



DECISION ON ADMISSIBILITY

Case no. CH/02/12457

Munir ALIBABIĆ

against

**BOSNIA AND HERZEGOVINA
and
THE HIGH REPRESENTATIVE**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 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 to the Chamber on 21 November 2002 and registered on the same day. The applicant requested that the Chamber order the respondent Parties, as a provisional measure, to take all necessary action to prevent his removal from office and annul the decision of the High Representative issued on 21 October 2002 by which he was removed from office as Director of the Federal Intelligence and Security Service (*Obavještajno-Sigurnosna Služba Federacije Bosne i Hercegovine*) and barred from holding any official, elective or appointive public office and from running in elections and from office within political parties. On 5 March 2003, the President of the First Panel decided not to order the provisional measure requested.
2. The applicant complains that the decision of the High Representative of 21 October 2002 was unlawful and not in accordance with the Office of High Representative's Operational Guide for Removals and Suspensions published in June 2002.

II. FACTS

3. The applicant was removed from office on 21 October 2002 by a decision of the High Representative on the ground that he had failed in his duty to adequately protect intelligence information from improper use and in his duty to maintain the confidence of the public in the Federation of Bosnia and Herzegovina. In the decision of 21 October 2002 it is further stated that he failed to take effective action to protect the reputation of the office he holds and of the Federal Intelligence and Security Service. Accordingly, by failing to demonstrate active and unreserved support for the peace process he has failed to perform his functions as Director in the manner expected of the holder of such office and has failed to ensure that Articles 6 and 16 of the Law on the Federation of Bosnia and Herzegovina Intelligence and Security Service (Official Gazette of the Federation of Bosnia and Herzegovina, no. 23/02) have been properly applied. The applicant was therefore removed from office by the High Representative in accordance with the powers vested in him under Article V of Annex 10 to the Dayton Peace Agreement, paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997 and paragraph X.4 of the Annex to the Declaration of the Peace Implementation Council made in Madrid on 16 December 1998.
4. Upon the issuance of the decision on removal the applicant wrote to the High Representative on 16 December 2002 requesting that the decision be annulled or rescinded. On 18 December 2002 the High Representative replied to the applicant refusing the applicant's request on the basis that the reasons for his removal were fully set out in the decision of 21 October 2002 and nothing had changed in the meantime for the High Representative to reconsider his decision.
5. In addition to his application to the Chamber, the applicant submitted criminal charges against the High Representative along with 2 supplements detailing his claim. In this respect the applicant complains that the High Representative, along with numerous other named individuals violated the Constitution of Bosnia and Herzegovina, Criminal Code of the Federation of Bosnia and Herzegovina, Article 3 of Annex 1-A to the Agreement, and Annex 6 of the Dayton Peace Agreement.

III. COMPLAINTS

6. The applicant complains that his right to work and various other human rights guaranteed under Annex 6 to the Agreement have been violated. He further complains that he was discriminated against in the enjoyment of his rights under the Article II(2)(b) of the Agreement due to his Bosniak origin.

III. OPINION OF THE CHAMBER

7. According to Article VIII(1) of the Agreement

“The Chamber shall receive ... from any Party or person, non-governmental organisation, or group of individuals claiming to be the victim of a violation by any Party ... applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II”.

The umbrella paragraph of the Agreement defines the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska as “the Parties”.

8. 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.”

9. The applicant directs his application against the state of Bosnia and Herzegovina and against the High Representative, Lord Paddy Ashdown. Insofar as the application is directed against the High Representative, the Chamber notes that it can only receive applications from alleged victims of a violation of the Agreement committed by one of the Parties. The High Representative is not a party to the Agreement (see e.g., case nos. CH/00/4027 & CH/00/4074 *Municipality Council of the Municipality of South-West Mostar v. The High Representative*, decision on admissibility of 9 March 2000, Decisions and Reports January-June 2000, paragraph 9).

10. Secondly, insofar as the application is directed against Bosnia and Herzegovina, the Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions of the High Representative he complains of, nor can the Chamber on its own motion find any such evidence. Additionally, in case no. CH/98/1266 *Čavić v. Bosnia and Herzegovina* (decision on admissibility of 18 December 1998, para. 19, Decisions and Reports 1998) the Chamber examined the compatibility with Annex 6 of complaints concerning actions carried out by the High Representative in the performance of his functions under Annex 10 of the Dayton Peace Agreement. The applicant in that case complained that the High Representative, by removing him from office as a member of the Republika Srpska National Assembly, to which he had been elected, had exceeded his powers and thereby violated several rights of the applicant protected by the Convention. The applicant submitted that Bosnia and Herzegovina was responsible for the actions of the High Representative for the purposes of the Annex 6 Agreement. The Chamber reviewed the relevant provisions of Annex 10 to the Dayton Peace Agreement, U.N. Security Council Resolution No. 1031(1995) and the relevant conclusions of the report of the Bonn Peace Implementation Conference and held that:

“The actions complained of were carried out by the High Representative in the performance of his functions under the General Framework Agreement, as interpreted by the Bonn Peace Implementation Conference. There is no provision for any intervention by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, the High Representative cannot be said to be acting as, or on behalf of, the State or the Entities when acting in pursuance of his powers. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party“(id., paragraph 19).”

11. The application is therefore incompatible *ratione personae* with the Agreement, within the meaning of Article VIII(2)(c), both as directed against Bosnia and Herzegovina and as directed against the High Representative. The Chamber therefore decides to declare the application in this respect inadmissible.

IV. CONCLUSION

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

DECLARES THE APPLICATION INADMISSIBLE

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel