DECISION ON ADMISSIBILITY

Case no. CH/99/2752

Džuma KUNOVAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 March 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Giovanni GRASSO
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Urlich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms, Antonia DE MEO, 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 Articles VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a former director of the company “Slovenka” in Donji Vakuf, the Federation of Bosnia and Herzegovina, and complains of discrimination on national grounds, because she was not allowed to be reinstated into her work.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced and registered on 5 August 1999.

3. On 8 June 2000, the Chamber decided to transmit the case to the respondent Party for its observations on the admissibility and merits. On 11 July 2000 the applications were transmitted under Article II(2)(b) of the Agreement (discrimination) in relation to Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, as well as, under Article 6 of the European Convention on Human Rights (“the Convention”).

4. On 18 September 2000, the respondent Party submitted its observations on admissibility and the merits.

5. The applicant submitted further observations on 16 November 2000, 15 October, 2 and 16 December 2002.

6. The Chamber deliberated on the case on 8 June 2000, 6 December 2002 and 10 January and 5 March 2003. On the latter date the Chamber adopted the present decision.

III. FACTS

7. The applicant, who is of Bosniak origin, is married to a man of Serb origin. She is a member of the Social Democratic Party (SDP).

8. The applicant used to work as a director for the company "Slovenka" (the “company”) in Donji Vakuf. After the war broke out, Donji Vakuf fell under Serb control and remained so until 1995. Most of the workers of Bosniak and Croat origin left the company and the city, but the applicant stayed. She continued her work in the company, trying to protect the facilities from destruction. She worked in the company until 1 September 1992, “when all activities in the company stopped, because there was no possibility to organise production”.

9. Between 13 and 16 March 1993, the applicant handed over the company to a new director upon orders from the Serb authorities. Nobody told her about her status in the company.

10. The applicant stayed in Donji Vakuf until 12 September 1995 when most of the Serb population left Donji Vakuf because the city was about to fall under the control of the Army of Bosnia and Herzegovina. The applicant alleges that Serb police ordered her and her family to leave, and they did so.

11. In February 1996 the applicant was able to return to Donji Vakuf. On 12 March 1996 the applicant appealed to the company and asked the new director of the company to be reinstated to a working position corresponding to her qualifications, or at least to be placed on a waiting list. This was very important to the applicant because she had worked for 28 years and she needed only two more years to be able to achieve early pension.

12. In an answer dated 15 March 1996, the company submitted to her a procedural decision of the director of 20 December 1995, which stated that her employment had been terminated on 8 May 1992. According to the decision, the reason for the termination of her and 59 other employees was that they had sided with the aggressor and against the Republic of Bosnia and Herzegovina. On the

list which is part of the mentioned decision were 57 workers of Serb origin, and three workers who were married to persons of Serb origin.

13. The applicant maintained that the company also has verbally stated that another reason for the termination of the employment is that she did not respond to a public invitation to all the workers to come to work, that was broadcast over the local radio. The applicant alleges that the mentioned public invitation was made on 2 October 1995, during the state of war, when she was not in Donji Vakuf and could not have come to the city, nor her former place of work, even if she had known about the invitation. However, the applicant stated that the company still employs other employees who did not respond to the invitation and explicitly mentions their names, all of them of Bosniak and Croat origin. In any case, not responding to the invitation is not mentioned as reason for terminating her labour relation in the employer's decision.

14. On 26 March 1996 the applicant submitted an objection against the procedural decision to the steering board of the company. The steering board never considered this objection.

15. On 29 August 1997 the applicant submitted a civil action to the Municipal Court in Bugojno. The first hearing was scheduled for 27 October 1998, but the defendant company did not appear.

16. On 30 November 1998 a hearing was held. The defendant was ordered to bring its Rules of Procedure for the following hearing, which was scheduled to be held on 20 January 1999. However, this hearing was postponed for an indefinite period of time by a decision of the judge.

17. In March 1999 the applicant contacted the institution of the Federation Ombudsmen in Travnik and the Office for Securtity and Cooperation in Europe (OSCE) in Bugojno to speed up the proceedings. A new hearing was scheduled for 6 April 1999.

18. On 6 April 1999 the Municipal Court in Bugojno rejected the applicant's action as out of time.

19. The applicant appealed against the first instance decision. On 17 June 1999 the Cantonal Court in Travnik rejected the appeal and confirmed the Municipal Court's decision.

20. In December 1999 the applicant requested the company to reinstate her into her working and legal status according to Article 143 of the Law on Labour. The company never responded to her request.

21. On 5 December 2000 the applicant appealed to the Ministry of Labour of Central Bosnia Canton requesting her reinstatement into her working and legal status pursuant to Article 143 of the Law on Labour. Until today the Ministry has not decided upon her appeal.

IV. COMPLAINTS

22. The applicant claims to have been discriminated against on national ground, because only the labour relations of the workers of Serb origin and those who were married to Serbs were terminated.

23. Further, the applicant states that her employment was terminated under the war regulations and not under peacetime regulations, which is wrong according to the applicant. She requests to be reinstated into a corresponding working place.

24. The applicant also submitted a compensation claim.

V. SUBMISSIONS OF THE RESPONDENT PARTY

25. As to the facts, the respondent Party points out that the applicant did not respond to the employer's public invitation to all workers to come back to work.

26. As to the admissibility, the respondent Party considers the application inadmissible *rationae temporis* because the applicant's labour relation was terminated on 8 May 1992. The respondent Party also alleges that the applicant did not use the effective remedy in the time prescribed by the law.

27. As to the merits the respondent Party alleges that the applicant did not substantiate her discrimination claim. The respondent Party states that "all the workers of the company were invited through the media to come back to work".

28. The respondent Party notes that the just and favourable conditions of work prescribed by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, which should have been provided, were influenced by the circumstances of war, which the respondent Party could not be blamed for.

29. The respondent Party finally notes that the applicant did not initiate the court proceedings in the time prescribed by the law, and due to that fact her claim was rejected as out of time. Because of that, the respondent Party considers the right provided in Article 6 of the Convention not to have been violated.

VI. RELEVANT LEGAL PROVISIONS

A. The Law on Fundamental Rights in Labour Relations

30. The Law on Fundamental Rights in Labour Relations of the Socialist Federal Republic of Yugoslavia ("SFRY") (Official Gazette of the SFRY nos. 60/89 and 42/90) was taken over as a law of the Republic of Bosnia and Herzegovina (OG RBiH no. 2/92).

> Article 23
>
> "(2) A written decision on the realization of a worker's individual rights, obligations and responsibilities shall be delivered to the worker obligatorily."
>
> Article 83
>
> (1) A worker who is not satisfied with the final decision of the competent body in the organization, or if that organ fails to issue a decision within 30 days from the day the request or appeal is lodged, has the right to seek protection of his right before competent court within the next 15 days.

VII. OPINION OF THE CHAMBER

31. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ...."

32. The Chamber notes that on 26 March 1996 the applicant filed an appeal against the company's decision terminating her labour relation to the steering board. As the steering board failed to decide on her appeal within 30 days, the applicant could have filed an action to the competent court within the next 15 days, pursuant the Article 83(1) of the Law on Fundamental Rights in Labour Relations. The Chamber notes that the applicant failed to comply with the time limit prescribed by the Law because she filed an action before the competent court on 29 August 1997. Accordingly, the applicant has not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

VIII. CONCLUSION

33. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel

Annex I: Dissenting opinion of Mr. Manfred Nowak

ANNEX I

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Manfred Nowak.

DISSENTING OPINION OF MR. MANFRED NOWAK

Under Article VIII of the Agreement, the Chamber has a certain discretionary power in deciding which applications to accept. Pursuant to Article VIII(2)(e), it "shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds". It is clear from the facts, as stated in part III of the decision, that the applicant, because of her Bosniak origin and marriage to a Serb, is the victim of a particularly serious and persistent discrimination in the enjoyment of her right to work. Being married to a Serb, she was in a particularly difficult situation during the armed conflict. Nevertheless, she stayed in Donji Vakuf, tried to protect the facilities of the company (for which she had worked for almost 30 years), handed over the management to a new director (of Serb origin) in 1993, and left the town only in September 1995 when she was ordered by the Serb police to do so. It is just outrageous that the new (Bosniak) director of the company on 20 December 1995 decided that her employment had been terminated on 8 May 1992 (this was the time when she as a Bosniak in a Serb controlled area tried to protect the company from destruction) on the ground that she "had sided with the aggressor and against the Republic of Bosnia and Herzegovina". It is clear beyond any doubt from the facts established by the Chamber (see para. 12) that the only reason for the dismissal and non-reinstatement of the applicant was the fact that she had been married to a Serb and stayed with her husband during the war. The Chamber, therefore, should have declared her application admissible, found discrimination in the enjoyment of her right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights and Article 5(e)(I) of the International Convention on the Elimination of All Forms of Racial Discrimination, and ordered the Federation to pay to her full compensation for the lost salaries and the emotional suffering, and to initiate criminal proceedings against the post-war director of the company and others who are responsible for this serious case of racial discrimination.

Instead, the Panel declared this case inadmissible for non-exhaustion of domestic remedies. In fact, the applicant already in March 1996 submitted an objection against the decision of the director to the steering board of the company. The steering board never considered this objection, but the applicant obviously hoped that it would revise the decision of her dismissal. That is probably the reason why she waited with initiating court proceedings until August 1997. The courts took this delay as a reason to reject her civil action as out of time. It might have just been a welcome excuse for the Municipal Court of Bugojno not to be of assistance to a Bosniak woman married to a Serb, but it definitely should not have been a reason for the Human Rights Chamber of Bosnia and Herzegovina to declare this well-founded application inadmissible. Let us hope that the applicant will submit a request for review and that the Plenary Chamber will repair this unfortunate mistake of Panel II.

(signed)
Manfred NOWAK