



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/1214

Branislav BERA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 14 May 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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 to Articles VIII(2)(a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The application relates to the proceedings initiated by the applicant arising out of the termination of his working relation with "DTP Krajinapromet" ("the company"), a public company located in Novi Grad, Republika Srpska.

2. On 20 December 1995, the applicant's working relation with the company was terminated with retrospective effect from 31 January 1995. The applicant had been subject to a period of compulsory military service with the Army of the Republika Srpska and accordingly was not required to report for work to the company during that time. The reason given for the termination of the applicant's working relation was that he had not reported for work immediately after the end of his military service. The date of the cessation of the applicant's working relation is a matter of dispute between the parties to the domestic proceedings initiated by the applicant.

3. On 10 November 1997 the applicant appealed to the Executive Board of the company against the decision of 20 December 1995 terminating his working relation. On 25 November 1997, this appeal was rejected as out of time. On 2 December 1997, the applicant initiated proceedings against this decision before the Municipal Court ("*Osnovni Sud*") in Novi Grad. There have been a number of hearings in these proceedings before the court to date, none of which have resulted in a final decision. The proceedings are accordingly still pending before the court. On 17 November 1998, the applicant submitted a motion for the replacement of the judge assigned to his case, as he alleged that she was not impartial. It is not clear from the documents provided to the Chamber whether this motion has been successful.

4. On 11 November 1997, the applicant provided information to the relevant Public Prosecutor relating to an alleged offence in the termination of his employment. In this information, the applicant stated that the Director of the Company had committed the criminal offence of violating the applicant's rights under his working relation by abusing his position.

5. On 17 December 1997, the Office of the Public Prosecutor informed the applicant that it did not intend to initiate criminal proceedings against the Director of the company. On 23 December 1997, the applicant himself initiated criminal proceedings against the Director of the company before the Municipal Court. On 1 October 1998, the Court passed a verdict finding the Director not guilty. On 27 October 1998, the applicant appealed against this decision to the Regional Court in Banja Luka. There has been no decision on this appeal to date.

II. COMPLAINT

6. The applicant alleges that his right to work has been violated. He also requests that the Chamber review the decision of the Public Prosecutor not to initiate criminal proceedings against the Director of the company.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was introduced on 15 December 1998 and registered on the same day.

IV. OPINION OF THE CHAMBER

8. 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)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted, and according to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

(i) The applicant's civil proceedings

9. Although the applicant does not specifically complain of the length of the civil proceedings initiated by him against the decision of the company, the Chamber will examine this issue *proprio*

motu. The Chamber has noted previously that one of the guarantees provided by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) is the right to a fair trial within a reasonable time in the determination of, *inter alia*, one’s civil rights and obligations (*Mitrović v. Federation of Bosnia and Herzegovina*, CH/97/54, Decision on Admissibility of 10 June 1998, paragraph 10). The Chamber also noted that “the reasonableness of the length of the proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the (European) Court’s case-law, in particular the complexity of the case and the conduct of the applicant and the relevant authorities” (*ibid.*).

10. The Chamber notes that the applicant initiated proceedings before the Municipal Court in Novi Grad on 2 December 1997 against the decision of the Executive Board of the company rejecting his appeal against the termination of his working relation. Accordingly, the time to be taken into consideration by the Chamber in determining whether or not the duration of his proceedings has been reasonable begins on that date.

11. The Chamber notes that there have been a number of procedural hearings in the case to date. The Chamber also notes that on 17 November 1998, the applicant requested that the judge in charge of the case be replaced. This motion of the applicant may be expected to cause a certain delay in the proceedings while it is considered by the President of the Court.

12. Therefore, the Chamber considers that the period that has so far elapsed since the applicant initiated proceedings (approximately one year and six months) is not excessive for the determination of the dispute in question.

13. Accordingly, the Chamber decides not to accept this part of the application it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

(ii) _____ The applicant’s complaint concerning criminal proceedings

14. The Chamber recalls that the protection afforded by Article 6 of the Convention does not extend to criminal proceedings initiated by an applicant against a third party or to a request to a public authority to initiate such proceedings. The Chamber has accordingly held that where an applicant has not himself been charged with a criminal offence and his “civil rights” would not be determined by any such proceedings, such a complaint is outside the scope of Article 6 of the Convention and is therefore incompatible *ratione materiae* with the Agreement in the sense of Article VIII(2)(c) thereof (*Fatima Galijašević v. Federation of Bosnia and Herzegovina*, CH/98/981, Decision on Admissibility of 12 November 1998, paragraph 10).

15. Accordingly, the Chamber decides not to accept this part of the application it being incompatible with the Agreement *ratione materiae* within the meaning of Article VIII(2)(c) of the Agreement.

(iii) _____ The applicant’s complaint concerning the right to work

16. The Chamber has previously held that the Convention does not, as such, contain a right to work (*Damir Alagić v. Federation of Bosnia and Herzegovina*, CH/98/681, Decision on Admissibility of 15 October 1998, paragraph 12). A complaint concerning the right to work could come within the scope of Article 6 of the International Covenant on Economic, Social and Cultural Rights (“the Covenant”). Under Article II(2) of the Agreement, the Chamber only has jurisdiction to consider whether there has been alleged or apparent discrimination in relation to the enjoyment of the rights guaranteed under the Covenant and the other international instruments referred to in the Appendix to the Agreement. The applicant has not alleged that there has been any such discrimination. Neither is it apparent from the facts of the case that the applicant has in fact been the victim of discrimination on any of the grounds set out in Article II(2)(b) of the Agreement. Accordingly the Chamber refuses to accept this part of the case as it is incompatible with the Agreement *ratione materiae* in the sense of Article VIII(2)(c) thereof.

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17. Therefore the Chamber refuses to accept the application, partly as manifestly ill-founded and partly as incompatible with the Agreement *ratione materiae* within the meaning of Article VIII(2)(c) thereof.

V. CONCLUSION

18. 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