



DECISION ON ADMISSIBILITY

Case no. CH/01/7880

Jela MILINKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 2002 with the following members present:

Mr. Viktor MASENKO-MAVI, Acting President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Ulrich GARMS, 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 13 September 2001 and registered on the same day.
2. The applicant complains that when her employer terminated her work relations, forcing her to take an “early old pension”, she did not receive any “retirement severance”.

II. STATEMENT OF FACTS

3. The applicant was employed with the “Fabrika duhana Sarajevo“ (Tobacco Factory Sarajevo, the “employer”). On 1 December 1994 the employer issued a decision permitting the applicant to take two months unpaid leave, starting from the date she departed from Sarajevo. The decision warned the applicant that her employment would terminate if she did not report to work after the time period for her unpaid leave expired.
4. On 17 July 1995 the employer issued a decision terminating the applicant’s employment as of 26 June 1995 because she failed to return to work after the time period for her unpaid leave expired and she was thus considered to have arbitrarily left work. The applicant did not appeal against the decision; therefore, the decision became valid.
5. As a result, the applicant alleges that she was forced to exercise her right to an “early old pension”. On 25 April 1996, the Office for Pension and Disability Insurance issued a procedural decision recognising the applicant’s right to a “decreased early old pension”, starting from 5 September 1995.
6. The applicant initiated civil proceedings before the Municipal Court II in Sarajevo requesting the amount of 7,500.00 KM as “unpaid retirement severance”. On 18 July 2000 the Court rejected the applicant’s request. The Court stated that the applicant’s employment was terminated because she arbitrarily left work and not due to her retirement, which is the condition for payment of a “retirement severance”. The applicant filed an appeal against the judgment, but on 12 February 2001 the Cantonal Court rejected her appeal.

iii. OPINION OF THE CHAMBER

7. 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.”
8. The Chamber notes that the applicant requested to be granted a “retirement severance”. However, the right to be granted a severance for retirement or for any other reason is not a right which is included among the rights and freedoms guaranteed under the Agreement. It follows that the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible.

IV. CONCLUSION

9. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Victor MASENKO-MAVI
Acting President of the Second Panel