DECISION ON ADMISSIBILITY

Case no. CH/02/10009

Alija ŠUKALIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

Mr. Ulrich 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 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 introduced on 22 April 2002. On 8 May 2002, the applicant requested that the Chamber order the respondent Party, as a provisional measure, to annul the decision of the Tuzla Cantonal Assembly and to prohibit publishing the announcement of positions of Deputy Prosecutors in the Cantonal Court in Tuzla until the adoption of the Chamber's final decision in his case. On 4 June 2002, the President of the First Panel decided not to order the provisional measure requested.

II. FACTS AND COMPLAINTS

2. On 22 June 1999, the Minister of Justice of the Tuzla Canton wrote to the applicant informing him that a proposal had been submitted to the Tuzla Cantonal Assembly (the "Cantonal Assembly") by which his employment as Deputy Cantonal Prosecutor would be terminated (deleted text). The Minister of Justice invited the applicant to submit his observations on his proposed dismissal. In his letter to the applicant, the Minister of Justice referred to the general assessment by the Office of the High Representative (the "OHR"), particularly in light of the applicant's conduct in the "Tula" case.

3. On 23 June 1999, the applicant submitted a reply to the Minister of Justice in which he stated that the Law on Prosecution of the Tuzla Canton (Official Gazette of Tuzla Canton, no. 4/96, 7/96 and 2/97) provided for the circumstances in which a prosecutor or his/her deputies could be dismissed. The applicant pointed out that the Minister of Justice had failed to consider the applicable law. The proposal by the Minister of Justice was transmitted to the Cantonal Assembly (deleted text) and on 23 June 1999 the President of the Cantonal Assembly sent a letter to the applicant informing him that on 24 June 1999 the Cantonal Assembly would discuss the proposal of the Minister of Justice concerning his termination. The applicant submitted to the Cantonal Assembly his written statement sent to the Minister of Justice with a request to read its contents at the session of the Cantonal Assembly. The Chamber has no information as to whether the Cantonal Assembly agreed to this request.

4. The applicant was not present during the session of the Cantonal Assembly. He states that he was aware that his employment as Deputy Cantonal Prosecutor would be terminated, in the absence of legal reasoning, but on the basis of the Cantonal Assembly's constitutional powers. The applicant learned of his termination through the media and on 23 July 1999 he addressed the Cantonal Assembly requesting to be delivered the written decision on termination. The applicant received the decision on 7 August 1999 and immediately submitted a request for protection of his rights to the Cantonal Court in Tuzla (the "Cantonal Court") which is the remedy against decisions of the Cantonal Assembly that cannot be qualified as "administrative acts". On 29 October 1999, the Cantonal Court issued a procedural decision rejecting the applicant's request. The Cantonal Court held that the Cantonal Assembly had reached its decision on the basis of Article 24 of the Constitution of the Tuzla Canton in conjunction with the Law on Prosecution of the Tuzla Canton. Therefore, the Cantonal Court concluded that the Cantonal Assembly had not acted exclusively on the basis of its constitutional powers, but also on the basis of its competencies under ordinary law. The Cantonal Court concluded that the decision of the Cantonal Assembly had the characteristics of an administrative act against which an administrative dispute could be initiated.

5. On 20 December 1999, the applicant submitted an appeal to the Supreme Court of the Federation of Bosnia and Herzegovina (the "Supreme Court") against the procedural decision of the Cantonal Court. The applicant pointed out that the decision of the Cantonal Court was incorrect in its assessment that the decision of the Cantonal Assembly not been based exclusively on its constitutional powers, as no legal reasoning had been given for his termination as stipulated by the Law on Prosecution of the Tuzla Canton. Additionally, the applicant submitted that if the decision of the Cantonal Assembly was an administrative act the Cantonal Court was obliged to consider his request for protection as an administrative dispute and such failure breached the Law on Administrative Disputes. On 30 August 2001, the Supreme Court issued a procedural decision rejecting the applicant's appeal as ill-founded and accepting the Cantonal Court's reasoning that his termination was based upon the Constitution of the Tuzla Canton in conjunction with Law on Prosecution of the Tuzla Canton. In respect to the applicant's complaint that the Cantonal Court

should have considered his request for protection as an administrative dispute, the Supreme Court stated that the applicant was not a layman and therefore should have been aware of what submissions he should make to the court.

6. The applicant complains that his right to an effective remedy under Article 13 of the European Convention on Human Rights (the "Convention"), his right to equal treatment before the Courts as guaranteed under Article 14(1) of the International Covenant on Civil and Political Rights (the " Covenant"), his right of access to public service under Article 25 of the Covenant and his right to freedom from discrimination under Article 26 of the Covenant have been violated. The applicant further complains of violations of various rights guaranteed under the Universal Declaration of Human Rights and the European Social Charter.

III. OPINION OF THE CHAMBER

7. 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."

A. Complaints concerning the decision terminating his employment

8. The applicant complains that his employment was unlawfully terminated and that this was an abuse of power. The applicant's complaint in this respect concerns the administrative act that removed him from office and the domestic courts' failure to consider the applicable legal provisions pertaining to his claim.

9. As to the applicant's claim that he has been denied the right to work, the Chamber notes that he is neither entitled to such a right under domestic law, nor does the European Convention on Human Rights contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider rights protected under the various agreements contained in the Appendix to Annex 6 of the Agreement, including the International Covenant on Civil and Political Rights, in connection with alleged or apparent discrimination in the enjoyment of such rights (see case no. CH/01/6662, *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, Decisions January-June 2001). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

10. Additionally, the Chamber recalls that it has in the past noted that disputes that relating to the recruitment, careers and termination of civil servants do not, as a general rule, fall within the ambit of Article 6(1) of the Convention (see case no. CH/98/1309 et al *Kaytaz and Others*, decision on admissibility and merits of 4 September 2001, paragraph 138, Decisions July-December 2001, referring to Eur. Court HR, *Massa v. Italy*, judgment of 24 August 1993, Series A no.265-B, p.20). The Chamber also recalls that in *Pellegrin* (Eur. Court HR, *Pellegrin v. France*, judgment of 8 December 1999, Reports of Judgments and Decisions 1999-VII, paragraphs 64-67) the European Court established a functional criterion, i.e. based on an examination of the duties of a particular applicant. The European Court noted that disputes concerning the employment of civil servants whose duties involve "direct or indirect participation in the exercise of powers conferred by public law and duties assigned to safeguard the general interests of the State or of other public authorities" are excluded from the scope of Article 6(1).

11. The Chamber finds that the applicant's function as deputy public prosecutor involves the "direct... participation in the exercise of powers conferred by public law and duties assigned to safeguard the general interests of the State or of other public authorities". It follows that the application in this respect is outside the scope of Article 6 of the Convention and thus incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible.

B. Right to an effective remedy

12. The Chamber notes that the applicant complains that there has been an interference with his right to an effective remedy in challenging the decision terminating his employment. The Chamber recalls that Article 13 of the Convention is not a free-standing right and cannot be applied independently of any other right under the Convention. This is not to say that a violation of another existing right must have been established. The requirement is that an "arguable claim to be the victim of a violation of the rights set forth in the Convention" must be met (see Eur. Court, *Silver & Others v. United Kingdom*, judgment of 25 March 1983, Series A. no.28, paragraph 113). However, as the termination of the applicant's service as a public prosecutor is outside the scope of Article 6, the Chamber finds that the applicant has failed to show that he has an arguable claim to be a victim of a violation of any of the rights and freedoms guaranteed under the Convention. It follows that the application in this respect is manifestly ill-founded, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible.

C. Complaints concerning discrimination on the right to take part in the conduct of public affairs

13. The applicant has alleged that he has been discriminated against in the enjoyment of various rights under the International Covenant on Civil and Political Rights. As the Chamber has explained in previous cases, it only has jurisdiction to consider complaints under the International Covenant on Civil and Political Rights, in connection with alleged or apparent discrimination in the enjoyment of such right. The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that this part of the application is manifestly ill-founded within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible as well.

D. Rights guaranteed under the Universal Declaration of Human Rights and the European Social Charter

14. The Chamber notes that the applicant complains of various violations of his rights as guaranteed under the Universal Declaration of Human Rights and the European Social Charter. However, neither the Universal Declaration of Human Rights nor the European Social Charter are among the international instruments listed in the Appendix to the Agreement which may be applied by the Chamber in connection with alleged or apparent discrimination under Article II(2)(b) of the Agreement. Therefore, the Chamber is not competent to consider allegations of violations of provisions of the Universal Declaration of Human Rights or the European Social Charter. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare also this part of the application inadmissible.

III. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)	(signed)
Ulrich GARMS	Michèle PICARD
Registrar of the Chamber	President of the First Panel