



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 November 2002)

Case no. CH/98/688

Idhan MUFTIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 October 2002 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. Ulrich GARMS, 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) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He was formerly employed by the company "Apoteka" in Banja Luka for more than ten years as a pharmacy technician. On 10 November 1992, the applicant was placed on the company's waiting list, and on 25 February 1994, the Director of Apoteka issued a decision terminating the applicant's employment. The applicant introduced a lawsuit against his employer in May 1994. After six hearings and eight postponements and over five years of proceedings, the First Instance Court in Banja Luka ("the First Instance Court") issued a decision in November 1999 refusing the applicant's claims. The applicant filed an appeal against the First Instance Court's decision to the District Court in Banja Luka ("the District Court"), which issued a decision by which it sent back the case to the First Instance Court. On 14 March 2002 the First Instance Court issued a decision acknowledging the applicant's claim. The employer appealed against this decision. The case is still pending before the District Court. The case raises issues under Article 6 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was received on 11 June 1998 and registered on the same day.
3. The Chamber transmitted the application to the respondent Party on 19 March 1999 under Article 6 of the Convention and Article II(2)(b) of the Agreement, with observations due by 19 May 1999. No observations were received from the respondent Party.
4. On 1 June 1999, the applicant was afforded an opportunity to submit any further observations or claims for compensation. His reply was received on 15 June 1999. He requested compensation for the company's failure to provide him with food during that time period.
5. On 18 June 1999, the Chamber transmitted the applicant's letter to the respondent Party for observations within a one-month time period. No observations have been received.
6. On 16 March 2000, the respondent Party informed the Chamber that, as of 25 February 2000, the applicant's case was again being considered by the First Instance Court in Banja Luka.
7. The Second Panel of the Chamber considered the admissibility and merits of the application on 10 March 1999, 10 September 1999 and 7 February 2000. On the latter date, the Chamber decided to postpone consideration of the application until the District Court had rendered its decision on the applicant's appeal. On 9 September 2002, in accordance with Rule 29(4) of the Chamber's Rules of Procedure, the President of the Chamber decided to transfer the application to the First Panel of the Chamber in order to redress an imbalance in the workload of the two Panels. On the same day, the First Panel considered the admissibility and merits of the application. On 8 October 2002, the First Panel adopted the present decision.

III. FACTS

8. The applicant resides in Banja Luka, where he was formerly employed by the company "Apoteka" as a pharmacy technician for more than ten years.
9. On 10 November 1992 the Director of Apoteka placed the applicant on the company's waiting list for a two-year period. The applicant stated that while on the waiting list at Apoteka, he received "symbolic assistance", but he did not receive assistance in the form of food, as others on the waiting list did.
10. On 25 February 1994, the Director of Apoteka issued a decision terminating the applicant's employment effective 28 February 1994. The decision reasoned that the circumstances that led to the applicant's placement on the waiting list (*i.e.*, reduced workload and economic difficulties) still

persisted; therefore, his dismissal was justified under the Law on Labour Relations of the Republika Srpska.

11. On 14 March 1994, the applicant filed a complaint with the Administrative Board of Apoteka against the decision terminating his working relations. The complaint was rejected on 7 April 1994 by a decision of the Board.

12. On 13 May 1994, the applicant filed a lawsuit in the First Instance Court in Banja Luka, requesting that the decision on termination of his employment and the subsequent decision of the Administrative Board be invalidated as illegal. The applicant disputed the fact that any work reduction took place at the Apoteka branch where he worked, and he argued that the termination decision was therefore illegal. He further argued that the Administrative Board decision rejecting his complaint was illegal. He requested reinstatement into his position as a pharmacy technician.

13. In response, Apoteka claimed that work reductions did in fact take place, due to economic difficulties, and that some pharmacies were closed following a decision of 30 December 1993 of the Administrative Board. According to Apoteka, the termination of the applicant's employment was therefore conducted in accordance with existing law.

14. The first First Instance Court hearing was held on 30 November 1995. At this hearing, consideration of the case was postponed for an undetermined amount of time. The defendant Apoteka's representative was instructed to submit to the Court the company's statute that was in effect at the time of the applicant's termination in 1994.

15. Another hearing was held before the First Instance Court in Banja Luka on 24 September 1998. At the defendant Apoteka's request, the Court postponed the hearing until 7 October 1998.

16. On 7 October 1998, the First Instance Court in Banja Luka again postponed hearing the case for an undetermined time. The Court ordered the applicant to submit better quality copies of the 25 February 1994 decision on termination and the 7 April 1994 decision rejecting his complaint. The Court ordered the defendant Apoteka to submit evidence to show when the applicant actually received the decision on termination of 25 February 1994 and the decision rejecting his complaint of 7 April 1994.

17. Another hearing was scheduled before the First Instance Court in Banja Luka on 24 December 1998. Due to the absence of the judge, however, the hearing was postponed until 3 February 1999.

18. The First Instance Court in Banja Luka held a hearing on 3 February 1999. The Court stated that the date the applicant received the Administrative Board decision could not be established from the documents submitted. The hearing was again postponed until 4 March 1999.

19. Another hearing was held before the First Instance Court in Banja Luka on 4 March 1999. The Court requested information from Pošta Banjaluka regarding when the registered delivery of the 7 April 1994 decision was made to the applicant, in order to determine whether the applicant's claim was timely filed.

20. On 2 September 1999, the main hearing in the applicant's case was subsequently postponed and rescheduled for 29 September 1999.

21. The First Instance Court in Banja Luka held another hearing on 29 November 1999. On that date, the Court issued a written judgment rejecting the applicant's complaint as ill-founded. The Court concluded that the applicant's claim had been timely filed, but that the defendant Apoteka's actions were in complete accordance with Article 53(b)(15) of the Law on Labour Relations of the Republika Srpska.

22. The applicant timely appealed to the District Court in Banja Luka against the 29 November 1999 decision of the First Instance Court.

23. As of 25 February 2000, the case was again before the First Instance Court in Banja Luka.

24. On 14 March 2002, the applicant apparently received a First Instance Court decision in his favour. On 29 May 2002 the employer Apoteka appealed against that decision. The case remains pending and a hearing was last scheduled for 2 September 2002.

IV. RELEVANT LEGAL PROVISIONS

A. Law on Labour Relations

25. The legal basis for the applicant's dismissal was Article 53(b)(15) of the Law on Labour Relations of the Republika Srpska (Official Gazette of the Republika Srpska no. 25/93). This Law allowed for dismissal of workers after the expiration of a waiting list period ordered as a result of reduced economic activity of the employer, provided those economic difficulties continued to exist.

B. Law on Civil Proceedings

26. Article 434 of the Law on Civil Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77) states that, in disputes concerning employment, the Court shall pay special attention to the need to resolve such disputes as a matter of urgency.

V. COMPLAINTS

27. The applicant alleges that his right to a fair hearing as guaranteed by Article 6 of the Convention has been violated. The applicant claims that his lawsuit has been intentionally delayed and has not been heard in a reasonable time. Additionally, he alleges differential treatment with regard to compensation while he was on the waiting list.

VI. SUBMISSION OF THE PARTIES

A. The respondent Party

28. The respondent Party has not submitted any formal written observations in the case. In a letter accompanying its submission of the minutes of hearings before the First Instance Court, however, the respondent Party asserted that the reason for the delays in the court proceedings was the court's large intake of cases and the large workload of the judges.

B. The applicant

29. The applicant has stated that while on the waiting list at Apoteka, he received "symbolic assistance", but he did not receive assistance in the form of food, as others on the waiting list did. He requests compensation for the company's failure to provide him with food during that time period. The applicant further contends that the judge who presided over his case in the First Instance Court in Banja Luka dealt with his case in an unfair manner. The applicant asserts that the judge sought irrelevant information, such as the Apoteka company statute, which unjustifiably lengthened the proceedings by many months. He also requests that the Chamber investigate the amount and method of Apoteka's payment of employees after his working relations were terminated.

VII. OPINION OF THE CHAMBER

A. Admissibility

30. 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 of the Agreement. In

accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

1. Compatibility *ratione temporis*

31. The Chamber notes that the applicant's complaints relate to the company decision to place him on the waiting list in November 1992, then to the company decision to terminate his employment contract in February 1994 and finally to the labour dispute he introduced before the First Instance Court in May 1994. All those events occurred before 14 December 1995, when the Agreement entered into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (see case no. CH/96/3, *Medan*, decision on admissibility of 4 February 1997, Decisions on Admissibility and Merits 1996-1997). The Chamber must confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date (see case no. CH/97/30, *Damjanović*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997). Therefore, pursuant to Article VIII(2)(c) of the Agreement, the Chamber declares inadmissible as incompatible *ratione temporis* with the Agreement the parts of the application related to the company decisions regarding his placement on the waiting list and the termination of his employment contract.

2. Conclusion as to admissibility

32. The Chamber further finds that no other grounds for declaring the case inadmissible have been established. Accordingly, the Chamber declares admissible the part of the application that concerns the alleged violations of Article 6 of the Convention occurring after 14 December 1995. The Chamber declares inadmissible the remainder of the applicant's complaints.

B. Merits

33. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for in the Convention.

34. The applicant complains about the lack of fairness in and the length of the proceedings before the First Instance Court and the District Court. The respondent Party states that the delays were the consequence of the large number of cases registered by the courts and that the time it took for the First Instance Court to issue a decision is reasonable.

35. Article 6 of the Convention, insofar as relevant to the present case, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law....”

1. Determination of the civil character of the proceedings

36. The Chamber recalls that in its constant jurisprudence it has considered that disputes relating to private and employment relations concern “civil rights and obligations”. The Chamber further notes that this point has not been put at issue by the parties. Therefore, the Chamber considers that the “right” being claimed by the applicant is a “civil right” within the meaning of Article 6 paragraph 1 of the Convention.

2. Fair hearing

37. The applicant alleges that the proceedings before the First Instance Court have not been fair and that the judge who presided over his case in the First Instance Court dealt with his case in an unfair manner. However, in the present case, the applicant has not offered the Chamber evidence indicating that the proceedings were not fair. Further, the Chamber cannot find any evidence as to a lack of fairness of the courts on its own motion.

38. The Chamber therefore finds that there has been no violation of the applicant's right to a fair hearing as guaranteed by Article 6 paragraph 1 of the Convention.

3. Length of the proceedings

39. The first step in establishing the reasonableness of the length of the proceedings is to determine the period of time to be considered. The Chamber finds that, considering its competence *ratione temporis*, it can assess the reasonableness of the length of the proceedings only with regard to the period after 14 December 1995. It may, however, take into account what stage the proceedings had reached and how long they had lasted before that date.

40. In the present case, the proceedings had lasted over 18 months when the Agreement entered into force. The proceedings before the First Instance Court were concluded on 29 November 1999 by the issuance of a decision refusing the applicant's claim as ill-founded. The proceedings before the District Court were initiated by the applicant's appeal. As of 25 February 2000, the case was again before the First Instance Court. On 14 March 2002 the applicant received a First Instance Court decision in his favour. The employer Apoteka has appealed against that decision, and the case remains pending before the District Court. In summary, after 14 December 1995, the proceedings have lasted 6 years and 10 months as of the date of the present decision, principally due to the fact that it took the First Instance Court over five years to issue its first decision in the applicant's case.

41. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998; Eur. Court HR, *Rajcevic v. Croatia*, judgment of 23 July 2002, paragraphs 36).

42. The respondent Party has not stated any specific reasons that could have justified the long length of the proceedings in the applicant's case.

43. The Chamber notes that the legal issues in the underlying case concern a labour dispute and the termination of the applicant's employment contract. Considering that those types of disputes are frequent in Bosnia and Herzegovina, the case does not seem to the Chamber to be so complex as to require more than five years of proceedings to issue a first decision.

44. The Chamber notes that the applicant was not responsible for the length of the proceedings. The Chamber observes that the respondent Party has not objected to the applicant's allegation that the reason for postponing six of the eight hearings before the First Instance Court was the request of the Court to submit different documents. The two other postponements occurred due to the absence of the judge or at the request of the defendant.

45. Having in mind the armed conflict, the Chamber notes that it is not reasonable to expect that the domestic courts were able to issue decisions at a normal speed immediately after the cessation of the armed conflict. The Chamber is therefore of the opinion that some delay by the domestic courts in issuing decisions must be accepted. However, the Chamber notes that the present case has been pending for almost seven years after the cessation of the armed conflict.

46. Furthermore, the Chamber considers that the conduct of the First Instance Court, delaying a decision in what appears to be an uncomplicated employment dispute, was primarily responsible for

the more than five-year delay between the complaint and the first decision. Therefore, the Chamber finds that the respondent Party is responsible for the unreasonable length of the proceedings.

47. The Chamber therefore finds a violation of Article 6 paragraph 1 of the Convention with regard to the length of the proceedings.

VIII. REMEDIES

48. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of an applicant.

49. The applicant requested that the Chamber investigate the amount and method of Apoteka's payment of employees after their working relations had been terminated. The applicant also requested that he be reinstated into his former employment position with Apoteka.

50. The Chamber notes that it has found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention. It considers it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's case is resolved by a final and binding decision in a reasonable time.

51. Furthermore, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided before the domestic organs.

52. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 1500 Convertible Marks (*Konvertibilnih Maraka*) in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

53. The Chamber further awards simple interest at an annual rate of 10% as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

54. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible the part of the application relating to the fairness and the length of the domestic proceedings in the applicant's civil dispute occurring after 14 December 1995;
2. unanimously, to declare inadmissible the remainder of the application;
3. unanimously, that there has been a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, to order the Republika Srpska, through its authorities, to take all necessary steps to ensure that the applicant's case is resolved by a final and binding decision in a reasonable time;
5. by 6 votes to 1, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, one thousand five hundred (1500) Convertible Marks (*"Konvertibilnih Maraka"*) by way of compensation for non-pecuniary damages;
6. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above

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one-month period until the date of settlement in full; and

7. unanimously, to order the Republika Srpska to report to it no later than three month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel