



DECISION ON ADMISSIBILITY

Case no. CH/02/12466

Nikola GRABOVAC

against

**BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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)(c) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The application was introduced to the Chamber on 27 November 2002 and registered on the same day. The applicant requested that the Chamber order the respondent Parties, as a provisional measure, to take all necessary action to prevent his removal from office and to annul the decision of the High Representative issued on 14 June 2002 by which he was removed from office as Minister of Finance of the Federation of Bosnia and Herzegovina and barred from holding any official, elective or appointive public office and from running in elections and from office within political parties. On 5 March 2003 the Chamber rejected the request.

II. FACTS

2. The applicant was removed from office on 14 June 2002 by a decision of the High Representative (published in the Official Gazette of the Federation of Bosnia and Herzegovina on 3 July 2002, no.28/02) in which it was stated:

“This office is one in which the holder is subject to the highest fiduciary duties in relation to the public finances of the Federation. As such he holds a position at the head of a Ministry which has special duties and responsibilities over and above those of other Ministries. The holder of such an office must be active in exercising the highest probity in relation to dealings with public funds. The confidence of the citizens of the country, business enterprises, and the banking institutions of the Federation must always be maintained to ensure proper governance and transparency.

“Mr Grabovac as the holder of such office has failed in his duty to maintain the confidence of the public, and the commercial and banking worlds, in the probity of the running of the financial affairs of the Federation.

“...Mr Grabovac has failed to take actively effective action to ensure the proper guardianship of the public funds and to protect the reputation of his office and the government. He has thereby, in the premises, failed to demonstrate active and unreserved support for the strategy, set out by the Peace Implementation Council, to oppose integrated corruption in Bosnia and Herzegovina.”

3. It is further stated that the applicant is the subject of a criminal investigation at the behest of the Sarajevo Cantonal Prosecutor's Office concerning the alleged violation of Article 366 of the Criminal Code of the Federation of Bosnia and Herzegovina. This provision renders punishable the conduct of “an official who, being aware of what he is doing, breaches law or other regulations or general acts, fails to exercise due supervision or in any other way manifestly acts in a clearly unconscientious manner in the discharge of his official duties”. The decision of the High Representative states that, without in anyway anticipating the outcome of such proceedings, and without commenting in any manner either expressly or by implication on their merits, and fully taking account to right of the due process before the courts, the fact remains that public confidence in the applicant's tenure of office has been undermined by his failure to take active steps to combat corruption and will be further undermined by the circumstances related to such investigation.

4. Accordingly, the decision states that this removal is carried out in the exercise of the powers vested in the High Representative by virtue of Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) of the Dayton Peace Agreement, Article II.1(d) of Annex X, paragraph X1.2 of the Conclusions of the Peace Implementation Council held in Bonn on 9 and 10 December 1997, paragraph X.4 of the Annex to the Declaration of the Peace Implementation Council made in Madrid on 16 December 1998, and recalling the repeated expressions of concern of the Peace Implementation Council of corruption in Bosnia and Herzegovina.

III. COMPLAINTS AND SUBMISSIONS

5. The applicant submits that the powers vested in the High Representative under Annex 10 of the Dayton Peace Agreement, i.e., that he is “the final authority in theatre regarding interpretation of this Agreement on civilian implementation of the peace settlement”, signify an intention by the Parties to the Agreement that the High Representative is to be considered an integral part of the legal

system of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina. This is confirmed by the fact that the High Representative a) issues decisions and publishes them in the Official Gazette; b) such decisions are binding on governmental institutions; and c) besides laws and regulations, also issues decisions concerning human rights and fundamental freedoms of all citizens of Bosnia and Herzegovina. Accordingly, the Office of the High Representative must be considered an institution of Bosnia and Herzegovina that was founded and empowered by the Parties and Co-Parties to the Agreement on Civilian Implementation of the Peace Settlement. Moreover, acting as the final authority in theatre, the High Representative is obliged to respect the European Convention on Human Rights (the "Convention") and its Protocols thereto and the other international agreements listed in the Appendix to Annex 6 of the Dayton Peace Agreement.

6. The applicant submits that under Article 17 of the Convention "nothing may destroy or limit an individual's human rights and fundamental freedoms to a greater extent than is provided for under the Convention." In this respect, the applicant submits that "the High Representative can not interpret or establish the rights and obligations of an individual in a way that is contrary to international conventions." Accordingly, the applicant submits that if there is no recourse to the actions of the High Representative for violations of human rights and fundamental freedoms, then the protection of fundamental human tenets, on which a free democratic society is built, is meaningless.

7. The applicant complains that the decision removing him from office is in violation of Article 6(1) of the Convention, as he was prevented from exercising his right to receive a fair and public hearing by an independent and impartial tribunal established by law. The applicant further complains that the actions he allegedly took and for which he has been removed from office were in accordance with the laws of the Federation of Bosnia and Herzegovina. By not establishing the factual basis for his removal the High Representative violated Article 6 in this respect as well.

8. The applicant disputes that he is currently under investigation by the Sarajevo Cantonal Prosecutor and his dismissal on the basis of a mere "suspicion" is in violation of the principle of presumption of innocence as guaranteed under Article 6(2) of the Convention.

9. The applicant complains that he was stripped of the right to compensation as guaranteed under the Law on Administration of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia no. 28/97) and other regulations, under which an official is entitled to the right to compensation after the termination of employment, regardless of the way in which his termination is effected. He specifically complains that his right to peaceful enjoyment of possessions as guaranteed under Article 1 of Protocol No. 1 to the Convention has been violated in this respect. The applicant further complains that he is deprived of an effective remedy under Article 13 of the Convention, as there is no right to challenge decisions on removal issued by the High Representative. Moreover, by barring him from participating in elections and performing public functions for a political party, the applicant's rights under Article 25 of the International Covenant on Civil and Political Rights have been violated.

IV. OPINION OF THE CHAMBER

10. In accordance with Article VIII(2) of the Human Rights 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 applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. He has extensively argued why Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina should be held responsible for the impugned actions of the High Representative. However, the Chamber notes that it has addressed the issue of the alleged responsibility of the Parties to Annex 6 for decisions of the High Representative to remove officials in previous decisions.

12. In case no. CH/98/1266 *Čavić v. Bosnia and Herzegovina* (decision on admissibility of 18 December 1998, para. 19, Decisions and Reports 1998) the Chamber examined the compatibility

with Annex 6 of complaints concerning actions carried out by the High Representative in the performance of his functions under Annex 10 of the Dayton Peace Agreement. The applicant complained that the High Representative, by removing him from office as a member of the Republika Srpska National Assembly, to which he had been elected, had exceeded his powers and thereby violated several rights of the applicant protected by the Convention. The applicant submitted that Bosnia and Herzegovina was responsible for the actions of the High Representative for the purposes of the Annex 6 Agreement. The Chamber reviewed the relevant provisions of Annex 10 to the Dayton Peace Agreement, UN Security Council Resolution No. 1031 (1995) and the relevant conclusions of the report of the Bonn Peace Implementation Conference and held that:

“The actions complained of were carried out by the High Representative in the performance of his functions under the General Framework Agreement, as interpreted by the Bonn Peace Implementation Conference. There is no provision for any intervention by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, the High Representative cannot be said to be acting as, or on behalf of, the State or the Entities when acting in pursuance of his powers. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party“(id., paragraph 19).”

13. The Chamber is of the opinion that the same applies in the applicant's case. Therefore, the application is incompatible *ratione personae* with the Agreement, within the meaning of Article VIII(2)(c), as directed against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber therefore decides to declare the application inadmissible.

V. CONCLUSION

14. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel