



DECISION ON ADMISSIBILITY

Case no. CH/02/11138

Fahrija HERGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 October 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 10 June 2002. It concerns the applicant's allegation that she was discriminated against on political grounds in the refusal of an employment application.

II. FACTS

2. The applicant was employed with the Živinice Municipality administration from 27 July 1995 to 26 August 2000 on the basis of a contract which was extended every three months. The applicant states that she was promised by the Head of the Municipality that she would be hired as a full-time employee for an indefinite time after the issuance of the new Rule Book on internal organisation, and when the job announcement was published. The new Rule Book should have envisaged the work post with the applicant's qualifications.

3. The applicant states that the announcement of vacancies for several work positions was published in the local media on 27 October and 3 November 2000. For the work position sought by the applicant, different qualifications and a different working experience than that of the applicant were foreseen. The applicant nonetheless applied for the position.

4. On 6 December 2000 the applicant was informed that she did not get hired for the reason that she did not meet the conditions foreseen by the job announcement. After that, on 19 December 2000, the applicant filed a petition to the Head of the Municipality. The petition was rejected.

5. The applicant further states that on 19 January 2001 she filed an action with the Municipal Court in Živinice seeking that the part of the job announcement relating to the qualifications which she did not meet be rendered null and void. Because, in the meantime, a candidate without working experience was employed, the Head of the Municipality issued, on 19 January 2001, a decision on the amendments of the job announcement and published it in the local newspaper, "Front slobode" ("Front of Liberty). By these amendments, working experience was eliminated as one of the special conditions for the disputed work position.

6. By her submission of 30 May 2001, the applicant extended the statement of her claim to the unlawful termination of her employment, proposing a friendly settlement. On 20 July 2001, the Municipal Court in Živinice issued a judgement rejecting the applicant's claim as ill-founded. According to the court's findings, she did not meet the conditions from the job announcement. The applicant filed an appeal against this judgement on 9 August 2001. Dealing with the applicant's appeal, the Cantonal Court in Tuzla issued a judgement rejecting the applicant's appeal and confirming the first instance judgement.

7. On 18 January 2002, the applicant submitted a request to the Municipal Court in Živinice for the renewal of proceedings. On 22 March 2002, the Municipal Court in Živinice issued a procedural decision by which the renewal of proceedings was not granted.

8. Finally, the applicant points out that in the aforementioned proceedings there have been violations of her rights. The applicant claims that in the course of the whole proceedings the Court was biased in favour of the Municipality, that her case was not tried by a panel although the names of the two additional judges were mentioned in the record, and that the Court did not take into account her proposals with respect to the presentation of substantive evidence. The applicant particularly points out that the Head of the Municipality was under political pressure from the Social-Democrat Party of the Živinice Municipality and that he participated in the issuance of the decision on the candidates accepted. The applicant states that she addressed the Federation of Bosnia and Herzegovina Ombudsmen's Office on 21 May 2002.

III. COMPLAINTS

9. The applicant states that her right to work and the right to a fair hearing in the court proceedings have been violated, and that she has been discriminated against on the ground of her political affiliation, because she is not a member of the Social-Democrat Party in Živinice.

IV. OPINION OF THE CHAMBER

10. 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.”

11. 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.

12. The main issue complained of by the applicant is that her right to work 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*, judgement of 28 September 1984, Series A No. 104, paragraph 48). The applicant’s complaints could come within the ambit of Article 6 of the International Covenant on Economic, Social and Political Rights. 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. The applicant has alleged that she has been discriminated against on the ground of her political affiliation. The information supplied by the applicant is insufficient to draw the conclusion that she has been the victim of discrimination. The Chamber therefore decides to declare this part of the application inadmissible as manifestly ill-founded.

13. The Chamber also notes that the applicant complains that the courts wrongly assessed the facts pertaining to her case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD “Trgosirovina” Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the court failed to act fairly as required by Article 6 of the Convention. 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 the application inadmissible.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich Garms
Registrar of the Chamber

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