



DECISION ON ADMISSIBILITY

Case no. CH/02/9436

Tufik HAMZIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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 Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application was submitted on 7 March 2002 and registered on the same day.
2. After protracted proceedings, the applicant concluded a contract with his employer to resolve a dispute over his working relations and to establish the amount of compensation due to him. The applicant complains about the amount of compensation for salary he received during the period he was laid off in accordance with the contract. He also considers that he has been discriminated against in relation to other employees of his employer as they allegedly received higher amounts of compensation while they were laid off.

ii. STATEMENT OF FACTS

3. The applicant was employed in the Tobacco Factory Sarajevo (the "employer"). Since 8 May 1992 he was a member of the Army of Bosnia and Herzegovina. The applicant was injured, and since the Army refused to send him for medical treatment, he went to Germany on his own initiative for the treatment. His treatment was completed in 1995 and he returned from Germany in 1997.
4. On 2 September 1997 the employer issued a decision terminating the applicant's working relation as of 12 November 1994. The decision states that the reason for the termination of the working relation is the applicant's departure from his job on his own free will.
5. The applicant filed an appeal against the mentioned decision. On 16 October 1997 the steering board of the employer refused his appeal as ill-founded. The applicant did not initiate a dispute before the competent court for annulment of the mentioned decisions.
6. After the entry into force of the Law on Labour (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/99), the applicant submitted a request to the employer to establish his legal and working status pursuant to Article 143 of the Law. On 13 January 2000 the employer issued a decision refusing his request.
7. The applicant initiated court proceedings to recognise his right on the basis of Article 143 of the Law. On 28 August 2000 the Municipal Court II in Sarajevo, on the basis of the Law on Changes and Amendments of the Law on Labour (Official Gazette of the Federation of Bosnia and Herzegovina no. 32/00), issued a procedural decision suspending the proceedings and relinquishing the case to the Commission for Implementation of Article 143 of the Law on Labour of Canton Sarajevo (the "Cantonal Commission").
8. On 15 February 2001 the Cantonal Commission ordered the employer to establish the applicant's legal and working status as a laid off employee from 12 January 2000 to 5 May 2000 and to establish the termination of his working relation by virtue of the law as of 5 May 2000. The same procedural decision ordered the employer to specify the applicant's amount of severance pay due to the termination of his working relation and to conclude a contract on severance with him.
9. The employer filed an appeal against the procedural decision of the Cantonal Commission. On 3 May 2001 the Federal Commission for Implementation of Article 143 of the Law on Labour set aside the procedural decision of the Cantonal Commission and returned the case for renewed proceedings.
10. On 6 December 2001, in the renewed proceedings, the Cantonal Commission issued another procedural decision with the same content as its previous decision of 15 February 2001.
11. On 27 December 2001 the applicant and the employer concluded a contract on the establishment of his status and severance pay, based upon which the applicant was paid the amount of 895.07 KM (38.23 KM by way of compensation for his salary while he was laid off from 12 January 2000 to 5 May 2000 and 856.84 KM by way of severance pay). The contract stipulated that all

mutual rights, obligations and claims between the contracting parties on the basis of the working relation are considered settled by its conclusion and compliance with the contracted obligations.

iii. OPINION OF THE CHAMBER

12. 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.”

13. The Chamber notes that applicant complains about the amount of compensation paid to him for his salary while he was paid off. However, the Chamber further notes that this amount of compensation, as well as the amount of severance pay, was established in the contract of 27 December 2001, which the applicant freely concluded with his employer. The employer complied with its obligations under the contract, and the applicant accepted the payment due under the contract. Accordingly, the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under Agreement. It follows that this part of application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

14. As to the applicant’s claim that he has been discriminated against by his employer in relation to other employees, the Chamber notes that applicant has failed to substantiate his allegations. Neither is it apparent from the facts of the case that the applicant has in fact been the victim of discrimination on any of the grounds set out in Article II(2)(b) of the Agreement. Since there is no evidence of discrimination, it follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Victor MASENKO-MAVI
Acting President of the Second Panel