



DECISION ON ADMISSIBILITY

CASE No. CH/01/6796

Suada HALILAGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 March 2001 with the following members present:

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

Mr. Peter KEMPEES, 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 INTRODUCTION

1. The application was introduced on 1 February 2001. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prohibit appointment of suggested candidates for Deputies of Federal Prosecutor, until the Chamber decides upon her application. On 7 March 2001 the Chamber decided not to order the provisional measure requested.

II FACTS

2. The applicant is a citizen of Bosnia and Herzegovina, of Bosniak origin. She has worked as Deputy of the Cantonal Prosecutor in the Cantonal Prosecutor's Office in Zenica for 17 years.

3. On 1 August 2000 the applicant applied to the Federal Ministry of Justice for admission to a competitive examination for five posts as Deputy of Federal Prosecutor in the Federal Prosecutor's Office. The competitive examination was announced on 14 July 2000 in the daily newspapers "Oslobođenje".

4. By the act of the Federal Commission for Appointing of Prosecutors of 10 October 2000 the applicant was informed that she was not on the list of suggested candidates with the best qualifications. The list of candidates with the best qualifications was attached to that document, reasons being given for the choices made.

5. On 19 October 2000 the applicant filed an objection against the list of candidates. The Federal Commission for Appointing of Prosecutors replied on 1 November 2000 rejecting the objection as ill-founded.

6. The applicant then applied to the President of the Federation of BiH requesting him to take all measures within his power to remedy "apparent violations". The applicant alleges that the President of the Federation of BiH, following her request, wrote to the Commission for Appointing of Prosecutors in which he had requested that Commission to suggest as a candidate one of the women who had applied. She further states that the Commission, after this intervention, suggested one woman candidate.

7. The applicant states that she found out through the media that the President and Vice-President of the Federation of BiH suggested the appointment as the Deputies of the Federal Prosecutor 2 candidates of Bosniak nationality, one of Croat nationality and one female candidate from the category of "others". The candidates' names were also published.

III COMPLAINTS

8. The applicant alleges that she has not been allowed to participate in the competitive examination for the appointment of Deputies of the Federal Prosecutor due to failings in the appointment procedure and discrimination of women in selecting persons for public positions. So, her right to equal access to the public service was violated.

9. The applicant complains of violations of the following rights set out in the European Convention on Human Rights: the right to a fair trial (Article 6), the right to an effective remedy (Article 13), the prohibition of discrimination on the basis of sex (Article 14), the prohibition of abuse of rights (Article 17).

10. In addition to that, she complains of violation of rights set out in the International Covenant on Elimination of All Forms of Racial Discrimination under Article 2 paragraph 1(c) ("Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists"); under Article 2 paragraph 1(e) ("Each State Party undertakes to

encourage ...integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division"); under Article 5 paragraph 1(a) (the right to equal treatment before the tribunals and all other organs administering justice); and under Article 6 (the right to "effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination...").

11. In addition, she alleges violations of rights set out in the International Covenant on Elimination of All Forms of Discrimination of Women under Article 2 paragraph 1 (principle of equality of men and women), Article 11 paragraph 1(a) (the right to work as an inalienable right of all human beings) and Article 11 paragraph b (the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment).

12. She also states that she has no possibility, under the applicable legislation, to initiate proceedings before a court and that she had exhausted all remedies by filing an objection against the list of candidates.

IV OPINION OF THE CHAMBER

13. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded or incompatible with the Agreement.

14. The Chamber recalls that its jurisdiction extends to the examination of alleged or apparent violations of the European Convention on Human Rights and of discrimination on any ground mentioned in Article II(2)(b) of the Agreement in the enjoyment of the rights contained in the international agreements listed in the Appendix to the Agreement.

15. The main issue complained of by the applicant is that her right to equal access to public service was violated. The European Convention of Human Rights does not contain a right to work as such or any right of access to public service (see, European Court of Human Rights, *Glaserapp case*, judgment of 28 September 1984, Series A No. 104, paragraph 48).

16. The applicant's complaints could come within the ambit of Article 25 of the International Covenant on Civil and Political Rights which provides that "every citizen shall have the right and the opportunity ...to have access, on general terms of equality, to public service in his country". However, under Article II paragraph 2 of the Agreement the Chamber only has jurisdiction to consider whether there has been "alleged or apparent discrimination" in relation to the rights guaranteed by the Covenant and other international instruments referred to.

17. The applicant has alleged that she has been discriminated against on the ground that she is a woman, because she was not placed on the list of candidates with the best qualifications, although, in her submission, she had the best qualifications. The Chamber notes that reasons were given for the choices made. The applicant does not suggest that these were frivolous or devoid of foundation. Consequently, the information supplied by the applicant appears insufficient to draw the conclusion that the applicant has been the victim of any discrimination. Hence this part of the application falls to be dismissed as manifestly ill-founded.

18. As regards the applicant's complaint that there was a violation of Article 6 paragraph 1 of the European Convention of Human Rights, because she could not initiate court proceedings in her case, the Chamber notes the following. This provision reads, as far as relevant, as follows:

"In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...".

19. The Chamber notes that the applicant applied for a position in the public service. The European Court of Human Rights has repeatedly stated that “disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 paragraph 1 of the Convention” (see, European Court of Human Rights, *Pellegrin v. France*, judgment of 9 December 1999, to be published in Decisions and Reports 1999). The present case concerns the non-appointment of the applicant for the position of the Federal Prosecutor. In cases where the nature of the civil servant’s employment is one of exercising discretionary powers, conferred by public law, protecting the public, or safeguarding the interests of the State, the European Court of Human Rights has held that no “civil” right is at issue (see the above mentioned judgment, paragraph 66). The employment sought by the applicant is of such a nature. Consequently, Article 6 does not apply. Therefore, the Chamber has no jurisdiction *ratione materiae* to examine this part of the application.

20. Accordingly, the Chamber decides not to accept the application, it being partly manifestly ill-founded and partly incompatible *ratione materiae* with the Agreement within the meaning of Article VIII(2)(c) thereof.

V CONCLUSION

21. For these reasons, the Chamber, by 5 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel