



DECISION ON ADMISSIBILITY

Case no. CH/02/10476

Risto LUGONJIĆ

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

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

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 applicant complains of violations of his human rights stemming from the termination of his employment as a police officer based on a decision by the International Police Task Force (“IPTF”) Commissioner. The applicant asserts that the decision was based on an erroneous factual background and that he was not afforded proper procedures to challenge his termination and the evidence against him. On 24 June 2002, the applicant and the Mayor of Brčko District entered into a contract providing for the applicant’s re-employment, but as of 7 October 2002 he had not been summoned to return to work. The IPTF subsequently initiated review proceedings regarding the applicant’s employment termination, which proceedings were still pending on 7 October 2002. The applicant has not informed the Chamber of any developments in his case after 7 October 2002.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The Chamber received and registered the application on 10 May 2002. The applicant requested, as a provisional measure, that the Chamber: (1) nullify the Brčko District Mayor’s decision terminating his employment; (2) order his assignment to other positions commensurate with his previous rank, qualifications, and salary; and (3) keep such orders in place until the completion of proceedings before the Chamber.

3. On 3 June 2002, the Chamber considered the case, rejected the request for provisional measures, and decided to transmit the case to the respondent Party under Articles 6 and 13 of the European Convention on Human Rights (the “Convention”). The Registry transmitted the case to Bosnia and Herzegovina on 11 June 2002.

4. The respondent Party’s observations were due on 11 August 2003. To date no observations have been received.

5. On 7 October 2002, the Chamber received correspondence from the applicant indicating that IPTF had initiated review proceedings in his case. The applicant also stated that he had entered into an annex to his work contract with the Mayor of Brčko District, but that he had not yet been summoned to work. The applicant attached copies of the work contract annex and correspondence related to the review proceedings.

6. On 16 October 2002, the Chamber transmitted the applicant’s 7 October 2002 submission to the respondent Party for comment. No reply has been received to date.

7. The Chamber again considered the case on 5 February 2003, 6 March 2003, and 1 April 2003. On the latter date it adopted the present decision.

III. FACTS

8. The applicant was employed as a police officer from 1 August 1978 to 3 January 2002. During his 24-year career, he performed various duties, and his last position was Deputy Head of the Police Station in the Brčko District of Bosnia and Herzegovina. In 1997, he served as the Head of the Criminal Police at the Public Security Centre in Brčko. On several occasions during his career, he was recognised for special service and dedication in performing his duties.

9. On 13 December 2001, the IPTF Commissioner decided to withdraw the applicant’s provisional IPTF permit¹ to exercise police authority. By this action, the applicant was excluded from “participating in any aspect of police function, currently and in the future, anywhere in Bosnia and Herzegovina”.

¹ In accordance with Article 11 of the General Framework Agreement for Peace, the IPTF registered and issued provisional authorisation permits to law enforcement personnel in Bosnia and Herzegovina (see IPTF Policy IPTF-P02/2000: Registration, Provisional Authorisation and Certification).

10. This decision arose from reports that the Bijeljina Crime Department, under the applicant's supervision, failed to take basic investigative actions in one particular case, and that the applicant engaged in unprofessional and partial behaviour.

11. On 5 January 2002, the applicant filed an appeal to the IPTF against the Commissioner's decision, through the Head of the Human Rights Office in Brčko.

12. On 18 January 2002, the Mayor of Brčko District issued a decision terminating the applicant's employment. The decision stated that the applicant's employment was terminated as of 3 January 2002, and that the IPTF Commissioner's letter played an integral part in the decision. In the reasoning, it is stated that the Mayor based his decision on Article 74 Paragraph 1 of the Brčko District Law on Labour, the IPTF Commissioner's letter, and the proposal of the Head of the Brčko District Police.

13. On 21 January 2002, the applicant filed an appeal to the Mayor against the 18 January 2002 decision terminating his employment. The Chamber has received no information regarding further developments in this proceeding.

14. On 25 April 2002, the Mayor sent a letter to the applicant informing him that no appeal is provided for by the Law on Labour in cases where an employee considers his rights to have been violated. Regarding the applicant's suggestion that he could be assigned to other duties commensurate with his qualifications, the Mayor invoked the IPTF Commissioner's decision, in which it is stated that the applicant is unsuitable for work in the police forces of Bosnia and Herzegovina. In his letter, the Mayor states: "With respect to IPTF's letter and the authority they have in the territory of Bosnia and Herzegovina as well as in the Brčko District, as envisioned in Annex 11 of the Agreement on International Police Force, in which Article IV provides for full cooperation with IPTF and Article V prescribes sanctions for failure to cooperate, you understand what effect the IPTF Commissioner's letter has, and the Mayor has issued a decision in accordance with it, and in accordance with his authority under Article 9 of the Law on Executive Power of the Brčko District, which you have contested."

IV. COMPLAINTS

15. The applicant alleges a violation of Article 6 of the Convention. In particular, he asserts a violation of the "equality of harms principle", because he was not provided an equal opportunity to present his arguments and reply to the opposing party. He also states that he was not allowed to examine the underlying case file, which is in the Police Archives, for the purpose of preparing his defence and presenting exculpatory evidence. The criminal investigation of the Bijeljina Crime Department in the particular case at issue, for which the applicant was held responsible, was performed in 1997, and the applicant is therefore unable to recall most of the actions of the Police. Requests by the applicant and his advocate to examine the case file and photocopy certain documents have been denied by the Police Station in Bijeljina.

16. The applicant further alleges a violation of his right to an effective remedy under Article 13 of the Convention. He states that in his case a disciplinary proceeding has neither been initiated nor conducted in accordance with the Rules of Procedure on disciplinary and material responsibility of Brčko District Police employees, which regulate minor and serious violations of work duties, establish methodologies for establishing disciplinary responsibility, and establish procedures for issuance of decisions terminating employment.

17. In addition to his request for provisional measures, the applicant requests the Chamber to order that the media in which it was published that he was dismissed from Police duty due to his failure to supervise and for unprofessional and partial behaviour should publish that, in the proceedings before the Chamber, it was established that he was not responsible. He claims pecuniary compensation in the amount of a monthly salary (1750 KM) for the period from 3 January 2002 until his assignment to another job or his reinstatement to employment with the Police. He also seeks 1500 KM for legal expenses.

V. OPINION OF THE CHAMBER

A. Article 6

18. Article 6 of the Convention provides, in pertinent part:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

* * *

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

“Everyone charged with a criminal offence has the following minimum rights:

* * *

to have adequate time and facilities for the preparation of his defence....”

1. Existence of a “civil right”

19. The Chamber notes that the European Court of Human Rights has held that Article 6 is not applicable where an applicant has exercised “powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities” (European Court of Human Rights, *Pellegrin v. France*, judgement of 8 December 1999). The *Pellegrin* decision makes it clear that police officers fall within this category:

“The Court therefore rules that the only disputes excluded from the scope of Article 6 § 1 of the Convention are those which are raised by public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depository of public authority responsible for protecting the general interests of the State or other public authorities. *A manifest example of such activities is provided by the armed forces and the police.*”

(*Pellegrin*, paragraph 66, emphasis added).

20. Having regard to the above, the Chamber concludes that, because the dispute concerns the applicant’s position as a police officer, the application does not concern the determination of the applicant’s “civil rights” within the meaning of Article 6 of the Convention.

2. Existence of a “criminal charge”

21. Alternatively, Article 6 could apply if the applicant’s decertification and removal constitutes a “criminal charge” under Article 6 of the Convention. The notion of “criminal charge” has an autonomous meaning under the Convention, which may include disciplinary proceedings (European Court of Human Rights, *Campbell and Fell v. the United Kingdom*, judgement of 28 June 1984). Although disciplinary proceedings as such cannot generally be characterised as “criminal”, the Court has stated that this general rule might not apply in certain specific cases (see *Engel and Others*, judgement of 8 June 1976, Series A no. 22, pp. 33-36, paras. 80-85).

22. In seeking to ascertain whether a given “charge”, though disciplinary in nature, nonetheless counts as “criminal” within the meaning of Article 6, the European Court takes into account “the way in which it is described in domestic law, its nature, the degree of severity of the penalty and its purpose” (*Engel and Others*, paras. 80-83).

23. In *Engel and Others*, an applicant who suffered no loss of liberty and an applicant who served a short period of strict arrest were found not to have faced criminal charges within the meaning of

Article 6. The charges against two other applicants, who faced serious punishments involving a four-month deprivation of liberty, did fall within the “criminal” sphere (*Id.*, para. 85).

24. Having regard to the above, the Chamber concludes that, in the present case, the consequences of the applicant’s decertification and removal do not establish the existence a “criminal charge” that invokes protection under Article 6.

3. Conclusion regarding Article 6 claims

25. With regard to the applicant’s claims under Article 6, the Chamber declares the application inadmissible *ratione materiae* because the dispute addressed in the application does not concern the determination of a “civil right” within the meaning of Article 6 of the Convention and because the applicant has not been confronted with a criminal charge for purposes of Article 6 of the Convention.

B. Article 13

26. Article 13 of the Convention provides:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

27. The Chamber notes that Article 13 is not a free-standing right; it requires the availability of an effective remedy exclusively in cases in which the alleged violation concerns one of the substantive rights and freedoms of the Convention, and it cannot be applied independently. Article 13 requires the applicant to present an “arguable claim to be the victim of a violation of the rights set forth in the Convention” (Eur. Court, *Silver & Others v. United Kingdom*, judgement of 25 March 1983, Series A. no. 28, paragraph 113).

28. Thus, with regard to the applicant’s claims under Article 13, the Chamber declares the application inadmissible as manifestly ill-founded because the applicant has failed to show that he has an arguable claim of a violation of any rights and freedoms protected by the Convention.

VI. CONCLUSION

29. For these reasons, pursuant to Article VII(2)(c) of the Agreement, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel