



DECISION ON ADMISSIBILITY

Case no. CH/00/4441

Merima SIJARIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 June 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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. FACTS

1. The applicant, a citizen of Bosnia and Herzegovina, was the principal of the High School "Zijah Dizdarević" in Fojnica, Federation of Bosnia and Herzegovina. When her mandate as principal expired, she applied again for the position, but on 28 September 1998 the Steering Board of the High School appointed another person, Mr. I.I., as principal.
2. The applicant initiated an administrative dispute before the Municipal Court in Fojnica against the decision of the Steering Board. The Municipal Court, by judgment of 12 January 1999, annulled the appointment decision of the Steering Board, on the ground that it had been unlawfully constituted because one of its members was the wife of Mr. I.I., the new principal.
3. On 28 January 1999 the Steering Board renewed the appointment of Mr. I.I. as principal of the High School, this time without the participation of the appointee's wife.
4. The applicant's grievances against this renewed decision were rejected by the Municipal Court in Fojnica on 2 June 1999 and, upon the applicant's appeal, on 4 November 1999 by the Cantonal Court in Travnik. The Federal Prosecutor submitted a request for the protection of legality in this matter to the Supreme Court, which by decision of 10 February 2000 refused the request and confirmed the previous court decisions.
5. In the meantime, on 22 December 1999, the applicant had appealed to the Constitutional Court of Bosnia and Herzegovina against the decision of the Cantonal Court of 4 November 1999. The case was registered on the same day under case no. U 10/00. In her appeal the applicant complains that she was discriminated against in her right to work in violation of Article II.4 of the Constitution of Bosnia and Herzegovina and that the courts upheld the discriminatory appointment decision taken by the Steering Board of the High School. The Constitutional Court has not yet rendered a decision in this case.

II. COMPLAINTS

6. The applicant complains that she was discriminated against on political grounds in the enjoyment of her right to work, protected by Article 6 of the International Covenant on Economic, Social and Cultural Rights.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was lodged with the Chamber on 27 March 2000 and registered on the following day. The applicant requested that the Chamber issue an order for provisional measures reinstating her into her position as principal of the school.
8. On 3 April 2000 the Chamber refused the request to order a provisional measure. On 3 May 2000 it addressed a request for further information to the applicant, to which she replied on 11 May 2000.

IV. OPINION OF THE CHAMBER

9. According to Article VIII(2) of the Agreement, the Chamber shall decide which applications to accept. In the present case the Chamber has considered whether it should accept an application concerning a matter which has been brought before the Constitutional Court of Bosnia and Herzegovina prior to the application to the Chamber and is pending before that court.
10. The Chamber recalls that pursuant to Article II.2 of the Constitution of Bosnia and Herzegovina, set forth in Annex 4 to the General Framework Agreement, the rights and freedoms enumerated in the Convention and its Protocols apply directly in Bosnia and Herzegovina. In addition, the rights and freedoms provided for in the international agreements listed in Annex I to the

Constitution shall be secured without discrimination. The Agreements listed in Annex I to the Constitution, among them the International Covenant on Economic, Social and Cultural Rights, are the same as those listed in the Appendix to the Human Rights Agreement in Annex 6 (with the difference that the Appendix to the Agreement also lists the European Convention on Human Rights).

11. Pursuant to Article VI.3.b of the Constitution the Constitutional Court has jurisdiction over constitutionality issues arising out of a judgment of any other court in Bosnia and Herzegovina. These “issues under this Constitution” in Article VI.3.b include alleged violations of human rights, as guaranteed by Article II of the Constitution, and the Constitutional Court has jurisdiction under Article VI.3.b to determine such issues upon appeal against the decisions of other courts.

12. The Chamber notes that in the specific circumstances of the present application its jurisdiction overlaps with that of the Constitutional Court. The application to the Chamber concerns the same matter and involves the same parties as the case pending before the Constitutional Court. Neither the Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement nor the Agreement in Annex 6 thereto establishes a hierarchy between the two judicial bodies or otherwise regulate the relationship between their respective jurisdictions. The Chamber recalls that the Constitutional Court has held that Article VI.3.b of the Constitution does not give it jurisdiction to review decisions of the Human Rights Chamber (see the Decision of the Constitutional Court of 26 February 1999 in case no. U 11/98, published in Decisions 1997-1999).

13. Under Article VIII(2) of the Agreement:

“The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:
(a) ...”

The Chamber considers that the wording of this provision clearly implies that the admissibility criteria in sub-paragraphs (a) to (d) of Article VIII(2), i.e. exhaustion of domestic remedies, the six-month rule, *res judicata*, incompatibility with the Agreement, manifestly ill-founded and *lis alibi pendens*, are not the only criteria it may apply in deciding whether to accept a case. Accordingly, under Article VIII(2) the Chamber enjoys a certain discretion not to accept cases on grounds other than those expressly spelled out in that provision.

14. In the light of these considerations and considering that the applicant has brought the matter before the Constitutional Court before she lodged her application with the Chamber, the Chamber finds it appropriate to exercise its discretion pursuant to Article VIII(2) of the Agreement not to accept the application.

V. CONCLUSION

15. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of Chamber