DECISION ON ADMISSIBILITY

Case no. CH/99/2565

Marko BANOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 December 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. Anders MÅNSSON, 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

1. The applicant is a citizen of Bosnia and Herzegovina. He was born in 1949 and was working in Germany until 31 December 1994. He then retired from his German employment on the basis of a medical finding determining that, due to his health conditions, he was no longer able to work. He still receives payments under his German pension.

2. The applicant states that he has also been working in the Federation of Bosnia and Herzegovina, although it is not clear whether he has been working in Tuzla after his retirement in Germany, or whether he worked on what is now the territory of the Federation of Bosnia and Herzegovina before migrating to Germany.

3. On an unspecified date the applicant requested the Bosnian Public Pension and Invalidity Insurance (hereinafter "PIO") to assess his working capability. It is not clear whether the applicant wanted to claim an invalidity pension from PIO or whether it was the German insurer who requested this assessment. On 19 January 1998 the medical commission of PIO issued a procedural decision according to which since 1 February 1995 the applicant has been able to do work that does not involve heavy exercise. The applicant claims that, while the assessment of the German doctors is the result of an in-depth examination, the PIO medical commission did not examine him at all.

4. The applicant filed an appeal against the PIO procedural decision to the Cantonal Court in Tuzla and also to the Supreme Court of the Federation. Both of these judicial bodies rejected the applicant's appeal.

II. COMPLAINTS

5. The applicant claims that his human rights resulting from labour relations have been violated. He further complains that the procedural decision of the administrative body and the judgments of the Cantonal and Supreme Court are wrongly based on facts opposite to those established by medical institutions in Germany. Thus, the applicant appears to complain of violations of economic rights emerging from labour relations and of his right to a fair trial.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was received by the Chamber on 21 June 1999 and registered on the same date. The applicant is represented by Mr. Kemal Sejfulović, a lawyer in Tuzla.

7. The Chamber contacted the applicant's representative in order to obtain clarification of certain facts, which the applicant's representative did not provide.

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)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

9. The applicant complains that the administrative bodies and the courts wrongly established the facts pertaining to his health condition. He also appears to be asking the Chamber to set up a medical commission to independently and correctly establish the facts.

10. The Chamber recalls that the European Court of Human Rights has held that, as a general rule, it is for national courts to assess the evidence before them, while the Court's task is just to ascertain whether the proceedings, considered as a whole, can be considered "fair" (see e.g. the *Lüdi v. Switzerland* judgment of 15 June 1992, Series A no. 238, p. 20, paragraph 43). Moreover,

the Chamber recalls that the European Court has stated that it is not within its competence to substitute its own assessment of the facts to that of the national courts (see e.g. the *Dombo Beheer B.V. v. the Netherlands* judgment of 27 October 1993, Series A no. 274, pp. 31-32, paragraph 31).

11. The same principles apply to proceedings before the Chamber regarding domestic courts. Therefore, the Chamber finds the application inadmissible *ratione materiae* in so far as it relates to the evaluation of the medical evidence before the national administrative body and courts.

12. The applicant further complains that his "rights emerging from labour relations" have been violated. The Chamber will construe this complaint by the applicant as a claim that he is entitled to an invalidity pension of which he is being wrongfully deprived. This complaint might raise issues under Article 1 of Protocol No. 1 to the Convention, which reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right to a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

13. The Chamber recalls, however, that Article 1 of Protocol 1 No. 1 to the Convention does not guarantee a general right to a pension. What is necessary is that the applicant demonstrates that he has a legal right to some benefits if he satisfies certain conditions, which is to say that the applicant has to be able to show that he has a right to a pension that is sufficiently clear and well-defined in order to constitute a possession under Article 1 of Protocol No. 1 to the Convention. Since in the present case the competent national authorities have established that the applicant does not meet the conditions for an invalidity pension, the Chamber finds the complaint of deprivation of "rights emerging from labour relations" manifestly ill-founded.

14. Accordingly, the Chamber decides to declare the application inadmissible, it being partly incompatible *ratione materiae* with the Agreement and partly manifestly ill-founded within the meaning of Article VIII(2)(c).

V. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel