



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1266

Dragan ČAVIĆ

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 18 December 1998 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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 to Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

The particular facts of the case

1. The applicant is the Vice-President of the Srpska Demokratska Stranka (“SDS”) and is resident in Banja Luka. He was elected as a member of the National Assembly of the Republika Srpska in the elections held in September 1998.

2. On 8 October 1998, the applicant received a letter from the High Representative in Bosnia and Herzegovina (“the High Representative”), Mr. Carlos Westendorp, in the following terms:

“Sir,

I have noted with extreme displeasure the comments which you made in your 5 October 1998 press conference, both regarding the outcome of the elections as well as the situation in Kosovo.

I take your statements on Kosovo as a deliberate threat to the security of the international community and as tantamount to incitement to violence.

Your comments on the elections represent a clear attempt to undermine the Dayton peace implementation process.

Your actions are completely unacceptable. I have made clear repeatedly that I will not tolerate the continuation in office of those who seek to obstruct the implementation of the Dayton agreement. Nor will I tolerate comments designed to provoke violent behaviour and exacerbate political tensions. I have made it clear in the past that I will not hesitate to use my Bonn powers to remove such extremist officials.

I therefore notify you formally, by means of this letter, under the authority vested in me at the Bonn Peace Implementation Council, of your removal as a member of the newly elected RS National Assembly. You are barred indefinitely from holding further official positions in BiH.

(Signed)
Carlos Westendorp
High Representative”

3. This letter was sent to the applicant in the English and Serbian languages. As a consequence of the decision of the High Representative contained in the above letter, the applicant has been removed from his position as a member of the National Assembly of the Republika Srpska and is unable to hold any public office in Bosnia and Herzegovina for an indefinite period.

Relevant legal provisions

4. The authority of the High Representative is based on the General Framework Agreement and on various resolutions of the United Nations Security Council.

5. Article I(2) of Annex 10 to the General Framework Agreement, entitled “Agreement on Civilian Implementation of the Peace Settlement”, states as follows:

“In view of the complexities facing them, the Parties request the designation of a High Representative, to be appointed consistent with the relevant United Nations Security Council resolutions, to facilitate the Parties’ own efforts and to mobilise and, as appropriate, coordinate the activities of the organisations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a U.N. Security Council resolution, the tasks set out below.”

6. Article V of Annex 10, entitled "Final Authority to Interpret" states as follows:

"The High Representative is the final authority in theatre regarding interpretation of this Agreement on the civilian implementation of the peace settlement."

7. Resolution 1031 (1995) of the United Nations Security Council established the office of the High Representative.

8. Article XI of the report (dated 10 December 1997) of the Bonn Peace Implementation Conference, entitled "High Representative", states as follows:

"2. The Council welcomes the High Representative's intention to use his final authority in theatre regarding implementation of the Agreement on Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary, on the following issues:

- a) (...)
- b) (...)
- c) other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation."

II. COMPLAINTS

9. The applicant complains of the decision of the High Representative set out at paragraph 2 above. He states that in view of the fact that he was elected to the National Assembly of the Republika Srpska by the voters of that Entity in elections held in accordance with the provisions of the General Framework Agreement, the High Representative has exceeded his authority in dismissing him.

10. The applicant states that this excess of authority is a violation of the guarantees contained in the European Convention on Human Rights ("the Convention"), in particular of Articles 9 and 10 of, and Article 3 of the First Protocol to, that Convention.

11. The applicant also states that as the results of the elections have been confirmed by the Provisional Election Commission, the only body which can address his application is the Commission on Human Rights, consisting of the Human Rights Ombudsperson and the Chamber, established under the Agreement.

12. Regarding the responsibility of Bosnia and Herzegovina as respondent Party, the applicant states that this derives from the fact that the High Representative acts in the name of the State rather than in the name of the Entities.

III. PROCEEDINGS BEFORE THE CHAMBER

13. The application was introduced on 14 October 1998 and registered on 28 October 1998. The applicant requested that the Chamber order a provisional measure, invalidating the decision of the High Representative. The Chamber refused the request on the same day.

IV. OPINION OF THE CHAMBER

14. 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. According to Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application which it considers incompatible with the Agreement.

15. Article II(2) of the Agreement states as follows:

“The Office of the Ombudsperson and the Human Rights Chamber shall consider, as subsequently described:

(a) alleged and apparent violations of human rights as provided in the (Convention) and the Protocols thereto, or

(b) alleged or apparent discrimination on any ground ... arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex,

where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.”

16. Article VIII(1) of the Agreement states as follows:

“The Chamber shall receive by referral from the (Ombudsperson) on behalf of an applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.”

17. Since the case concerns the actions of the High Representative, the Chamber has considered whether the case is within the competence of the Chamber *ratione personae* (cf. the Chamber’s decision of 14 May 1998 on the admissibility of Cases Nos. CH/98/230 and 231 *Adnan Suljanović, Edita Čišić and Asim Lelić v. Bosnia and Herzegovina and The Republika Srpska*, Decisions and Reports January–June 1998, p. 171).

18. Article II(2) of the Agreement gives the Chamber competence to consider, *inter alia*, alleged or apparent violations of human rights for which it is alleged or apparent that the Parties are responsible. It does not provide for the possibility of the Chamber considering applications directed against the High Representative. As the Chamber has previously stated, it is beyond doubt that the actions of the High Representative are not subject to any review in relation to the carrying out of his functions under the General Framework Agreement. For this to be the case, the General Framework Agreement would have to provide specifically for any such review (see the aforementioned decision in *Suljanović, Čišić and Lelić*, loc.cit., p. 180, paragraph 39).

19. The actions complained of were carried out by the High Representative in the performance of his functions under the General Framework Agreement, as interpreted by the Bonn Peace Implementation Conference. There is no provision for any intervention by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, the High Representative cannot be said to be acting as, or on behalf of, the State or the Entities when acting in pursuance of his powers. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party.

20. In conclusion, the impugned acts do not come within the responsibility of the respondent Party and are therefore outside the competence of the Chamber under Articles II and VIII(I) of the Agreement.

21. Accordingly, the Chamber decides not to accept the application, it being incompatible *ratione personae* with the Agreement within the meaning of Article VIII(2)(c) thereof.

V. CONCLUSION

22. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber