including the applicant's criticism of the work of the Head of the State Security. By these acts he committed serious violations of his duties under Article 72 paragraph 1 *alinea* 9 of the Law on the Interior Affairs of the Federation of BiH. This behaviour also constituted an act harming the reputation of the Ministry and required the application of Article 286 paragraph 2 of the Law on State Administration. The applicant was therefore transferred to carry out other duties for a period of 12 months.

11. On 25 March 1997 the Minister transferred the applicant to his new post as a car-body mechanic where he was working from 23 September 1997. On the same day he took sick leave to look after his wife who is disabled.

12. On 12 November 1997 disciplinary proceedings were again initiated against the applicant because he had been seen working on 9 October 1997 at the international fair "ZEPS". It was alleged that the applicant had performed work while being on sick leave and had committed serious violations of the working duties provided for by Article 9 paragraph 1 sub-paragraph 24 of the Rules of Procedure on Disciplinary Responsibility of employees of the Cantonal Ministry.

13. On 18 November 1997 the applicant stated before the Disciplinary Commission of the Cantonal Ministry that he had not been officially employed at the fair but had been helping a friend.

14. On 26 November 1997 the Disciplinary Commission of the Cantonal Ministry decided that the applicant had violated his duties by misusing his sick-leave and he was therefore suspended from the employment with the Ministry as from April 1998. On 8 December 1997 the applicant lodged a petition against this decision which was rejected by the second instance Disciplinary Commission, on 31 March 1998.

15. On 21 April 1998 the applicant submitted a complaint against the decisions of 26 November 1997 and of 31 March 1998 to the Municipal Court of Zenica with a request for annulment of these decisions. The proceedings before this Court are apparently still pending.

II. COMPLAINTS

16. The applicant alleges that the facts in the proceedings initiated against him have neither been established in a correct way nor have they been lawfully evaluated. He further alleges that the reasoning of the decisions issued against him was incorrect. Finally, he complains that provisions of the Law on Administration and the Law on Criminal Procedure have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

17. The application was introduced on 26 June 1998 and registered on the same day.

IV. OPINION OF THE CHAMBER

18. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under this provision the Chamber must take into account, *inter alia*, whether other effective remedies exist and if so, whether the applicant has demonstrated that they have been exhausted.

19. The Chamber notes that on 21 April 1998 the applicant initiated proceeding before the Municipal Court in Zenica for the annulment of the decisions complained of. These proceedings are apparently still pending. The applicant has not provided the Chamber with any information as to why such proceedings before the domestic courts cannot be regarded as "effective remedies" in the sense of Article VIII (2) of the Agreement, nor has he indicated that these remedies have been exhausted.

20. Accordingly, the Chamber decides not to accept the application pursuant to Article VIII(2)(a) of the Agreement, as the applicant has not demonstrated that the effective domestic remedies have been exhausted.

V. CONCLUSION

21. 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