



DECISION ON ADMISSIBILITY

Case no. CH/02/10675

SCHOOL BOARD OF THE PRIMARY MUSIC SCHOOL IN DOBOJ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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(1) and VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. This application concerns a dispute between the former members of the School Board and the Ministry of Education of the Republika Srpska over the appointment of a new director of the Primary Music School in Doboj.

2. The applicants requested the Chamber to order the respondent Party, as a provisional measure, to suspend the enforcement of the disputed procedural decisions of the Republic Education Inspector, which ordered the School Board to hand-over responsibility of the director of the School and which dismissed the School Board's members and appointed new members. On 7 February 2003 the Chamber decided not to order the provisional measure requested.

II. STATEMENT OF FACTS AND PROCEEDINGS

3. The application was submitted on 27 August 2002 and registered the same day. The application was signed by 5 former members of the School Board of the Primary Music School in Doboj, on their own behalf and on behalf of the School Board. It contains the seal of the School. On 5 September 2002 the applicants submitted additional information in the case.

4. On 31 May 2002 the Primary Music School in Doboj (hereinafter "the School"), a public institution, published a vacancy notice for the position of the director of the School. Two candidates who met the requirements applied for the vacancy. On 19 June 2002 the School Board, in accordance with Article 116 of the Law on Primary Schools of the Republika Srpska, unanimously issued a decision to propose G.M., who was the acting director, as the director. This proposal was sent to the Minister of Education of the Republika Srpska, who was competent to appoint the School's director under the law.

5. However, the Minister disregarded the School Board's proposal, and on 1 July 2002 he issued a procedural decision appointing another candidate as the director. He did not state in the reasoning of the procedural decision the reasons for not having accepted the School Board's proposal.

6. On 5 July 2002 the School Board issued a decision on initiating an administrative dispute against the procedural decision of 1 July 2002. It further provided not to allow hand-over of responsibility as the director of the School from the acting director to the person appointed on the basis of the Minister's decision until the conclusion of the administrative dispute. On 8 July 2002 the School Board initiated an administrative dispute against the mentioned procedural decision before the Supreme Court of the Republika Srpska (the "Supreme Court").

7. On 16 August 2002 the Republic Education Inspector – Department Doboj, issued a procedural decision ordering the school to carry out the hand-over of responsibility as the director of the School. At the same time, he stated that the School Board's decisions were illegal. This procedural decision states that it is final in the administrative proceedings but that an administrative dispute may be initiated against it to the Supreme Court. The applicants, however, allege that the procedural decision of the Education Inspector does not contain a clause concerning the right to appeal, so the School Board thought no appeal was allowed against the decision, and it could only initiate an administrative dispute before the Supreme Court.

8. On 30 August 2002, the Ministry of Education issued a procedural decision dismissing the former members of the School Board for refusing to enforce the procedural decision on the appointment of the School's director. The same day the Ministry issued a procedural decision appointing other persons as members of the School Board.

9. The individual applicants consider that they were dismissed from the School Board because they "legally requested the protection of their rights and the School's interests". They claim they have no legal remedy because the mentioned procedural decisions provide for no such remedy.

III. COMPLAINTS

10. The applicants complain their right to a fair trial under Article 6 of the European Convention on Human Rights (the “Convention”), as well as their right to an effective remedy before domestic bodies under Article 13 of the Convention, have been violated.

IV. OPINION OF THE CHAMBER

A. With respect to complaints on behalf of the School Board

11. In accordance with Article VIII(1) of the Agreement, the jurisdiction of the Chamber extends to applications filed directly by or on behalf of an applicant claiming to be the victim of an alleged or apparent violation of human rights. According to Rule 45(2) of the Chamber’s Rules of Procedure, “where an application is submitted by a non-governmental organisation or by a group of individuals, it shall be signed by those persons competent to represent such organisation or group. The Chamber shall determine any question as to whether the persons who have signed an application are competent to do so.”

12. As to the applicants’ complaint about the violation of the right guaranteed under Article 13 of the Convention in relation to the procedural decision of the Education Inspector of 16 August 2002, the Chamber notes that the individual applicants have been dismissed as members of the School Board by the procedural decision of the Minister of Education of 30 August 2002. Accordingly, although they were authorised to represent the School Board at the time they submitted the application to the Chamber on 27 August 2002, as of 30 August 2002, they are no longer authorised to represent the School Board. The Chamber therefore decides to declare this part of the application inadmissible because the individual applicants are not competent any more to pursue the claims on behalf of the School Board.

B. With respect to the complaints by the individual applicants

13. 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.”

14. The Chamber notes that the individual applicants also complain about their dismissal as members of the School Board. However, the right to be a member of the managing organ of a school is not a right which is included among the rights and freedoms guaranteed under the Agreement. It follows that this part of 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 this part of the application inadmissible, as well.

V. CONCLUSION

15. 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