HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

DECISION ON ADMISSIBILITY

Case no. CH/01/6842

Ranko KRNETA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 June 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)(a) and (c) and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

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I. INTRODUCTION

1. The applicant is a graduate architectural engineer of Serb origin. He claims that he was illegally dismissed from his position as a fire inspector. He further alleges that the court proceedings that he initiated to regain his position did not respect the guarantees provided by Article 6 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was received on 12 February 2001 and registered the next day.

3. On 5 June 2001, the Chamber decided to transmit the case to the respondent Party under Article 6 of the Convention and under Article II(2)(b) of the Agreement in conjunction with Article 25(c) on the International Covenant on Civil and Political Rights and Articles 6 and 7 of the Convention on Economic, Social and Cultural Rights.

4. On 27 August 2001, the respondent Party submitted its written observations on admissibility and merits.

5. On 1 October 2001, the applicant submitted his written reply to the observations of the respondent Party.

6. Since the Chamber registered his application, the applicant submitted several correspondences in which he mainly repeated his allegations and to which he attached newspaper articles that, in his opinion, support these allegations.

7. On 26 December 2002, and 9 and 30 January 2003, the respondent Party submitted additional information in which it stated that the Ministry cannot employ persons with police power without the certification of the International Police Task Force ("IPTF"). It also stated that, although the position of fire inspector requires a certificate from the IPTF, the applicant was never granted such certificate. Further, the respondent Party informed the Chamber that since 23 March 1997, the Ministry has hired, on different bases, 500 employees, 248 persons of Bosniak origin, 150 of Croat origin, 90 of Serb origin and 12 of other origin. Finally, the respondent Party conceded that the decision on termination of the applicant's labour relations was never delivered to him, but it was posted on the bulletin board within the Ministry.

8. On 14 and 23 January 2003, the applicant submitted letters in which he informed the Chamber that the Ministry wanted to comply with the decision of the Cantonal Commission and to terminate his labour relations and pay him severance. The applicant stated that he was not interested in severance pay, and that he only wanted to be reinstated into his position. He contested the allegations of the respondent Party on the reinstatement into their positions of pre-war employees of Serb origin and alleged that 90 employees of Serb origin could only be young employees from the Police school. He requested the Chamber to order the respondent Party, as a provisional measure, to stop the enforcement of the decision of the Cantonal Commission.

9. On 7 February 2003, the Chamber rejected the applicant's request for a provisional measure.

III. FACTS

10. The applicant started to work in 1987 as an inspector for fire and explosion protection in the Secretariat of Internal Affairs of the Republic of Bosnia and Herzegovina, which functions were taken over by the Federation Ministry of Internal Affairs ("the Ministry"). On 1 September 1994, he left Sarajevo because he was sick. His employer issued a written agreement and a procedural decision allowing him to be absent from work, *i.e.* he was put on paid leave for the month from 1 September 1994 to 1 October 1994.

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11. On 14 October 1994, the applicant requested that his labour relations be put on hold for six months, as he needed medical treatment in Germany. It appears that on 12 November 1994, the Ministry issued a procedural decision putting the applicant on unpaid leave from 1 October 1994 to 31 March 1995.

12. On 7 March 1996, the Ministry issued a procedural decision terminating applicant's labour relations as of 1 October 1994. The applicant asserts that the mentioned procedural decision has never been delivered to him but that he was only informed by the Fund for Pension and Disability Insurance that the Ministry had cancelled his pension insurance on 1 October 1994. It appears that the employer only put the procedural decision on the bulletin board of the Ministry (see paragraph 7 above).

13. In June 1996, the applicant returned to Sarajevo. On 7 June 1996, he requested the Ministry to re-employ him. He also alleges that he applied to the Ministry to be re-employed on two other occasions, on 27 January 1998 and August 1998, but he received no reply.

14. On 8 November 1999, the applicant submitted to the Ministry a claim for the establishment of his labour and legal status, as provided by Article 143 of the Law on Labour.

15. On 14 September 2000, the applicant filed a lawsuit against the Ministry before the Municipal Court I in Sarajevo ("the Court") requesting the establishment of his labour and legal status.

16. On 25 September 2000, the applicant submitted a claim for the establishment of his labour and legal status to the Cantonal Commission for Implementation of Article 143 of the Law on Labour ("the Cantonal Commission").

17. On 16 October 2000, the Court issued, in accordance with Article 143 of the Law on Labour, a procedural decision suspending the proceedings and handing the case over to the Cantonal Commission. The applicant filed an appeal against the mentioned procedural decision, and on 5 December 2000, the Sarajevo Cantonal Court rejected the appeal as it was submitted out of time. On 17 January 2001, the Cantonal Court transmitted the case to the Cantonal Commission.

18. On 12 May 2001, the Cantonal Commission issued a procedural decision confirming that the applicant's claim was well founded. It ordered the Ministry to establish the applicant's labour and legal status as an employee on the waiting list from 8 November 1999 (the date when the applicant's claim was submitted to the employer) until 5 May 2000. It further ordered the Ministry to terminate the applicant's employment *ex lege* and to conclude with him a contract on severance payment. The Ministry and the applicant filed an appeal against this decision of the Cantonal Commission. The applicant complained that the Cantonal Commission failed to decide on his re-employment.

19. On 20 December 2001, the Federal Commission for Implementation of Article 143 of the Law on Labour ("the Federal Commission") annulled the decision of the Cantonal Commission and referred the case back for renewal of the proceedings.

20. On 30 April 2002, the Cantonal Commission again issued a procedural decision of the same content as the one of 22 May 2001. Considering the applicant's request for re-employment, the decision stated that the Commission is not competent to decide such claim and that therefore the case is transmitted to the competent Court. The Ministry again filed an appeal to the Federal Commission.

21. On 5 November 2002, the Federal Commission rejected the Ministry's appeal and confirmed the procedural decision of the Cantonal Commission of 30 April 2002.

22. On 20 January 2003, the employer informed the applicant that it will act according to the decision of the Cantonal Commission: it will reinstate him into the legal and working status of an employee on the waiting list and terminate his labour relations on 5 May 2000, by force of law, and pay him severance. On 17 January 2003, the Ministry issued a procedural decision reinstating the

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applicant into working and legal status from 8 November 1999 until 5 May 2000, and terminating his labour relations as of 5 May 2000, complying, in that way, with the decision of the Cantonal Commission. The applicant was also invited to come to the Ministry to sign a contract for the payment of his severance. Apparently the applicant did not respond to this invitation.

23. The Municipal Court I in Sarajevo proceeded with the applicant's case transferred to it by the Cantonal Commission. The Municipal Court held two hearings on 13 March and 24 April 2003 on the applicant's request for reinstatement to work. To date, these proceedings are still pending before the Municipal Court.

24. The applicant alleges that while he was addressing the Ministry claiming his re-employment, his employer employed tens of new employees with no announced vacancies and within no adequate educational background. He alleges that these employees occupied responsible positions on the basis of their political and national background, as they were Bosniaks, while he was discriminated against on the basis of his ethnic origin. He supports these allegations with a number of newspaper articles. He also offers a precise example that the Ministry re-employed an employee of Bosniak ethnic origin, who had left for Germany immediately after the outbreak of the armed conflict and then returned when peace was restored.

IV. COMPLAINTS

25. The applicant complains that he has been discriminated against in the realisation of his right to work because of his ethnic origin. He refers to Article II(2)(b) of the Agreement in conjunction with Article 25(c) of the International Covenant on Civil and Political Rights and Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

26. The applicant complains of the length of proceedings before the domestic organs and of his inability to realise his right to work. The applicant alleges that his right to fair hearing under Article 6 of the Convention has been violated.

27. He requests to be re-employed in the Ministry on a position adequate to his professional background. In addition, the applicant raises a compensation claim.

V. OPINION OF THE CHAMBER

28. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted…. (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."

29. Regarding the applicant's claim that he was discriminated against in his right to work, the Chamber notes that the complaint was partially solved by the Cantonal Commission decision of 30 April 2002. According to this decision, the labour relations of the applicant were clarified for the period of 8 November 1999 to 5 May 2000. Considering the remainder of the claim and specially the request to be reinstated in his pre-war position, the Chamber notes that the applicant's request is pending before the Municipal Court I in Sarajevo. Therefore, the Chamber considers that the applicant's complaint is premature as the proceedings are still pending. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

30. As to the applicant's claim that he has been denied the rights guaranteed by Article 6 of the Convention, the Chamber does not note any *prima facie* violation of the right to a fair hearing. Regarding the length of proceedings before the Cantonal and Federal Commissions, the Chamber considers that the applicant's claim was solved within a reasonable time. It follows that this part of the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

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VI. CONCLUSION

31. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

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