DECISION ON ADMISSIBILITY

Case no. CH/98/699

Rasim JUSUFOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 January 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Andrew GROTRIAN, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

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 Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant, who is a citizen of Bosnia and Herzegovina, was employed as a teacher at Filip Višnjić school in Bijeljina, Republika Srpska. On 4 September 1992 he was deemed by the school board to be "surplus to requirements", the reason given being that the subject he taught was no longer on the school curriculum. This decision, which took effect as of 1 September 1992, granted him certain rights, including the right to receive a minimal income for a two-year period after the decision. It did not terminate his employment with the school.

2. Upon the applicant's appeal, the school board, by a decision of 6 October 1992, altered the part of the appealed decision relating to the rights he enjoyed while defined as "surplus to requirements", deciding that he be entitled to receive his full salary from the school for such time as he was a member of the Army of the Republika Srpska. It upheld the remainder of the decision.

3. On 18 September 1993 the director of the school terminated the applicant's employment. The reason for the decision was that he had refused to work as a librarian in the school. However, on 9 December 1993 the director accepted the applicant's appeal against this decision and reinstated him to the status of being "surplus to requirements".

4. On 31 August 1994 the director terminated the applicant's employment with the school. The applicant received this decision on 5 September 1994 and soon afterwards was required to leave Bijeljina due to fears for his personal security. He states that for this reason he did not lodge an appeal against the decision of 31 August 1994 within the applicable time-limit.

5. On 10 September 1996, one day after his return to Bijeljina, he lodged an appeal against the decision of 31 August 1994. The applicant did not receive any reply to this appeal. On 2 October 1996 he initiated proceedings against the school before the Court of First Instance in Bijeljina, requesting that the decisions of the school authorities of 4 September 1992 and 31 August 1994 be revoked, that he be reinstated to his employment immediately and that he be paid all sums which he claimed were due to him by the school.

6. On 15 May 1998 the Court of First Instance rejected the applicant's claim as out of time. It stated that the time-limits for the initiation of proceedings against the decisions in question had expired and that the applicant had not shown that he had been unable to comply with these time-limits. It held that, in relation to the decision of the school board of 4 September 1992, the applicant could have initiated court proceedings against it as he lived in Bijeljina until September 1994. Concerning the decision of the school director of 31 August 1994, the Court noted that the applicant was at the relevant time living in Montenegro in Yugoslavia. Therefore he could have submitted his appeal by post, if not within the applicable time-limit, at least as soon as possible after the re-establishment of postal communications between Yugoslavia and the Republika Srpska following the ending of the sanctions imposed upon the Republika Srpska by Yugoslavia.

7. On 7 August 1998 the applicant appealed against this decision to the Regional Court in Bijeljina. On 25 December 1998 the Regional Court refused the applicant's appeal and confirmed the first instance decision.

8. The applicant has not requested the Supreme Court of the Republika Srpska to review the decision of the Regional Court, although entitled to. This is an extraordinary remedy in the legal system of the Republika Srpska.

II. COMPLAINTS

9. The applicant complains that the termination of his employment has violated his right to work and also his rights to pension and health insurance.

III. PROCEEDINGS BEFORE THE CHAMBER

10. The application was submitted on 16 June 1998 and registered on the same day. On 1 April 1999 the applicant informed the Chamber that he had withdrawn his application concerning the same matter from the Human Rights Ombudsperson for Bosnia and Herzegovina. On 26 May 1999 the application was transmitted to the respondent Party for observations on its admissibility and merits.

11. The observations of the respondent Party were received on 2 August 1999 and sent to the applicant on the following day. The Chamber accepted the observations of the respondent Party despite the fact that they were received seven days outside the time-limit set for their receipt. The applicant's further observations and claim for compensation were received on 3 and 9 August 1999. They were sent to the respondent Party on 4 and 16 August 1999 respectively.

IV. SUBMISSIONS OF THE PARTIES

12. The respondent Party submits that the applicant has not exhausted the domestic remedies available to him, as he did not submit a request for review of the decision of the Regional Court of 25 December 1998 to the Supreme Court of the Republika Srpska. It also submits that the Chamber should refuse to accept the application as it is already pending before the Human Rights Ombudsperson for Bosnia and Herzegovina.

13. The applicant submits that the observations of the respondent Party should not be accepted by the Chamber, as they were submitted outside the time-limit set by the Chamber in its order concerning the organisation of the proceedings in the case. He also reiterates that the decisions of the school authorities are not in accordance with the law as, at the time they were issued, the applicant was subject to a compulsory work obligation.

V. 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), the Chamber shall dismiss any application which it considers incompatible with the Agreement or manifestly ill-founded.

A. The respondent Party's preliminary objection

15. The respondent Party submits that the Chamber should refuse to accept the application as it is pending before the Ombudsperson. The Chamber notes, however, that the applicant withdrew his application to the Ombudsperson in order that the Chamber could consider his case. Accordingly, this submission of the respondent Party is now redundant.

B. The complaint regarding the dismissal of the applicant

16. The Chamber notes that the applicant was declared to be "surplus to requirements" by the school on 4 September 1992 and had his employment with it terminated on 31 August 1994. Both of these decisions were made before 14 December 1995, the date of entry into force of the Agreement. The Chamber has previously held that it is not competent to consider events that took place prior to the entry into force of the Agreement (Case no. CH/96/1, *Matanović,* decision on admissibility of 13 September 1996, Decisions on Admissibility and Merits 1996-1997). Accordingly, the applicant's complaint that the decisions of the school of 1 September 1992 and 31 August 1994 violated his right to work are outside the Chamber's competence *ratione temporis*.

C. The proceedings initiated by the applicant

17. While the applicant did not complain of the conduct of the proceedings before the courts of the Republika Srpska, the Chamber, of its own motion, raised the issue of the compatibility of these proceedings with Article 6 of the European Convention on Human Rights when transmitting the case to the Republika Srpska.

18. The Chamber notes that the applicant initiated proceedings before the courts of the Republika Srpska against the decisions of the school he complains of. The Court of First Instance rejected his claim and on appeal the Regional Court upheld this decision. The conduct of the proceedings before the courts of the Republika Srpska do not disclose any issue under the Agreement, as they do not appear to have been conducted contrary to the applicant's rights as guaranteed by Article 6 of the Convention.

19. Accordingly the Chamber decides not to accept the application, partly as it is outside the Chamber's competence *ratione temporis* and partly as it is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

VI. CONCLUSION

20. 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