



DECISION ON ADMISSIBILITY

Case no. CH/00/4569

Mirjana BASTA

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 September 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Andrew GROTRIAN, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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) 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 from Sarajevo. Starting in 1973, she was employed by the company "KTK Visoko". When hostilities in the area broke out, however, the applicant did not come to work any more. However, she claims having reported to her working place regularly.

2. On 25 March 1996 the company terminated the applicant's working relationship on the ground that she had been absent from work for more than 20 consecutive days without good cause. On 25 June 1996 the applicant initiated civil proceedings against the company. On 9 February 1999 the Municipal Court in Sarajevo quashed the company's decision of 25 March 1996 and ordered the defendant to re-employ the applicant. On 28 August 1999 the Cantonal Court in Sarajevo, upon the appeal of the defendant, confirmed the first instance judgment. In the following time, however, the applicant was prevented from returning to her working place by company officials. The applicant has not requested the enforcement of the judgment of 9 February 1999 pursuant to the Law on Enforcement Procedure.

II. COMPLAINT

3. The applicant alleges a violation of her right to work and to social security. She asks the Chamber to execute the judgment of 9 February 1999 and wishes to be compensated for the period of time during which she could not take up her work again.

III. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 10 April 2000 and registered on the same day.

IV. OPINION OF THE CHAMBER

5. Before considering the merits of the case the Chamber must decide whether to accept it, 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. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

6. The Chamber notes that the applicant has not requested the enforcement of the judgment of the Municipal Court and as confirmed by the Cantonal Court, although domestic law provides for such an enforcement procedure.

7. Concerning the applicant's complaint that her right to work was violated, the Chamber only has jurisdiction to consider whether there has been alleged or apparent discrimination in relation to the enjoyment of this right as guaranteed by the treaties 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.

8. Accordingly, the Chamber decides not to accept the application, partly as the applicant has not demonstrated that the effective domestic remedies have been exhausted and partly as the application is incompatible *ratione materiae* with the Agreement.

V. CONCLUSION

9. 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