



**DECISION ON ADMISSIBILITY
AND TO STRIKE OUT**

CASE No. CH/99/2985

Jusuf BRKIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 July 2001 with the following members present:

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

Mr. Peter KEMPEES, 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)(a) and (c) and Article VIII(3) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He has worked for the "Livno-Bus Company" in Livno, as a doorman. At the time of the Bosniak-Croat conflict in the area of Livno, namely in July 1993, he was not allowed to come to work anymore but was put on a so-called "waiting list" together with 51 other employees of Bosniak origin. For the following years, the company paid a certain compensation to the applicant and the other employees on the waiting list. The payment of the compensation was stopped in June 1997. In July 1997 the applicant and his colleagues initiated an action collectively against the company before the Municipal Court in Livno, requesting to be reinstated and awarded compensation, which was dismissed by the Court. The applicant initiated court proceedings by his individual action in February 1998, and obtained a valid judgment according to which his labour relation was not terminated. In March 2000 he initiated new court proceedings concerning compensation. The applicant was reinstated into his previous job in June 2000.

II FACTS

2. The applicant, who is of Bosniak origin, was employed by the Livno-Bus Company in Livno as a doorman (porter) until 21 July 1993, when he was placed on a "waiting list". He did not receive any written procedural decision on this changed employee status. Until July 1997, he received 80 DEM compensation per month.

3. The applicant appealed against the manager's oral decision concerning his employee status, on 17 July 1997, to the Steering Board of the company, together with other workers of Bosniak origin. The workers requested to be re-instated into positions commensurate with their skills and educational background. Moreover, the workers asked for compensation. There was no reply from the company.

4. On 20 July 1997 the applicant and 51 other "Livno-Bus" employees initiated a collective action before the Municipal Court Livno seeking reinstatement into his position, monetary compensation for unpaid salaries from 21 July 1993 until his return to work (with a full salary), and payment of contributions for pension and health insurance and other social security. This collective action was rejected by the court in December 1997 as it was not in compliance with formal requirements prescribed by the Law on Civil Procedure.

5. On 6 February 1998 the applicant filed an individual action with the Municipal Court Livno. In the main hearing before the Municipal Court on 10 March 1999 the applicant's representative submitted a more precise motion requesting the Court to find it "established that the employment of the plaintiff (applicant) had not been terminated. The defendant (Company) ... should further be obliged, in accordance with its internal regulations (and) under the threat of execution, to allow the return of the plaintiff (applicant) to his work place, taking account of his skills and educational background, within 15 days from the date when the judgment becomes valid."

6. The Court issued its judgment on 9 December 1999. This judgment became final and binding on 28 January 2000. By the judgment "it is established that the labour relation of the applicant with the company Livno-Bus is not terminated. The company is obliged in accordance with the Law on Labour of the Federation of Bosnia and Herzegovina and with its own normative acts to enable the applicant reinstatement to employment, on his post and in accordance with his qualifications and working possibilities, within 15 days from the date this judgment becomes final and binding."

7. On 14 March 2000 he initiated new court proceedings before the Municipal Court Livno, seeking "compensation for unpaid salaries from 21 July 1993 to the date of reemployment in the amount of 58,578.00 KM, and compensation for all contributions from labour relations for the mentioned period". The court held hearings on 6 April and on 8 May 2001. The court proceedings are still pending.

8. On 23 May 2001 the respondent Party informed the Chamber that the applicant had been reinstated into his previous post in June 2000.

9. The applicant sent a letter on 30 May 2001, stating that he had resumed working in the Company on 24 June 2000.

III PROCEEDINGS BEFORE THE CHAMBER

10. The application form was submitted to the Chamber on 7 October 1999 and registered on the next day.

11. The case was transmitted to the respondent Party for its observations on 8 November 1999. The respondent Party responded on 5 January 2000, and sent the additional information on 12 April and 23 May 2001.

12. The applicant did not respond to the Federation observations and did not specify his compensation claim although he was requested to do so by the Chamber on 12 January 2000.

IV COMPLAINTS

13. In his application form the applicant initially alleged a violation of his right to work and other rights stemming from the working relationship (salary, insurance, to be informed about reasons for being placed on the waiting list i.e. for the termination of the working relationship). He also complained of a violation of his right to a fair trial and relied on Article 6 of the Convention. The applicant requested the Chamber to enable his reinstatement to work, and to award monetary compensation.

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)(a), the Chamber shall decide whether effective remedies exist, and the applicant demonstrated that they have been exhausted. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded. According to Article VIII(3), of the Agreement the Chamber may decide to strike out the application on the ground that the matter has been resolved.

15. The Chamber notes that the applicant has been reinstated into his position, and that his labour relation has not been terminated as established by a valid court judgment. The issue of re-employment is therefore resolved. Consequently, the Chamber decides to strike the application out in so far as the matter is resolved, having regard to Article VIII(3) of the Agreement.

16. The applicant initially complained of his right to a fair trial before the Municipal Court in Livno. The Chamber finds that this court, on 9 December 1999, issued its judgment, acting upon the applicant's action of 6 February 1998. The applicant's labour relation and rights stemming from it were confirmed by that judgment. Therefore the applicant is not a "victim" of any apparent violation and this part of the application falls to be dismissed as manifestly ill-founded, in accordance with Article VIII(2)(c) of the Agreement.

17. Concerning the applicant's request for compensation for unpaid salaries from 21 July 1993 to the date of reemployment and compensation for all contributions from labour relations, the Chamber finds that the applicant's complaint is premature as the proceedings are still pending before the Municipal Court in Livno. The domestic remedies have therefore not been exhausted as required by Article VIII(2)(a) of the Agreement. It follows that this part of the application must be rejected also.

18. Accordingly, the Chamber decides not to accept the application, it being partly manifestly ill-founded and partly because of legal remedies have not been exhausted within the meaning of Article VIII(2)(c) and VIII(2)(a) thereof, and to strike the application out in so far as the matter is resolved within the meaning of Article VIII(3).

VI CONCLUSION

19. For these reasons, the Chamber, unanimously,

STRIKES THE APPLICATION OUT in so far as it relates to the applicant's complaint that he was not re-employed and

DECLARES THE APPLICATION INADMISSIBLE for the remainder.

(signed)
Olga Kapić
Deputy Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel