



**DECISION ON ADMISSIBILITY AND MERITS
(delivered on 5 December 2003)**

Case no. CH/02/11033

ASSOCIATED WORKERS' UNION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the plenary Chamber on 6 November 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicant, the Associated Workers' Union of the Federation of Bosnia and Herzegovina (*Udruženi Radnički Sindikat Federacije Bosne i Hercegovine*), is a citizens' association of workers from the Federation of Bosnia and Herzegovina. The case deals with the alleged obstruction of the authorities of the respondent Party to the effect that the applicant association is not able to register and therefore, it cannot exercise its functions as a trade union.
2. The application raises issues under Article 11 of the European Convention on Human Rights (hereinafter "the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received on 21 May 2002 and introduced by the President of the trade union and its legal representative, Mr. Ramiz Uzunović. On 11 June 2003, the application was transmitted to the respondent Party for its observations on the admissibility and merits of the case. The Federation of Bosnia and Herzegovina sent written observations on 12 August 2003. The applicant's representative replied on 8 September 2003.
4. The First Panel deliberated on the admissibility and merits of the application on 6 June, 8 October and 3 November 2003. On the latter date, it decided to refer the case to the plenary Chamber in accordance with Rule 29(2) of the Chamber's Rules of Procedure. The plenary Chamber considered the case on 6 November 2003. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

5. On 27 December 1997, individual workers from the whole territory of the Federation of Bosnia and Herzegovina gathered in Sarajevo and unanimously decided to initiate the founding of a trade union bearing the name *Udruženi Radnički Sindikat Federacije Bosne i Hercegovine*, meaning "Associated Workers' Union of the Federation of Bosnia and Herzegovina". A Steering Board was entrusted to oversee the preparatory stage of the founding proceedings.
6. On 18 March 1998, the Steering Board filed a request with the Government of the Federation of Bosnia and Herzegovina in accordance with Article 17 of the Law on Association of Citizens in order to obtain permission to include the term of "Federation of Bosnia and Herzegovina" in the name of the trade union. Despite an intervention by the representative of the applicant, no immediate decision was taken upon the request.
7. On 16 May 1998, the founding assembly convened and adopted the Statute of the trade union.
8. On 3 June 1998, the Ministry for Social Affairs, Displaced Persons and Refugees of the Federation of Bosnia and Herzegovina (hereinafter "the Ministry for Social Affairs") forwarded the request of the applicant's representative for permission to include the term of "Federation of Bosnia and Herzegovina" in the name of the trade union to the Federal Ministry of Justice (hereinafter "the Ministry of Justice"), considering that the matter falls within that Ministry's area of competence. On 9 June 1998, the Federal Ministry of Justice returned the case back to the Ministry for Social Affairs, stating that it was indeed the Ministry for Social Affairs which is competent to decide on the request.
9. On 23 June 1998, the applicant association lodged a request to be entered under the name *Udruženi Radnički Sindikat Federacije Bosne i Hercegovine* in the registry of citizens' associations with the Ministry of Justice of the Federation of Bosnia and Herzegovina. Only thereafter, on 29 June 1998, the Ministry for Social Affairs finally gave permission that the applicant association include the term of "Federation of Bosnia and Herzegovina" in its name. This decision was delivered to the representative of the applicant association on 2 July 1998.
10. On 4 July 1998, the Ministry of Justice wrote to the applicant's representative, stating that the name of the trade union was misleading as it could not be inferred from it whether it consisted of

other trade unions, or of individual citizens. A deadline of 30 days was given within which the trade union should change its name. However, the applicant did not comply with these instructions.

11. On 12 August 1998, the Ministry of Justice issued a decision rejecting the request for registration. The Ministry reasoned that, in the first place, the registration request was filed out of time considering that pursuant to Article 27 of the Law on Association of Citizens, such a request shall be submitted within 15 days after the founding assembly was held. Secondly, it stated that the applicant association had not changed its name within the time-limit provided by the Ministry, and that the chosen name was ambiguous.

12. On 22 March 2000, the Supreme Court of the Federation rejected a claim lodged by the applicant's representative against the decision of 12 August 1998 and confirmed the findings of the Ministry of Justice. It added that the 15-day time-limit for registration was prescribed by law and could not have been extended.

13. Unsatisfied with the course of events, the applicant association filed a complaint with the International Labour Organisation ("ILO") in Geneva. In March 2001, the Committee on Freedom of Association of the ILO ("the Committee") issued a report on the case (324th report). Therein, the Committee considered the time-limit for registration of 15 days as "exceptionally short", also finding that the Ministry of Justice's objection to the name of the trade union was ill-founded. In its conclusion, the Committee recommended to the Government of the Federation of Bosnia and Herzegovina to enable registration of the applicant and amend its domestic legislation in accordance with the Convention on Freedom of Associations and Protection of Unions' Rights of 1948, to which Bosnia and Herzegovina is a state party.

14. On 7 March 2003, the Committee informed the applicant association that the Federation Government had not yet reacted to its recommendations of March 2001.

IV. RELEVANT LEGISLATION

15. The Law on Association of Citizens (Official Gazette of the Federation of Bosnia and Herzegovina no. 6/95) was adopted on 19 September 1995 and entered into force on 22 October 1995. It sets out the conditions and the procedure regarding the establishment and the operation of citizens' associations, thus defining prerequisites for the realisation of the constitutional freedom of citizens to freely and voluntarily associate in such associations. Article 6 of this Law reads:

"An association shall have legal personality."

16. Article 12 of this Law reads:

"The association can associate itself with unions and other forms of associations in accordance with its statute."

17. Article 17 of this Law reads:

"The name of the association shall not contain the name of the Federation, (...) unless permission to do so is granted by the organs of the Government of the Federation of Bosnia and Herzegovina (...)"

18. Article 18 of this Law reads:

"It shall not be possible to keep two or more associations registered under the same name within the register of the same body in charge of keeping records of associations."

19. Article 23 of this Law reads:

“(1) An association shall be registered in the court registry of citizens’ associations (“the registry”).

(2) The association obtains the characteristics of a legal entity on the day of its admission into the registry.

...

(4) The Minister of Justice of the Federation of Bosnia and Herzegovina shall prescribe forms and methods of keeping the registry of citizens’ associations.

(5) The registry of citizens’ associations is public.”

20. Article 25 of this Law reads:

“The registration request shall be accompanied by: a decision on foundation, the minutes of the founding assembly, a list of the founding members and the members of the administrative organs, the statute, names and surnames of persons entrusted with representation.”

21. Article 27 of this Law reads:

“(1) The request for admission into the registry must be submitted within 15 days from the day when the founding assembly session was held.

(2) The competent Ministry shall deliver its decision on the request for admission into the registry.

...”

22. Article 28 of this Law reads:

“(1) The competent Ministry is obliged to pass the decision on the request for admission into the registry within 30 days from the day of submitting orderly request for admission.

(2) If the competent Ministry establishes that not all necessary documents in the sense of Article 25 of this Law were attached along with the request for admission into the registry, or if it is established that the association’s statute is not in harmony with provisions of the Constitution and the law, they shall ask the applicant of the request for registration to remove established failures within 30 days.

(3) If the applicant does not remove the failures found within the legal deadline the competent ministry shall refuse the request for admission into the registry.”

23. Article 29 of this Law reads:

“(1) The competent Ministry shall refuse the request for registration of all association if:

- the association was not founded in line with this Law;
- its statutory goals encourage or invite to forceful endangering of the constitutional order, independence, unison or territorial unity of the Federation;
- if its name is not clearly distinctive from names of already registered associations.

(2) If two or more requests for registration of associations with the same name are sent to the competent ministry, the request for admission of the association which was first submitted shall be approved.

...”

V. COMPLAINTS

24. The applicant association complains that it was not registered as a citizens' association although it was entitled to be so, and that it cannot exercise its functions as a trade union in the absence thereof.

25. The applicant association requests that the Chamber order the respondent Party to comply with the recommendations given by the ILO and register the trade union immediately. Furthermore, the applicant association requests to be compensated in an unspecified amount for all pecuniary and non-pecuniary damages it incurred due to the failure of the respondent Party to register it.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

26. In its observations of 12 August 2003, the Federation of Bosnia and Herzegovina suggests that the Chamber declare the application inadmissible as manifestly ill-founded, as all proceedings that were conducted in the case of the applicant association were in accordance with law. It contends that the applicant association had been free to choose another name subsequent to the Ministry of Justice's letter of 4 July 1998. However, the applicant association had undoubtedly missed the deadline of 15 days for registration pursuant to the convention of its founding assembly on 16 May 1998.

B. The applicant

27. Commenting on the respondent Party's observations, the applicant association alleges that the delay to decide on its request to use the term of "Federation of Bosnia and Herzegovina" in its name of 18 March 1998 was intentional in order to prevent the trade union from registering. However, the trade union had no other choice than to hold its founding assembly and to seek registration only after having obtained all necessary permissions. As the disagreement between the Ministry for Social Affairs and the Ministry of Justice on their respective competencies to decide on its request should not serve to its detriment, the applicant proposes that the beginning of the 15-day time-limit should be considered the date of the issuance of the permission by the Ministry of Social Affairs, *i.e.*, on 29 June 1998.

28. Regarding the chosen name, the applicant association states that no other association in Bosnia and Herzegovina bears an identical name, and that there was no legal reason for it to change its name. Moreover, only the founding assembly could decide on the name of the trade union and make changes to it. This was precisely the reason why the applicant had filed a request to the Ministry for Social Affairs ahead of time, several months before the founding assembly convened.

VII. OPINION OF THE CHAMBER

A. Admissibility

29. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII of the Agreement.

30. The respondent Party argues that the application should be declared inadmissible as manifestly ill-founded. The Chamber, however, considers that the case raises serious issues under the Convention and will therefore not decide to declare it inadmissible on this ground. No other ground of inadmissibility has been put forward and the Chamber will therefore declare the case admissible.

B. Merits

31. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for by the Convention and the other international agreements listed in the Appendix to the Agreement.

32. The applicant association essentially alleges that the respondent Party has interfered with its right to form a trade union. Article 11 of the Convention reads:

“(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

1. Whether there has been an interference

33. The Chamber recalls that the refusal by the authorities of the respondent Party to register the applicant association was based on two grounds, the first ground being the non-compliance with the legally prescribed time-limit of 15 days for registration after the holding of the founding assembly session, and the second ground being that the chosen name of the trade union was misleading.

34. Recalling the case-law of the European Court of Human Rights (hereinafter “the European Court”) on the interpretation of Article 11 of the Convention, the Chamber observes that although the provision does not secure any particular treatment of trade unions and their members, it does require States to protect rights “that are indispensable for the effective enjoyment of trade union freedom” (*Swedish Engine Drivers’ Union v. Sweden*, judgment of 6 February 1976, Series A 20, paragraph 39).

Even though the European Court has not explicitly pronounced on which elements it considers to be indispensable for the enjoyment of this right, the Chamber finds that the very registration of a trade union, which stands at the outset of any activity guaranteed under Article 11 of the Convention, constitutes such a right.

35. Against this background, the Chamber notes that the rejection of the applicant association’s request to be registered, taken by the Ministry of Justice pursuant to the Law on Association of Citizens, had a direct impact on the legal personality of the applicant association (see paragraph 19 above) that would otherwise have been granted to it under Article 6 of that Law, and therefore constituted an interference of the right of the applicant associations’ members to form a trade union.

2. Whether the interference was justified

36. Such an interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 and was “necessary in a democratic society” for the achievement of those aims. The Chamber will now examine whether the interference was justified on any of these grounds.

(a) “Prescribed by law”

37. As to the first ground stated by Ministry of Justice in its decision of 12 August 1998 refusing to register the applicant association, the Chamber recalls that Article 27 of the Law on Association of Citizens stipulates a 15-day time-limit for registration, starting on the day when the founding assembly session was held.

38. The Chamber observes that the applicant association requested permission from the Government of the Federation of Bosnia and Herzegovina to use the term of “Federation of Bosnia

and Herzegovina” in its name as soon as in March 1998. However, the request for admission into the registry of citizens’ associations, as prescribed by Article 27 of the Law on Association of Citizens, was not lodged with the Ministry of Justice until 23 June 1998. As this date is more than 15 days after the founding assembly convened on 16 May 1998, the refusal to register the applicant association on this ground had a foundation in the law.

39. As to the second ground stated in the Ministry of Justice’s refusal of 12 August 1998, *i.e.*, that the name of the trade union was ambiguous, the Chamber notes that Article 29 of the Law on Association of Citizens provides a ground for rejecting registration of an association on the ground that “its name is not clearly distinctive from names of already registered associations”. It is true that a trade union can be composed both of individual citizens, and, according to Article 12 of the Law on Association of Citizens, of other trade unions. However, the Chamber finds that the Law only provides a ground for refusing registration due to the similarity of the name of an association with another one already registered, but there is no provision allowing rejection on a general ground of ambiguity. The respondent Party has not made an argument that an association bearing a similar name already existed. It follows that the second ground of rejection relied on the Ministry of Justice was not prescribed by law, and therefore constitutes an unjustified interference with the applicant association’s rights under Article 11 of the Convention.

(b) Legitimate aim

40. As regards the time-limit of 15 days for registration, the respondent Party has not argued that this interference pursued a particular legitimate aim, whereas the applicant, invoking the conclusion of a report authored by the ILO (see paragraph 13 above), maintains that this deadline is unreasonably short.

41. The Chamber recalls that paragraph 2 of Article 11 of the Convention provides that no restrictions shall be placed on the exercise of the right to form a trade union other than such as are prescribed by law and are necessary in a democratic society, *inter alia*, for the protection of the rights and freedoms of others. The Chamber observes that limitation periods, which are a common feature of legal systems, serve several purposes, *inter alia*, ensuring legal certainty, one of the fundamental aspects of the rule of law. Limitation periods can thus be considered to be in the interest of the protection of rights and freedoms of others. Turning to the present case, the principle of legal certainty can be understood to advocate that an administrative decision is taken within a certain time-frame after a particular action decisive for the decision has been carried out by the requesting party, in the case at hand allowing both sides to obtain clarity on the issue of registration. Moreover, legal certainty may be impaired if courts were subsequently required to decide on the basis of evidence which might have become incomplete because of the passage of time (see the European Court judgment in *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, Reports 1996-IV, para. 51).

42. Accordingly, the Chamber finds that, in principle, a limitation period for the filing of a registration request of an association pursued a legitimate aim for the purposes of paragraph 2 of Article 11 of the Convention.

(c) “Necessary in a democratic society”

(i) General Principles

43. Article 11 of the Convention requires that interference with the exercise of the rights it enshrines must be assessed by the yardstick of what is “necessary in a democratic society”. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from “democratic society” (see the judgment of the European Court in *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, Reports 1998-I, para. 45).

44. In determining whether a necessity within the meaning of Article 11 paragraph 2 of the Convention exists, the European Court has held that States have only a limited margin of appreciation as to the possible exceptions set out in that paragraph, and that only convincing and compelling

reasons can justify such restrictions (see the above-mentioned *United Communist Party of Turkey* judgment, para. 46). Therefore, the Chamber must satisfy itself that the 15 day time-limit was in accordance with the principles embodied in Article 11 of the Convention and, first and foremost, that the Ministry of Justice, when it rejected the applicant association's request for registration, based its decision on an acceptable assessment of the relevant facts.

(ii) Application of the principles to the present case

45. At the outset, the Chamber notes that the Steering Board of the applicant association, on 18 March 1998, filed a request that it may use the term of "Federation of Bosnia and Herzegovina" in the name the trade union intended to be adopted at its subsequent founding assembly. The respondent Party has not denied that two of its Ministries, apparently due to an unclear distribution of competencies, failed to decide on this request until 29 June 1998. Considering that Article 17 of the Law on Association of Citizens stipulates that an association cannot bear the name of the Federation of Bosnia and Herzegovina absent of permission to do so, it is clear that the applicant association could not have been lawfully registered before gaining such permission. On the other hand, an unreasonable delay in issuing this permission by the competent Ministry would render the applicant association fully dependent in holding its founding assembly on the uncertain date on which the administrative decision will be reached.

46. In the instant case, the Chamber must look at the interference complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are proportionate to the legitimate aim pursued. In this respect, the Chamber finds that the forwarding of the request of 18 March 1998 between the two Ministries and an eventual decision more than three months thereafter, in addition to the rejection of the registration request on a ground not provided for by law (see paragraph 39 above), strongly indicates that the domestic authorities applied the law in a way incompatible with the objective of Article 11 of the Convention, *i.e.*, not to interfere with the right to form trade unions except for reasons necessary in a democratic society.

47. The Chamber also can see no compelling or convincing reason for the time-limit provided for in Article 27 of the Law on Citizen Association to be merely 15 days, without any possibility of extending it. Although it is true that the objective to create legal certainty through limitation periods is in principle a legitimate one, it should also be noted that unreasonably short time-limits can have the opposite effect in not allowing a citizen to realise his or her rights. It appears that in this case, the administrative authorities of the respondent Party had recourse to legal provisions normally securing legal certainty, using them to prevent the applicant from being registered. Furthermore, the Chamber cannot find any ambiguity in the name adopted by the applicant association, which indicates clearly that it is a "workers'" union. Even if domestic law provided for the refusal of registration on such grounds, it would not therefore be considered "necessary" in this case, within the meaning of paragraph 2 of Article 11 of the Convention.

48. Taking the facts of this case as a whole, the Chamber opines that the refusal of the respondent Party to register the applicant association constituted an interference with its rights guaranteed under Article 11 of the Convention, which was not justified by any exception provided in paragraph 2 of this provision. It follows that the respondent Party has violated the applicant association's rights as guaranteed by Article 11 of the Convention.

VIII. REMEDIES

49. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of the applicants.

50. In this case, the Chamber deems it appropriate to order the respondent Party, as a matter of urgency, to admit the applicant association into the registry of citizens' associations, and without further requirements, in any case no later than one month after the delivery of this decision, *i.e.*, by 5 January 2004.

51. In addition, the Chamber will order the respondent Party to pay to the applicant association, within one month, the sum of 1,000 Convertible Marks (*Kovertibilnih Maraka*), in recognition of the injustice suffered. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set for the implementation of the present decision on the sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

52. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the Federation of Bosnia and Herzegovina has violated the applicant's rights under Article 11 of the European Convention on Human Rights, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;
3. unanimously, to order the Federation of Bosnia and Herzegovina to register the applicant association without further requirements into the registry of citizens' associations, in any case no later than 5 January 2004;
4. by 12 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant association the sum of 1,000 (one thousand) Convertible Marks ("*Kovertibilnih Maraka*") by way of compensation for the injustice suffered, within one month from the date of delivery of this decision;
5. unanimously, to dismiss any remaining claim for compensation;
6. by 12 votes to 1, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the sum awarded in the conclusion no. 4 from the expiry of the one-month period set for such payment until the date of final settlement of the sum due under this decision; and
7. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or its successor institution, the Human Rights Commission within the Constitutional Court, within one month from the date of delivery of this decision on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber